ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC046707
Case Name	TURNER, REGINA v. CITY OF CHICAGO
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0001
Number of Pages of Decision	45
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	James Ridge
Respondent Attorney	Devin Mapes

DATE FILED: 1/4/2022

/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

Regina Turner,

Petitioner,

vs. No. 10 WC 46707

City of Chicago,

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 care, temporary total disability ("TTD"), maintenance benefits and permanent disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Petitioner filed two claims which were tried together. Although the Arbitrator issued one decision for both claims, the Commission now issues a separate decision for each claim. This decision is for case number, 10 WC 46707, only.

Petitioner, a 48-y/o truck driver, alleged that on September 20, 2010, while driving a truck over potholes, she struck her head on the cab's roof and then immediately felt low back pain. Following a §19(b) hearing on October 19, 2011, an arbitrator found her condition to be causally related to her accident and awarded her, inter alia, lumbar fusion surgery at L4-L5. Dr. Goldberg performed that procedure on March 6, 2012, after which he reported Petitioner attained maximum medical improvement ("MMI") on October 17, 2012. Dr. Goldberg then released Petitioner to work with restrictions; in January 2013, he lifted all restrictions. Petitioner returned to and worked her prior job until March 15, 2013.

Petitioner's second accident (16 WC 3042) occurred on March 15, 2013. She was sitting in the cab of her dump truck while it was being filled. A heavy load of asphalt was dropped into the truck, which caused it to shake, and caused Petitioner to experience increased symptoms in her low back.

Petitioner treated with Dr. Slavin, who referred her to a pain management doctor. A lumbar MRI on November 16, 2013 showed unremarkable post-surgical changes at L4-5 and minimal generalized bulging at L3-L4. Petitioner remained off work and was treated with pain medication, physical therapy, injections, acupuncture and a trial of a spinal cord stimulator, none of which, she reported, improved her pain.

On February 13, 2014, Petitioner was examined by Respondent's Section 12 expert, Dr. Troy. He opined that Petitioner's second work incident in March 2013 was a reaggravation injury, and that she required sedentary work restrictions. However, Dr. Troy found that her objective tests did not match her neurologic function, and reported she exhibited significant symptom magnification.

On May 7, 2014, Petitioner underwent an EMG which was reported as normal. On August 14, 2014, she underwent an FCE in which her participation was found to be, "Indeterminate." A repeat FCE on September 29, 2014 was reported as valid and found Petitioner capable of working at a Light duty physical demand level. Petitioner's usual job as a truck driver was classified as Light-Medium.

On December 20, 2014, Dr. El Shami referred Petitioner to the Rehabilitation Institute of Chicago ("RIC") for a multi-disciplinary pain program, because of her multiple failed interventional treatments. She began pain treatment there on July 16, 2015, but was discharged from the program two months later after failing 3 urine drug screening tests. Those tests were negative for opioids, which Petitioner claimed she had been consistently taking 3 times a day. The tests were also positive for non-prescribed benzodiazepines, which Dr. Bouffard believed Petitioner had been taking illegally from friends or buying on the street. At arbitration, Petitioner offered no testimony to contradict or rebut Dr. Bouffard's report.

Petitioner participated in a job search with MedVoc Rehabilitation between May 2015 and September 2016. MedVoc sent her job leads for light duty positions like front desk clerk, office clerk and greeter – positions which allowed her to alternate sitting and standing throughout the work day. Petitioner did not find work within her restrictions while working with MedVoc.

A lumbar MRI taken in December 2015 revealed worsening degenerative changes to Petitioner's lumbar spine. On February 5, 2016, Dr. El Shami gave Petitioner work restrictions which included limiting her workday to 4 hours/day in a sitting position, one hour of continuous sitting, and six minutes of standing. On April 19, 2016, a physical therapist at ATI Physical

Therapy wrote an amendment to their September 2014 FCE report, adding a recommendation that Petitioner work only 4 hours a day.

Petitioner's surgeon, Dr. Siemionow, testified at a March 13, 2018 deposition that Petitioner developed adjacent segmental degeneration following her first lumbar surgery, and would benefit from a second surgery. On September 23, 2016, he performed a spinal fusion at L3-L5. Following that surgery, Dr. Siemionow found Petitioner able to work light duty. Dr. Siemionow believed that while Petitioner's September 29, 2014 FCE report had been valid, it might not be an accurate representation of her current abilities. At his deposition, Dr. Siemionow did not testify Petitioner required restrictions on the number of hours she could work.

In Dr. El Shami's March 27, 2018 work status report, he also found Petitioner able to work light duty with a 5 lb. lifting restriction. Similar to Dr. Siemionow, Dr. El Shami placed no limitation on the number of hours Petitioner could work.

Lisa Helma, Petitioner's certified vocational rehabilitation counselor, interviewed and evaluated Petitioner on February 25, 2015. Ms. Helma testified at a December 19, 2018 deposition that Petitioner had no transferrable skills, was totally disabled and was unemployable. She testified Petitioner's 4-hour a day work tolerance was a significant factor which limited Petitioner's employability.

In an addendum report dated March 2, 2017, Dr. Troy opined Petitioner's need for surgery on September 23, 2016 was not causally related to her September 20, 2010 work accident. He believed Petitioner reached MMI for that accident on September 29, 2014.

At arbitration, Petitioner testified she recently renewed her commercial driver's license ("CDL"), along with endorsements which allowed her to transport hazmat, tankers and passengers. She testified she is still employed by the City, and that she renewed her CDL, "just in case." Petitioner testified that although the City has not offered her a job within her restrictions, she has not requested accommodations from the City's Disability Officer under the American with Disabilities Act, or looked for any other work since her second surgery. Contrary to Petitioner's claim that MedVoc did not provide her with computer or keyboard training, MedVoc reported that Petitioner did not do keyboarding assignments or turn in daily typing tests which they requested.

Regarding Petitioner's first accident of September 20, 2010 (10 WC 46707), the Arbitrator awarded her TTD, maintenance, medical expenses, and 25% person as a whole. However, the Arbitrator denied Petitioner benefits after August 14, 2014 – the date of her indeterminate FCE. In so finding, the Arbitrator expressed grave issues with Petitioner's credibility, noting inter alia her: 3 failed drug tests at RIC; failure to take narcotics which had been prescribed to her for pain; exaggerated pain symptoms, and misleading testimony to the Court. The Arbitrator noted that while Petitioner denied receiving lumbar injuries and treatment prior to her two work accidents, her medical records revealed that she had, in 2009 – following a T-bone vehicle accident in which her car was totaled.

The Arbitrator did not find persuasive Dr. Siemionow's opinion that Petitioner developed adjacent segment disorder following her first fusion surgery, because he believed Dr. Siemionow was probably unaware of Petitioner's 2014 negative EMG and 2016 negative CT scan, and because no other doctors reported that problem. The Arbitrator imagined it would take longer than 2 years for adjacent segment disorder to manifest, especially given that Petitioner was inactive. The Arbitrator believed that the progression of Petitioner's condition could have as easily been caused by the passage of time or by the lumbar injections she received.

With regard to Petitioner's first accident of September 20, 2010, the Commission views the evidence somewhat differently than the Arbitrator. Dr. Siemionow reported on August 21, 2017 that Petitioner's L3-L4 adjacent segment degeneration was a direct result of her March 6, 2012 fusion at L4-L5. At his deposition, Dr. Siemionow testified it usually takes 2-3 years to see early signs of adjacent segmental degeneration. That matches the timeline in this case. Dr. Siemionow testified Petitioner's L3-L4 herniation progressed from 2013 to 2016. Petitioner's objective tests during that period largely corroborate the worsening of her lumbar spine at the L3-L4 level. The Commission finds Dr. Siemionow's opinions to be persuasive.

The Commission finds Dr. Troy's opinions less credible than found by the Arbitrator. Dr. Troy was not deposed for this case. Although he conducted a second IME of Petitioner on January 23, 2017, Respondent did not offer Dr. Troy's report of that examination into evidence. Instead, Respondent offered his addendum report dated March 2, 2017. In that addendum, Dr. Troy acknowledged Petitioner had, "transitional syndrome at the L3-L4 level" – another name for adjacent segment disorder.

While Dr. Troy denied that Petitioner's September 23, 2016 surgery was related to either of her work injuries, he did not dispute the necessity of that surgery. He also acknowledged it was performed to address Petitioner's L3-L4 transitional syndrome. Dr. Troy did not deny that Petitioner's transitional syndrome was caused or accelerated by her first *surgery* – which the Commission had found was causally related to her September 20, 2010 work accident.

The Commission finds Petitioner proved she developed adjacent segment degeneration (transitional syndrome) at L3-L4 as a result of her first, causally related, surgery, and that her need for a second lumbar surgery on September 23, 2016 was a sequela related to her first surgery. The Commission finds Petitioner's lumbar spine condition continued to be causally related to her September 20, 2010 work accident through September 23, 2017, the date Dr. Siemionow testified Petitioner attained MMI from her second lumbar surgery. The Commission therefore modifies the Arbitrator's award of TTD in this case by extending it through that date, and modifies the award of medical services to include Petitioner's lumbar spine-related medical expenses from September 20, 2010, the date of her first accident, through September 23, 2017.

Although the Commission finds Petitioner proved causal connection of her injuries through September 23, 2017, it nonetheless has concerns regarding Petitioner's credibility and motivation

to return to work. In addition to her failed drug screening tests at RIC, Dr. Troy found positive Waddell's signs at his examination of Petitioner in 2014.

Petitioner's continued reliance on her FCE and 4-hour workday restrictions and 2014 FCE as a reason to not seek employment, is misplaced. While those may have been valid indicators of her condition prior to her September 2016 surgery, since that surgery, they are not. That surgery improved Petitioner's condition. Dr. Siemionow testified that by May 2017, Petitioner no longer had pain in her lumbar spine, although she still complained of some left leg pain. Since that surgery, both Dr. Siemionow and Dr. El Shami have released Petitioner to light duty work, with no restrictions on the number of hours she could work. Dr. Siemionow recommended Petitioner obtain an updated FCE, which would have provided her treating physicians and the Commission with a more reliable indication of her current physical condition and abilities. She has not done so. Petitioner recently renewed her CDL, which allows her to seek driving positions within her restrictions. However, she has not looked for any work since her second surgery.

The Commission does not find Ms. Helma's opinions persuasive. They were in large part based upon Petitioner's outdated 2014 workday restriction of 4 hours. At her deposition, Ms. Helma admitted she was unaware Petitioner had undergone a second surgery in 2016, and she had not meet with or interviewed Petitioner following that surgery. Contrary to Ms. Helma's conclusion that Petitioner has no transferable skills, the Commission finds otherwise, noting that in addition to her experience as a driver, Petitioner attended Kennedy-King College, studied computer programing, worked in customer service at U-Haul for three years, and set up computers at that company's locations.

With regard to the nature and extent of Petitioner's injuries in this case, 10 WC 46707, the Commission finds an increase in the Arbitrator's award is warranted. Petitioner underwent two lumbar fusion surgeries, both of which the Commission has found to be causally related to her first accident of September 20, 2010. She required additional medical treatment following both procedures. She did not reach MMI for her second surgery, according to Dr. Siemionow, until September 23, 2017. While there is evidence that Petitioner is unable to work in her prior truck driver position, she has not proven she is incapable of finding work within her restrictions. The Commission therefore increases the Arbitrator's §8(d)2 award in this case from 25% to 45% person as a whole, representing a loss of trade.

Finally, although some of the lost time and medical expenses the Commission is awarding in this case were incurred following Petitioner's second, stipulated accident of March 15, 2013 (16 WC 3042), the Commission finds Petitioner's condition after that date to be more causally related to her September 20, 2010 accident and sequelae. Petitioner's condition following her September 20, 2010 accident progressed over time; resulted in adjacent segmental degeneration at L3-L4, and ultimately necessitated considerable additional treatment and a second surgery. The Commission finds Petitioner's accident of March 15, 2013 was only a temporary aggravation of her prior condition, which did not result in any permanent partial disability.

IT IS THEREFORE ORDERED BY THE COMMISSION that the May 5, 2020 Decision of the Arbitrator relating to Petitioner's claim number 10 WC 46707 is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that that the Arbitrator's award of medical services in this case is modified. Respondent shall pay Petitioner for all reasonable and necessary medical services related to her lumbar spine condition from September 20, 2010 through September 23, 2017, as provided in §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of TTD benefits is modified. Respondent shall pay Petitioner TTD benefits of $883.21/week for 299-2/7 weeks, representing the periods of time from October 20, 2011 through January 7, 2013 (63-5/7 weeks) and from March 20, 2013 through September 23, 2017 (235-4/7 weeks), as provided by §8(b) of the Act. The Arbitrator's award of 26 weeks of maintenance benefits from February 14, 2014 through August 14, 2014 is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's §8(d)2 award of 125 weeks at $669.64/week (25% person as a whole) is modified. Respondent shall pay Petitioner 225 weeks at $669.64/week (45% person as a whole), representing a loss of trade.

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

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

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

January 4, 2022

/s/ *Marc Parker*
Marc Parker

MP/mcp
o-11/18/21
068

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

22IWCC0001

TURNER, REGINA
Employee/Petitioner

Case# **10WC046707**

16WC003042

CITY OF CHICAGO
Employer/Respondent

On 5/5/2020, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0412 RIDGE & DOWNES
AMYLEE HOGAN SIMONOVICH
101 N WACKER DR SUITE 200
CHICAGO, IL 60606

0010 CITY OF CHICAGO LAW DEPT
MATTHEW A LOCKE
30 N LASALLE ST SUITE 800
CHICAGO, IL 60602

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Regina Turner
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # **10** WC **046707**

Consolidated cases: **16 WC 03042**

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 **October 10, 2019 & January 10, 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 **September 20, 2010 and March 15, 2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being ***is*** causally related to the accident of September 20, 2010.

In the year preceding the injury, Petitioner earned $**68,890.12**; the average weekly wage was $**1,324.81**.

On the date of accident, Petitioner was **57** 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 $**182,831.50** for TTD, $**0.00** for TPD, $**77,726.00** for maintenance, and $**15,528.90** for other benefits, for a total credit of $**276.086.40**.

Respondent is entitled to a credit of $**42.895.16** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner **temporary total disability benefits** of $883.21/week for 111 weeks, representing the periods of time from 10-20-11 through 01-07-13 (63.714 weeks) and the period of 03-20-13 through 02-13-14, (47.286 weeks) the date of Dr. Daniel Troy's IME.

Respondent shall pay Petitioner **maintenance benefits** of $883.21/ week for 26 weeks, representing the period of time from 02-14-14 through 08-14-14, (26 weeks) the date of the indeterminate FCE.

Respondent shall be liable all reasonable and necessary **medical services** related to the L4-5 fusion and post-operative care, as provided in Sections 8(a) and 8.2. of the Act. Conversely, Respondent is not liable for any medical bills, under the Act after 08-14-14, the date of the indeterminate FCE. Further, Respondent is not liable for the L3-4 surgery of September 23, 2016.

Petitioner is entitled to have and receive from Respondent 125 weeks at a rate of $669.64 per week, representative of a 25% loss of a person as a whole.

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

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

Signature of Arbitrator

05-02-20
Date

MAY 5 - 2020

IN THE WORKERS' COMPENSATION COMMISSION OF THE STATE OF ILLINOIS

REGINA TURNER,	)	
	)	Case No. 10 WC 46707
Petitioner,	)	16 WC 03042
v.	)	
	)	Kurt Carlson, Arbitrator
CITY OF CHICAGO,	)	
Respondent,	)	

DECISION OF ARBITRATOR

Statement of Facts

Procedural History

Regina Turner ("Petitioner") was a motor truck driver for the City of Chicago Department of Transportation. The City of Chicago ("Respondent") is a municipal corporation and body politic.

Earlier 19(b) Hearing - 01-06-12

An earlier hearing under section 19(b) of the Act was held in 2012. (PX #1) The Petitioner won and was awarded prospective medical care in the form of a lumbar decompression and fusion surgery (L4-L5) that was recommended by Dr. Fardon. (PX #1).

The "law of the case" provides that where an issue has been litigated and decided, a court's unreversed decision on a question or law or fact settles that question for all subsequent stages of the suit. See *Norton v. City of Chicago*, 293 Ill. App. 3d 620, 624, 690 N.E.2d 119, 123

(1st Dist. 1997). As such, all conclusions of law in the January 6, 2012 19(b) arbitration decision are adopted and incorporated into this decision. (PX #1)

After the 19(b) hearing, the Petitioner's lumbar surgery was performed by Dr. Edward Goldberg (not Fardon) and the Petitioner was paid TTD until January 8, 2013, when she returned to work. Soon afterwards, she was involved in another accident with the City and the two claims were consolidated.

Present workers' compensation hearing:

On January 10, 2020, the parties closed proofs on the present matter listing both dates of loss on the request for hearing form. (ARB X #1) Neither accident was disputed. *(Id.)* Petitioner is claiming to be permanently and totally disabled.

History of the claim after the 1st 19(b) hearing

Dr. Edward Goldberg

On March 6, 2012, Petitioner underwent a surgical decompression and fusion at L4-L5 with Dr. Edward Goldberg (not Dr. Fardon) at Midwest Orthopaedics at RUSH. (PX #2) Post-operative physical therapy at ATI ended on September 5, 2012 when she underwent a Functional Capacity Examination. ("FCE") (PX # 4b) Petitioner was unable to complete assessment activities during the second half of the FCE, but the exam was still determined as VALID by the athletic trainer. Dr. Goldberg endorsed the results and released Petitioner back to work with light duty restrictions. (PX #2) Petitioner continued to complain of severe pain in the left buttock with radiation down the left leg. She was still on Norco. (PX #2)

Post-operative MRI

On October 1, 2012, because of persistent pain complaints, Petitioner underwent an MRI of her lumbar spine with gadolinium at Streeterview Open MRI. (PX #2) overall impression was mild to moderate foraminal stenosis at L4-5 and L5-S1, mild stenosis at L3-4.

On October 17, 2012, Dr. Goldberg wrote that she still had some chronic right radiculopathy at L5. (PX #2) She had no active nerve compression on the MRI scan. He did not recommend any additional surgery. *(Id.)* Instead, he recommended return to work, light duty with permanent restrictions per her FCE. *(Id.)* Petitioner had reached MMI. *(Id.)* Petitioner could follow up care with her personal physician. She was taken off Norco *(Id.)*

Full duty release (trial basis)

Petitioner obtained a full-duty release by Dr. Goldberg on January 8, 2013. (PX #2) Petitioner returned to her job as a motor-truck driver, a LIGHT to MEDIUM occupation. *(Id.)* Dr. Goldberg had referred the Petitioner to Dr. Myria Dmytriv for pain management. *(Id.)*

Dr. Myria Dmytriv – UIC – pain management

On January 16, 2013, Petitioner was treated by Dr. Myria Dmytriv who ordered continued occupational therapy for the Petitioner's right wrist pain, for a possible radio-scaphoid ligament injury. She stated that Petitioner's low back is doing better, but she needed a prescription for diazepam and hydrocodone for occasional pain and muscle spasm. She was given 60 tablets. (PX #13, p.997) Petitioner was back on Norco.

On January 22, 2013, Petitioner treated with Dr. Dmytriv who wrote, "her c/o L foot pain that started last Thu with the spasm while laying down on R side. Pain was 10/10, worse with even touching her skin, impaired walking. The diagnosis was acute leg pain, L-S radiculopathy. Worsening radicular symptoms. (PX #13 p.996)

Petitioner returns to full duty work – February 11, 2013

Petitioner returned to full duty work on February 11, 2013. (PX #2) She testified that upon returning to work she was still symptomatic, with complaints of pain radiating down her left leg to her toes. (T. 11) Petitioner's job as a motor truck driver required a valid CDL.

Dr. Krystof Siemionow - UIC

The University of Illinois – Chicago ("UIC") records show that Petitioner was examined by Dr. Siemionow on February 12, 2013. He found a negative straight leg raise bilaterally. Petitioner was walking with a slightly antalgic gait. He reviewed Dr. Goldberg's latest MRI and ordered a CT-Scan to assess for any screw loosening or pseudoarthrosis. (PX #13 p.1143)

On February 19, 2013, Petitioner was prescribed methylprednisone by Dr. Jonathan Watson. (PX #11) His records are not in evidence.

On February 28, 2013, Petitioner was seen by Dr. Dmytiv who wrote that Petitioner's chief complaint was "back pain…" "The onset was gradual." Her reported pain scale was 6. Petitioner had an appointment with orthopaedics and was still on Norco. (PX #13 p.991)

Petitioner underwent a CT-Scan of the lumbar spine at UIC on March 2, 2013. (PX #2) (PX #9b)

Second Accident – March 15, 2013

On March 15, 2013, Petitioner testified that she was assigned to a dump truck crew that patched potholes. (T. 12) The truck could allegedly hold up to ten tons of asphalt and it was loaded in scoops; each averaging about five tons. *(Id.)* Petitioner testified that the truck shook when the asphalt was dropped into the payload area of the truck bed and that the shaking caused

her to re-experience lower back pain. (T. 12-14) The pain was so severe that she had trouble walking. *(Id.)*

On March 19, 2013, Petitioner was examined by Dr. Krystof Siemionow at UIC who found a negative bilateral straight leg raise and stated, "there does not appear to be any ongoing compression that could explain her pain." We recommend that she see from pain service that she has been having ongoing issues with pain and is requiring narcotic medications to control this pain." (PX #13 p.1141) "There is currently no surgical recommendations from our standpoint to help her with her pain." *(Id.)* Petitioner was also seen by Dr. Kristin Baier on this date at UIC, who prescribed more Norco. (PX #13 p.922, 989-990)

The next day, March 20, 2013, Petitioner sought medical care at UIC with Dr. Mariya Dmytriv (pain management) at UIC. Her back pain was reportedly to be severe and constant. (PX #13 p.986)

Dr. Konstantin Slavin - UIC

On April 1, 2013, Petitioner sought treatment at The University of Illinois- Chicago ("UIC") with Dr. Konstantin Slavin (neurosurgeon) who wrote the clinical exam "today was pretty much unremarkable" and the CT-Scan showed good alignment with no stenosis. (PX #13 p.1513) Yet, the Petitioner still complained of left leg pain. (PX #3 p.6) He recommended a referral to a pain clinic and an injection which was performed on April 23, 2013. (PX #3)

On April 18, 2013, the Petitioner was seen by Dr. Mariya Dmytriv at UIC who wrote that Petitioner was complaining of worsening pain in the left foot, worse at night, "spares Norco because is afraid of getting addicted." She was advised to get steroid injections at the pain clinic. Petitioner was thinking about disability since she cannot drive a truck anymore. She was prescribed Norco. (PX #13 p.983)

On April 29, 2013 Petitioner returned to Dr. Goldberg's office on unprescribed crutches and saw physicians' assistant – Brandon Sessler at Midwest Orthopaedics. (T. 15) stating that she was back on Norco, taking three to four tablets a day and taking meloxicam at bedtime. (PX #2) Dr. Sessler diagnosed chronic left lumbar radiculopathy in the L5 distribution. *(Id.)* Petitioner's straight leg raise was positive on the left, negative on the right. (PX #2) In PA–Sessler's opinion, Petitioner did not suffer a new injury or present new symptoms; rather, she suffered a reaggravation of her previous injury and an increase in symptoms that previously existed. She was not reporting new symptoms, just an increase in pain since March 15, 2013. Drs. Sessler and Goldberg would defer the Petitioner's work status to Dr. Siemionow. It was reasonable to consider injections. (PX #2 p.7)

On April 30, 2013, the Petitioner told Dr. Siemionow about her recent flare up. He noted Petitioner's negative bilateral straight leg raise and he agreed with a conservative treatment course. (PX #13 p.1139)

Dr. Konstantin Slavin - UIC

On September 23, 2013, the Petitioner was examined by Dr. Konstantin Slavin (neurologist) wrote, "Unfortunately, the patient's pain has changed. Right now, she has new pain that goes into her right leg and foot and she has no good explanation for it. …I do not have any explanation for it." (PX #13 p.1066) He thought the Petitioner's unprescribed crutches might have something to do with it. *(Id.)*

On October 29, 2013, Petitioner complained of new right-sided radiating pain to Dr. Siemionow. (PX #13 p.1136) Her straight leg raise was mild bilaterally. *(Id.)*

On November 5, 2013, Petitioner began her physical therapy evaluation at UIC and stated that the initial onset of her low back pain was in 2010 when she hit a bump while driving a truck at work. (PX #13 p.1414) She thought she that failed the earlier FCE at ATI. *(Id.)*

MRI – lumbar spine – November 16, 2013

An MRI of the lumbar spine was performed on November 16, 2013 and interpreted as unremarkable at L4-5 and minimal generalized bulging disc at L3-4. There was no spinal canal stenosis. (PX #10 p.7) Dr. Slavin reviewed it a month later and described the surgical area as "nice and clean." He described the bulging at L3-4 as mild. (PX #13 p.1062) There was no stenosis or nerve impingement. *(Id.)* Dr. El Shami (UIC) agreed and stated it was "unremarkable." (PX #13 p. 1259)

On December 10, 2013, the Petitioner was examined by Dr. Siemionow and stated that the pain no longer radiates any further down the right leg. (PX #13 p.1133) She was walking with a normal gait and her physical examination was negative. (*Id.*) Dr. Siemionow reviewed the MRI and stated that it did not show anything that warranted surgery. (*Id.*)

On January 10, 2014, Petitioner told her physical therapist that she cannot even go to the movies with her husband because standing in line for popcorn, and sitting still for 1.5 hours are too much for her left leg to handle. (PX #13 p.1398)

Respondent's IME with Dr. Daniel Troy – February 13, 2014

Petitioner underwent a Section 12 Examination ("IME") with Dr. Daniel Troy at Respondent's request on February 13, 2014. (RX #2) He noted that when Dr. Goldberg substituted the Petitioner's Norco for Aleve, she began treating with Dr. Krzysztof Siemionow at UIC. *(Id.)* More importantly, on physical exam, he stated that Petitioner was significantly magnifying her symptoms. He reviewed four lumbar MRIs. Her objective testing did not match

her true neurological function because she was neurologically intact with 5/5 strength and no sensory or motor deficits. Her response to palpation was magnified and she displayed marked cogwheel rigidity, no gross sensory deficits, and was found to have a significant number of Waddell factors, all of which indicate non-organic or a psychological component to her back pain. (*Id.)* In addressing her work capacity, Dr. Troy recommended a new FCE, but not at ATI. However, he also noted that Petitioner's sedentary work restrictions were based on her subjective statements. (*Id.*)

On February 14, 2014, UIC physical therapist Josiah Sault wrote that Petitioner should consider seeking psychiatric counseling. (PX #13 p.1388)

On March 10, 2014, Dr. Konstantin Slavin wrote that "The orthopedic doctors did not feel that she needs more surgeries and sent her to me for consideration of a spinal cord stimulator. (PX #13 p.1054)

On March 28, 2014, physical therapist Josiah Sault wrote that "PT is not the most important option for her at this point." Pain was still limiting all function and Petitioner spent an extensive amount of time talking about the RIC program instead of performing her stretches and exercises. (PX #13 p.1379)

EMG -May 7, 2014 - negative

On May 7, 2014 and EMG/NCV performed at UIC was interpreted as normal. "This is a normal study. There is no EDX evidence to support a peripheral nerve lesion, lumbosacral plexopathy, myopathy, lumbosacral root lesion or polyneuropathy." (PX #10 p.15) Please see also, (PX #9b). The original report is not in evidence.

On June 16, 2014, Petitioner told Dr. El Shami that after the 2010 work accident, she felt that she had broken her hip and she had to use crutches off and on since then. (PX #10 p.1251)

The doctor wrote that both the recent MRI and EMG appear to be within normal limits. *(Id.)* The Petitioner did not have a fractured hip.

On June 27, 2014, Dr. El Shami recommended that the Petitioner "stop using the cane as I see no significant weakness or need for it." (PX #13 p.1246)

Functional Capacity Examination - indeterminate

Petitioner underwent an FCE on August 14, 2014 at ATI which was deemed by the athletic trainer to be INDETERMINATE. She quit the exam and simply did not complete enough activities to make any recommendation. (PX #4c)

On August 28, 2014, Dr. El Shami wrote that Petitioner should have an epidural steroid injection for diagnostic purposes. He was becoming somewhat skeptical since the EMG was completely normal. He wanted to see a FCE to determine if the Petitioner's findings were validated. (PX #13 p.1232)

Functional Capacity Examination – valid - 2014

Petitioner underwent another FCE on September 29, 2014 at ATI. This time Petitioner was found to put in a VALID level of participation. The FCE report noted that Petitioner was capable of work within the light physical demand level. (PX #4d)

Epidural Steroid Injections

Petitioner testified that she continued to treat at UIC through the remainder of 2014. Her treatment included an epidural steroid injection (ESI) on October 14, 2014 and a medial branch block on December 9, 2014. (T. 18)

On October 31, 2014, Dr. El Shami wrote that Petitioner's imaging has "only showed mild residual deficits." (PX #13 p.1220) The Petitioner has been taking 3-4 Norcos per day and

has had two recent suicidal ideations. She needed a multi-disciplinary approach to deal with her chronic pain including psychological treatment. *(Id.)*

On November 20, 2014, Dr. Amir El Shami admitted that everything they've tried so far has been unsuccessful. "At this point, more from a psychological standpoint, I do not feel the patient is ready to return to work physically. I do not see any risk of her returning to work as a truck driver." (PX #13 p.1210-11) Dr. El Shami thought the benefit of future injections was low, as she failed to respond to all previous interventions. (PX #13 p.1203) Nevertheless, he wanted her to attend RIC before she tried to return to work. (PX #13 p. 1211)

Petitioner also obtained a prescription for hydrocodone-acetaminophin from Dr. Humera Asem at UIC (obstetrician-gynecologist). (PX #11)

Initial Vocational Assessment – CRC – Lisa Helma

On February 25, 2015, vocational rehabilitation consultant, Lisa Helma, wrote that Petitioner was still treating with Dr. El Shami for pain management once a month for medication refills (narcotics). (PX #6a) She cannot get her Norco refilled without seeing him. The Arbitrator notes that Dr. El Shami's name is not on any of the CVS prescription logs. (PX #11) On this date, she also stated that Dr. El Shami prescribed the cane. *(Id. p.2)* Further, she stated that "she was capable of standing for a maximum of 5 to 10 minutes, but that she would be unable to walk the next day." *(Id. p.4)* In Ms. Helma's opinion, Petitioner age, disability and lack of transferable skills meant that Petitioner's disability was permanent and total. *(Id. p.11)*

On February 9, 2015, the Petitioner sought treatment at the UIC emergency room, but those records are not in evidence. (PX #7b) Apparently, it was for superficial thrombophlebitis (PX #13 p.1202)

MRI – lumbar spine – April 22, 2015

April 22, 2015, an MRI showed minimal generalized bulging at L3-4 and no spinal stenosis (PX #10 p.15). One week later, Dr. El Shami's physical exam was negative. (PX #13 p.1201). He hoped RIC would wean Petitioner off narcotics and possibly other interventions. *(Id.)*

Vocational Rehabilitation – MedVoc – May 1, 2015

On April 23, 2015, Petitioner met with MedVoc Rehabilitation consultants Diamond Warren and Jacqueline Bethell. MedVoc prepared an initial rehabilitation report on May 1, 2015. (RX #6) The MedVoc report noted that Petitioner had already started a job search and had job logs with her at the initial meeting. (*Id.*) According to the report, Petitioner was looking for cashier positions in retails stores and hospitals. The report noted Petitioner had outdated computer training from the late 1980's and recommended up-to-date computer training through MedVoc's home-study program. *(Id.)* Petitioner declined to participate. *(Id.)* Nevertheless, Petitioner testified that she participated in MedVoc from May of 2015 through September of 2016. (T. 27)

On June 2, 2015, Petitioner underwent a left joint steroid injection with Dr. Pichurko. (PX #10 p.15)

On June 19, 2015, Dr. Amir El Shami referred the Petitioner to the Rehabilitation Institute of Chicago ("RIC"), to focus on psychological treatment and physical therapy. Another one of his concerns was that Petitioner said she was taking 3-4 Norco per day. (PX #13 p.1198) He gave her a copy of the latest MRI and EMG for the RIC physicians to review as well. *(Id.)*

Pain Treatment at RIC – three failed drug screenings in 2015!

Petitioner began pain treatment with Dr. Karina Bouffard at Rehabilitation Institute of Chicago ("RIC") on July 16, 2015, as UIC does not have a multi-disciplinary pain clinic. (PX #10 p.14) (PX #13 p.1198) These records show that the Petitioner gave a poor effort for her "nocieptive somatic back pain." (PX #10) Petitioner admitted that she had thoughts of hurting herself from 2010–2013 and underwent four suicide attempts during this time. (*Id.* p.9) Petitioner was able to stand on her heels and toes. *(Id. p.16)* Petitioner had treatment for psychiatric care during this time, but those records are not in evidence. Petitioner denied ever using illegal drugs *(Id. p.11),* but was soon discharged from the pain management program after two months for testing positive for unprescribed medications. *(Id. p.51, 212, 214)* Petitioner had three noncompliant urinary drug screening (UDS) tests! *(Id. p.51, 57)* According to Dr. Bouffard, after checking a controlled substance database, Petitioner had no prescription by any physician in Illinois or Indiana for benzodiazephines or "benzos," but somehow kept coming up positive for them. Ironically, she tested negative for opioids containing hydrocodone (Norco), which were prescribed, and the Petitioner had claimed to taking three-four times a day since 2013 for her pain! *(Id. p.53, 57)* Dr. Bouffard counseled the Petitioner several times about her poor progress, lack of motivation, absences, tardiness and noncompliant UDS before discharging Petitioner from the program. *(Id. p. 51, 59)* Dr. Bouffard concluded that she was getting her benzos from the street or taking friends medications. *(Id. p. 51)* Petitioner had nothing to say in her defense after speaking at length with Dr. Bouffard and Dr. Colin Franz upon discharge. *(Id.)*

Towards the end of the treatment at RIC, Petitioner began to complain of bilateral and right upper extremity radiculopathy. *(Id. p.6, 22)* The physical therapist also noted that her pain

location changed from day to day during her time at RIC. *(Id. p.98)* Nothing ever came of these complaints. Similar non-anatomical complaints were also documented by Dr. Votta-Vaelis during the Summer of 2015 when Petitioner stated that her lower back pain radiates into her arms with numbness and tingling. (PX #13 p.781 & 785)

Petitioner's prescription medication record with CVS Pharmacy is labeled PX #11. While these documents may not show a complete history of Petitioner's prescription drug use, one can see that she continued to obtain narcotic medication (hydrocodone and tramadol) from various doctors to the present time. *(Id.)*

Petitioner's acetaminophen-hydrocodone prescriptions were refilled by Dr. Valero-Vargas (UIC -clinical exercise physiologist) on October 27, 2015 and December 1, 2015. (PX #13 p.1193)

UIC – Physical Therapy

Despite the above, Petitioner continued to follow up regularly at UIC for physical therapy, pain treatment and narcotic medication refills from Dr. Votta-Velis. (PX #11) (PX #13 p. 1192-3)

Petitioner's failed urinary drug screening failures were not disclosed to her treating physicians at UIC, as they made no mention of it in their records and kept prescribing narcotic medication. (PX #13) (PX #2) In fact, Petitioner misled Dr. El Shami on November 13, 2015, by telling him that she completed the program at RIC, was "happy with the pain program and result it has given her" and is "now only taking 60 narcotic tablets a month instead of 120; but…her pain was still the same." (PX #13 p.1196) Petitioner carried on as if nothing ever happened. Dr. El-Shami did not recommend any further interventions as she was in no distress. She was not using an assistive device at this appointment. Nevertheless, he recommended that Petitioner try

and wean herself off narcotics. (PX #13 p. 1731 & 2) He would follow up with her on an as needed basis. *(Id.)*

MRI – lumbar spine – December 31, 2015

Petitioner underwent another lumbar MRI (without contrast) on December 31, 2015. (PX #13 p.1692) "Since 2013, there worsening degenerative changes noted at the L3-4 level including tiny, bilateral, facet-related synovial cysts that result in moderate central spinal canal and moderate to severe left neural foraminal and moderative right neural foraminal stenosis. (PX #13 p.1692)

On January 14, 2016, Dr. Amir El Shami reviewed the above MRI and stated that it demonstrated "slightly progressive" findings from the MRI just over 2 years ago. He recommended foot orthotics and facet block injections. (PX #13 p.1183)

On February 5, 2016, Dr. Amir El Shami stated that Petitioner should only work four hours a day per the September 2014 FCE. (PX #13 p.1176)

On February 22, 2016, Dr. Konstantin Slavin wrote that "I feel that the chance of her getting better from lumbar decompression is small but real…" (PX #13 p.1048) On February 28, 2016, the Petitioner sought medical care at the UIC emergency room. (PX #7b) Those records are not in evidence.

Petitioner restricted to 4-hour workday by ATI

On April 19, 2016, an athletic trainer at ATI created an addendum report to the FCE that was performed in September of 2014 clarifying to Dr. El Shami that a 4-hour workday is recommended only if sitting, standing or walking are required. (PX #4e)

Repeat EMG/NCV – May 11, 2016 – positive?

On May 11, 2016, the Petitioner underwent another EMG/NCV, which showed mild chronic right-sided radiculopathy at L5. There was no evidence to support a peripheral nerve lesion, lumbosacral plexopathy, myopathy or polyneuropathy. (PX #13 p.1579-83) This matches Dr. Goldberg's finding back in 2012.

CT-lumbar Spine – June 8, 2016 - no stenosis

A CT- lumbar spine was performed by UIC on June 8, 2016 and showed posterior disc bulge at L3-4 and L5-S1 without evidence of stenosis or significant neural foraminal narrowing. The laminectomy appeared stable. The anterolisthesis of L4 on 5 was describes a "grade 1" or mild. (PX #3 p.182) (PX #13 p.1573)

Another ESI was performed later that month. (PX #3 p.68)

On July 19, 2016, over three years after the second work accident, Dr. Krysztof Siemionow recommended a L3-L5 decompression and fusion. (PX #7a). In his view, Petitioner had failed conservative treatment and the degeneration at L3-L4 was a direct result of the earlier L4-L5 fusion Dr. Goldberg had performed. *(Id.)* His plan was to remove and replace the screws at L4 and L5 then extend the fusion up a level. (PX #13 p.1122) The surgery was delayed until the end of September.

On August 12, 2016, Petitioner was discharged from UIC physical therapy stating that "her pain levels are the same" and she plans to have her surgery at the end of September. She had no plans to return to work. (PX #13 p.1366-7) The therapist wrote that her minimal progress was "most likely secondary to outside psychosocial factors that will need to be addressed if she wants to have long term improvement." (*Id.* p.1368)

Dr. Siemionow – UIC -fusion surgery L3-4

Surgery was performed on September 23, 2016. (PX #13 p.1607) The preoperative diagnosis was L3-4 spinal stenosis, adjacent segment degeneration, status post L4-5 decompression and fusion. *(Id.)*

Petitioner's post-operative care was complicated by an unrelated pulmonary embolism, requiring the Petitioner to be hospitalized until October 7, 2016. (T. 20)

Trip to Mexico

On October 18, 2016, Petitioner admitted to her therapist that she felt rage related to her injury and the victimization she felt at the City of Chicago's hands. (PX #3 –folder 7 – addendum psych records p.15) Petitioner also stated she suffered a traumatic brain injury (TBI) when she drove over the pothole and hit her head in 2010. *(Id.)* She also spoke of her recent trip to Mexico. The specific travel dates were not mentioned. *(Id.)*

Unprescribed wheelchair

On November 3, 2016, Petitioner went to UIC for a medication refill with Dr. Chukwudi Okpala. His physical examination was negative, and he noted that Petitioner arrived in a wheelchair. (PX #3 p.179) Nevertheless, he wrote her a prescription for hydrocodone-acetaminophen. (PX #11) Petitioner also began physical therapy at ATI and continued there until discharged on August 8, 2017. (T. 21)

IME – Dr. Daniel Troy – January 23, 2017

On January 23, 2017, Petitioner had a follow up IME with Dr. Troy. (RX #3) Dr. Troy stated that the September 23, 2016 fusion was based "purely on Petitioner's subjective complaints of discomfort and the MRI findings of the December 31, 2015." Dr. Troy further opined that the need for surgical intervention was not causally connected to the work injury suffered in 2010 or the reaggravation in 2013. *(Id.)* Dr. Troy expounded on his opinion by

pointing to the significant degree of symptom magnification on the part of Petitioner. He added that he recommended Petitioner undergo a new FCE, not at ATI. He noted that after the first invalid FCE, a second, independent location should have been used. (*Id.*) Lastly, Dr. Troy noted that Petitioner's FCE results on the September 29, 2014 were very similar to the previous FCE of 2012, therefore indicating that Petitioner had returned to her previous job level predating the March 2013 injury. (*Id.*)

Physical Therapist recommends discharge – March 9, 2017

On March 9, 2017, UIC physical therapist Bradley Myers wrote that the Petitioner was "resistant to interventions.... transition to a health club and independent exercise is needed as progressed is slowed." (PX #3 p.716) Ten days later, CT imaging showed "good location of pedicle screws. There is no hardware failure. There is good fusion. There is no pseudoarthrosis. There is no adjacent segment degeneration." (PX #3 p.645)

Petitioner underwent another caudal ESI later that month. (PX #3 p.68)

On May 24, 2017, Petitioner was back in physical therapy. (PX #13 p.1444)

CT – lumbar spine – August 21, 2017

On August 21, 2017, Petitioner underwent a CT of the lumbar spine which showed no radiographic evidence of complication, a stable laminectomy and posterior fusion at L4-5 and L5-S1. There was posterior disc bulging seen at L3-3 and L5-S1, but no central or neural foraminal stenosis. Petitioner was diagnosed with "failed back syndrome." (PX #3 p.84)

Neuropsychological Evaluation – October 23, 2017

Petitioner underwent a neuropsychological evaluation on October 23, 2017 by Dr. Konstantin Slavin at The University of Illinois Hospital prior to the placement of a spinal cord stimulator. (PX #3) Petitioner denied any history of substance abuse. The doctor found no

contraindications from a neuropsychological standpoint with her undergoing the spinal cord stimulator process. (*Id.*)

The Arbitrator notes that The University of Illinois Hospital has "blacked-out" portions of the Petitioner's past and current medical history from the medical records submitted into evidence. Two good examples of this are on page 254 and 413 of PX #3. However, there are dozens of "blacked out" lines of treatment plans, diagnoses, and assessment plans. The medical record adminstrator, Ciox Health, indicated in a cover letter that records involving substance abuse or HIV/AIDs would not be released with a general release. (PX #3) Apparently, a general release was sent to the health care provider instead of an Illinois subpoena. The Arbitrator notes that the records in PX #2 appear to be "full and complete," but they are not. For instance, there is no operative report from the second fusion performed by Dr. Siemienow on September 23, 2016, nor is there a copy of the EMG report dated May 11, 2016 enclosed in the record. These key documents are located in PX #13, a two-volume set.

On December 27, 2017, Petitioner was examined at the UIC pain clinic. Her physical examination was largely normal. (PX #3 p.96) All provocative testing was normal except for supine straight leg raise. (*Id.*) The sitting straight leg raise was not performed. (*Id.*) Deep tendon reflexes and strength were normal all around. (*Id.*) Four days later, the Petitioner filled a prescription for hydrocodone. (PX #11)

On February 21, 2018, the Petitioner physical exam was negative, except for complaints of pain. (PX #3 p.3) Later that day, Petitioner filled a prescription for narcotic medication. (P #11)

Spinal Cord Stimulator – February 27, 2018

On February 27, 2018, Petitioner had a spinal cord stimulator trial while under the care of Dr. Slavin. (T. 21). After one week, the Petitioner was unsatisfied with the results and had the electrodes removed. (PX # 3 p.634)

On April 23, 2018, Petitioner underwent yet another MRI of the lumbar spine which showed no stenosis at any level. (PX #3 p.1298)

In May of 2018, Petitioner's treating doctor's at UIC requested another FCE (PX #3 p.640). There is some indication in the medical records that Respondent requested another FCE in December of 2018. (PX #3 p.395, 402, 685) In any event, Petitioner told her doctors that "things were not worse, they just aren't any different." (PX #3 p.687) There is no record of FCE being performed in 2018.

Permanent light duty restrictions – March 27, 2018

On March 27, 2018, Dr. Siemionow wrote the following, "At this time, given that the patient has exhausted a lot of her operative and non-operative treatment, we do not think the patient is a good target for surgery, as everything radiographically appears to be in good surgical order." (PX #3 p.643) The Petitioner complained of pain, but the physical examination was unremarkable. (*Id.*) The Petitioner was referred to Dr. El Shami for non-surgical treatment.

On this same above date, Dr. Amir El Shami then imposed permanent light duty restrictions, "as per FCE, of no lifting, pushing, pulling or carrying greater than 5 pounds and climbing stairs or ladders." (PX #12b) But there was no new FCE.

MRI – lumbar spine – April 4, 2018

On April 4, 2018, Petitioner indicated on an Owestry survey that her pain prevents her from all travel except for visits to the physician, therapist, or hospital. (PX #3 p.679) Later that

month, Petitioner underwent an MRI of the lumbar spine that showed no spinal stenosis at any level. The spinal canal appeared patent. (PX #3 p.79)

Petitioner's drug screening results from UIC have been "blacked out." (PX #3 p.836, 837)

Currently still treating – minimal progress

Petitioner kept treating. Dr. Abbas Hyderi referred the Petitioner to Schwab Rehabilitation Hospital for physical therapy from September 5, 2018 to December 18, 2018. (PX #5) Petitioner made minimal progress and stated to the therapist that she had radiating pain down both legs to her toes. She stated, "I know I'm always going to have pain, the doctor told me, and that I'll probably need therapy for the rest of my life." (PX #5) She was still being prescribed Norco, Lyrica, and Nortriptyline. She was still using a walker. *(Id.)*

The CVS prescription log shows that Petitioner was receiving prescriptions for hydrocodone-acetaminophen from Dr. Rani Chovatiya (pain specialist) as recently at August 29, 2019. (PX #11)

Petitioner's job description was forwarded to the ATI by Respondent. The minimum qualifications include having a valid CDL. (PX #4a)

Trial testimony

At the second and final workers' compensation arbitration hearing, on October 10, 2019, Petitioner ambulated with a walker. Sometimes, she uses the rolling walker that belongs to her mother. (PX #3 p.176) She testified that she continues to experience symptoms today, including a constant aching and pain down her leg all the way to her left foot. (T. 27) Petitioner also testified that she has not sought any employment since September of 2016. (T. 30) Nevertheless,

Petitioner testified she recently renewed her Illinois State commercial driver's license and classifications ("CDL"). Petitioner indicated she renewed her CDL in case she was called back to work for Respondent. Petitioner stated no medical documentation was required for renewing her CDL, because she only drives in the City, not across the state or interstate. (T. 45-48). Petitioner indicated that she would be interested in returning to work for Respondent but admitted that she has not applied for any jobs or sought reasonable accommodations under the American's with Disability Act. ("ADA")

Updated Vocational Assessment

On October 24, 2018, Vocamotive provided an updated report. (PX# 6c). It concluded Petitioner does not have access to any stable labor market. *Id.*

Ms. Helma offered testimony by way of an evidence deposition. (PX# 6d). Ms. Helma's testimony was largely consistent with her reports. It is noted however, that Ms. Helma admitted that the way in which ATI calculated Petitioner's work-day restriction of 4 hours is uncommon. If you add up the hours listed for sitting, standing, and walking, the sum of which is greater than 4 hours, but the FCE concluded she was limiting to a 4-hour workday. Ms. Helma was aware that Petitioner currently held a Commercial Drivers' License – B (CDL) and it was currently valid. (PX# 6a)

Conclusions of Law

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

An injury is compensable under the Illinois Workers' Compensation Act only if it arises out of and in the course of employment. *Panagos v. Industrial Commission*, 177 Ill. App.3d 12,

524 N.E.2d 1018 (1988). The burden is upon the party seeking an award to prove by the preponderance of the credible evidence the elements of her claim. *Peoria County Nursing Home v. Industrial Commission*, 115 Ill.2d 524, 505 N.E.2d 1026 (1987). The burden of proof is on claimant to establish the elements of her right to compensation, and unless that 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 Comm.* 44 Ill.2d at 214, 254 N.E.2d 522 (1969). Critical to the determination of the aforementioned is the petitioner's credibility.

The Arbitrator finds that there are grave issues with Petitioner's credibility based on the following eight observations.

First, Petitioner was discharged from the pain treatment program at Rehabilitation Institute of Chicago ("RIC") for failing three drug tests. (PX #10) At that time, Petitioner told her doctors that she took Norco 3-4 times a day for her low back pain, but this was untrue. Instead, she was taking unprescribed benzodiazepines, an anti-anxiety drug. It is important to note that Petitioner was not trading one kind of pain medication for another. One can only conclude that Petitioner's pain must not have been as severe as she claimed and therefore her subjective complaints, the ones she made to her doctors to justify years of additional treatment and prescription medication were not genuine. Petitioner's complaints contributed significantly to her treatment for years and Dr. Siemionow's decision to perform the second fusion was largely based upon them. Moreover, those same complaints had an impact on her FCEs, work restrictions, vocational rehabilitation and ongoing medical treatment. Oddly, no matter what treatment she's received, her complaints have stayed the same. Sometimes, they migrated to her left hip, foot (PX #13 p.1698, 1706), neck (PX #13 p.1694), or wrists (PX #12 p.1731, 1721).

As a result, she continued to receive narcotic pain medication for nearly a decade and there is no reliable indication in the record of her true physical capabilities.

Second, the diagnostic evidence performed soon after the second accident does not support a re-injury or worsening of symptoms. Please recall that the first MRI after March 13, 2013 (the second accident date) was negative. (PX #10 p.7) Likewise an EMG done in November of 2016 showed no neuropathy. (PX #10 p.15) While it is true that the December 2015 MRI showed moderate to severe left stenosis (PX #13 p.1692), this was three years after the Petitioner's last day of work. It was read by a resident, not an MD, it wasn't compared with the most recent studies showing no stenosis. And no other doctor diagnosed adjacent segment degeneration or a herniation after years of treatment. In summary, the weight of the diagnostic evidence does not match the Petitioner's tenacious pain complaints and the second fusion was unwarranted. Further, it is difficult to believe that Dr. Siemionow would have prescribed a second fusion had he known about the three failed drug tests, lack of compliance in physical therapy, psychological concerns and the negative MRIs, CT-Scans and EMG studies.

Please observe a similar pattern of medical treatment for Petitioner's earlier, consolidated claim – 10 WC3042. In that case, Dr. Fardon did not think her clinical signs or diagnostic imaging warranted surgery, (the first MRI showed no nerve root compression at L5-S1 and a moderate bulge at L4-5 with only an early suggestion of stenosis) (PX#1) but because of Petitioner's relentless pain complaints, fusion surgery was finally prescribed. Similarly, Petitioner had problems completing a valid FCE afterwards. (PX# 4b)

Third, unprescribed crutches, canes, walkers and wheelchairs are always troublesome to the trier of fact in that they raise the specter of symptom magnification. These assistive, but unprescribed devices are probably acceptable when used on a temporary basis, but not when

constantly employed. While it may be true that Petitioner's treaters often tolerated Petitioner's use of these devices, they never prescribed them. This behavior corroborates Dr. Daniel Troy's observation of symptom magnification and strongly suggests that Petitioner can do more.

Fourth, Petitioner's first FCE was declared INDETERMINATE by ATI. In a similar fashion, the Petitioner's physical therapy records show a pattern of "opting out" of exercises and stretches due to subjective complaints of pain. (PX #3 p.753) (PX #4b)

On a related note, Petitioner exaggerated her pain symptoms. Perhaps she went too far when she told the vocational rehabilitation counselor that she was capable of standing for a maximum of 5 to 10 minutes, but that she would be "unable to walk the next day." (PX# 6a) If this were true, how could she travel to Mexico? Again, this behavior corroborates Dr. Troy's observation of symptom magnification at his first Section 12 examination on February 13, 2014. (RX# 2 & 3)

Sixth, Petitioner testified that she renewed her commercial driver's license ("CDL") within the last year. (T. 46-48) She told the vocational counselor that she had hazmat, tanker and passenger endorsements. (PX# 6a) Petitioner was questioned about this at trial and stated she needed no medical certificate to obtain her license.

The Arbitrator does not believe that Petitioner obtained her CDL recertification in good faith. It's no secret that in the interest of public safety, commercial motor vehicle drivers are held to higher physical, mental and emotional standards than passenger car drivers. The medical rules and requirements are governed by the Federal Motor Carrier Safety Administration (FMSCA) which prohibits opioids from being used by drivers, even when prescribed by a doctor. When the Petitioner renewed her license, she was undoubtedly asked about her prescription and non-prescription drug use. Any driver that takes a controlled substance included in 21 CFR 1308.11

(391.42(b)(12), or other habit-forming drug, is medically unqualified to drive. Using prescribed hydrocodone and/or unprescribed benzodiazepines is a disqualifying event. In addition to her CDL "B" certification, Petitioner told the vocational rehabilitation counselor that she had a hazmat, tanker and passenger endorsement. (PX# 6a) In all likelihood, Petitioner was required by the Secretary of State to provide a medical certification or at least self-certify her medical condition to obtain a renewal. So…what did Petitioner disclose about her physical, mental and emotional status in order to have her CDL renewed? Her lack of candor with The Illinois Secretary of State parallels the same with her doctors, physical therapists, vocational rehabilitation counselors and The Illinois Workers' Compensation Commission. It also indicates a gross disregard for her own safety as well as the safety of others.

The Arbitrator notes that it would have been illegal for Respondent to have allowed the Petitioner back to work as a motor truck driver under the circumstances.

Regarding the second date of injury, March 15, 2013, the evidence suggests that "perhaps" Petitioner suffered a temporary aggravation of a pre-existing condition. While it is true that Respondent did not dispute the issue of accident in either case, Dr. Goldberg, Dr. Troy & Dr. Siemionow all agree on a temporary aggravation, and Dr. Troy (Respondent's IME) correctly found evidence of symptom magnification in that her objective findings did not match her reported symptoms. (RX# 2 & 3) The Arbitrator is impressed at Dr. Troy's ability discern symptom magnification without the aid of all the surrounding corroborative evidence that was presented to the Arbitrator. Dr. Troy did not have the benefit of reviewing a bankers' box of medical records from various treaters. The Arbitrator finds that the weight this evidence supports Dr. Troy's findings in favor of Respondent. Petitioner's permanent restrictions are unreliable as

they are based on Petitioner's subjective complaints. Stated another way, her disability is not work related.

Damaging the Petitioner's credibility further, one can see that her original testimony from the first 19(b) hearing (10 WC 46707 (date of loss 09-20-10)) was misleading to the Court. Petitioner denied having any prior medical treatment to the lower spine. (PX #1) Remarkably, the medical records from UIC unearthed a dramatic, non-work-related motor vehicle accident that occurred on March 14, 2009 that resulted in the Petitioner being transported to the Jackson Park Hospital (ER) then follow up treatment at Parkview Orthopaedics, Accelerated Rehabilitation, chiropractic care then another stint of treatment at UIC. (PX #13 p.1158, 1262, & 1527)

On March 14, 2009, Petitioner's car was t-boned in a head on collision at an intersection by an 86-year-old lady who allegedly blew the red light. Petitioner's car was totaled. There was litigation. An MRI and EMG (right lower extremity) were performed. (PX #13 p.1028, 1158) The results of the MRI was reportedly to showing mild spondylosis at L4-5 and L5-S1; (PX #13 p.1263) The EMG showed mild neuropathy. (PX #13 p.1588-91) For that injury, Petitioner also complained of left lower radiculopathy and received an epidural steroid injection at UIC in March of 2010 after complaining of bilateral radiculopathy. (*Id.* p.1150) (PX #13 p.872) She was diagnosed with L5 spondylolisthesis by UIC. *(Id.)* At that time, her gait was slightly antalgic and there were no neurological deficits. (PX #13 p.1154) It was also described as "moderate spinal stenosis" by Dr. Nicola Terry. CT Scans were performed at UIC. (PX #13 p.1265) In January of 2010, Petitioner described her pain as 7-8 out of 10. (PX #13 p.1268) Constant 5-6/10 in intensity with an electric shock in nature. (PX #13 p.1528) She was still treating in March of 2010 and re-scheduled for more physical therapy. *(Id. p.872)* There is no indication that

Petitioner was ever discharged nor reached maximum medical improvement from this accident. The records are incomplete.

Somehow, this pre-existing medical history was insulated from the doctors involved in the original 19(b) hearing back in 2012 (PX #1) as well as the ones in the current hearing in 2020. Likewise, Petitioner never disclosed it to the court. Instead, she consistently stated that her original complaints were from driving over a pothole and/or a being inside a shaking truck while it was being loaded with asphalt. Incredibly, she never mentioned getting t-boned at the intersection. Frankly, the above revelation calls into question the issue of accident in both workers' compensation claims.

Dr. Siemionow's testimony – 03-13-18

Dr. Siemionow justified his September 23, 2016 fusion surgery, stating there was a herniation at L3-4. (PX #7b p.8) In his opinion, Petitioner's had "segment degeneration" at L3-L4. Segment degeneration is when the disc levels above and/or below the original fusion site are stressed and therefore "wear out" faster. (*Id.* p. 19) According to Dr. Siemionow, adjacent segmental degeneration usually only takes two to three years to develop. (*Id.* p.26) He performed fusion surgery at L3-4 because he thought some of the pain was coming from that level. (*Id.* p.27) In his opinion, Petitioner's current pain was from the L4-5 surgery, which is where Dr. Goldberg fused. *(Id. p.32)* Nevertheless, he thought Dr. Goldberg had done a nice job and no further surgery was unnecessary. (*Id.*) While the EMG showed chronic right-sided radiculopathy at L4-5, Siemionow testified that he did not operate at that level. (*Id.* p.27) and his surgery would not have corrected it. (*Id.* at 27-32) As result, his L3-4 fusion addressed a new problem. (*Id.* p.23) The only medical treatment he could endorse was his own and the future spinal cord stimulator. (*Id.* p.24) In his opinion, the Petitioner initially reached MMI on September 24, 2014,

the date of the FCE. (*Id.* p.22) He admittedly did not review the medical records of other physicians. (*Id.* p.9)

He expected MMI from his surgery in September of 2017. (*Id.* p.34) Further, Dr. Siemionow stated that spinal cord stimulators are designed to reduce pain and keep patients away from narcotics. *(Id.)* He would recommend the stimulator and another FCE. *(Id. p.29)* The earlier FCE in 2014 may not be an accurate representation of her abilities. *(Id.)* Petitioner could work light duty.

Analysis of Dr. Siemionow's testimony

Dr. Siemionow focused on the December 31, 2015 MRI to justify his surgery, which was interpreted as "worsening degenerative changes at L3-4, with tiny cysts that result in moderate central stenosis, moderate-severe left neural foraminal and moderate right neural foraminal stenosis." (PX #3 p.143) However, this MRI was two and half years after the Petitioner's first fusion and his theory of "adjacent segment disorder" is not in accordance with the November 2013 MRI. (PX #10 p.7) nor the April 22, 2015 MRI, (PX #10 p.15) and he was probably unaware of the negative EMG on May 7, 2014, (PX #10 p.15) or the negative CT-Scan on June 8, 2016 showing no stenosis. None of those diagnostic studies characterized Petitioner's condition at L3-4 as a "herniation" nor did any other doctor diagnose "adjacent segment disorder." They all stated no stenosis. In any event, one would imagine that it would take longer than two years for adjacent segment disorder to manifest itself, especially if the patient was inactive like Petitioner. In any event, the diagnosis of adjacent segment disorder is more of a theory than a fact, in this Petitioner's case. It would be extremely difficult, if not impossible to distinguish his diagnosis from the normal degenerative aging process and Petitioner's slight

progression could have just as easily been caused by the passage of time or all the lumbar injections she received throughout the course of her treatment. It could be caused by the cysts observed on the MRI. Further, Petitioner's pain complaints have never wavered and they are suspect because of her history of drug abuse, questionable psychological state and the paucity of diagnostic findings involved in not only her low back, but her hip, foot, and arms.

In noting the above, the Arbitrator does not find Dr. Siemionow's reasoning to be very compelling as his characterizations seem somewhat overstated to justify further surgery. (PX # 7b p.30) But there's another issue. Please recall that Dr. Siemionow stated he did not operate at the L4-5 level (PX #7b p.23), but the UIC medical records state otherwise. It looks as though he revised Dr. Goldberg's earlier fusion at L4-5. (PX #3 p.174, 185-186, 791) In short, many of the UIC records suggest that he operated at both levels and performed a revision (PX #3 p.791) (PX #13 p.1122) and the operative report states he removed two Goldberg screws and replaced them with his own. *(Id.)* Since he did, in fact, operate on L5 level, why state otherwise? The effect diminishes the weight of Dr. Siemionow's testimony and rationale for the second fusion.

The fact that Petitioner still complains of the same symptoms as she did before the surgery, further supports Dr. Troy's opinion that the second surgery was not needed. In 2012, Petitioner's complaints were similar when Dr. Goldberg (treater) viewed an MRI with gadolinium and stated no surgery was necessary. His assessment agrees with Dr. Troy's (IME) later opinion that no surgery was necessary. (PX #2) Drs. El Shami agreed no surgery was necessary, Dr. Slavin agreed it only had a small possibility of succeeding, after earlier stating it was not necessary. (PX #13 p.833)

In conclusion, the second fusion was not necessary and while the Arbitrator finds that Petitioner' current condition of ill-being is but partly related to the September 20, 2010 work

injury, it is not at all related to the 2013 event and that her exaggerated pain complaints cloud her true physical abilities and future employment prospects. Throughout a decade of medical care, her pain symptoms "just aren't any different." The root of this never-ending medical treatment is more likely than not related to her unresolved psychological state of mind and/or drug abuse; both which are unrelated to the work occurrences. In fact, all this medical treatment may have been triggered by the t-bone MVA in 2009! As a result of the above, there is no causal connection between either accident or the second fusion at L3-4 performed by Dr. Siemionow.

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 that Respondent is liable for medical services until August 14, 2014, the date that Petitioner's FCE at ATI was deemed INDETERMINATE. The Arbitrator bases his decision on the credible opinion of Dr. Daniel Troy who examined the Petitioner on February 13, 2014. (RX #2 & 3) Please recall that he stated Petitioner was engaged in symptom magnification and recommended a new FCE to determine if any further treatment was necessary. It was INDETERMINATE, which is a polite way of stating it was invalid. Petitioner thought she had failed. As a result, The Arbitrator awards no additional medical treatment for the Petitioner's lumbar spine after her first FCE at ATI on August 14, 2014. Dr. Troy's dissatisfaction with ATI is well founded as its business model is based upon service administered by athletic trainers (AT) instead of physical therapists. The business model is attractive to Respondents' as it appears to be an inexpensive way to provide physical therapy, but the product might be inferior to some, like Dr. Troy, because in their estimation an athletic trainer is less qualified than a physical

therapist. In the present claim, some of the physical therapists immediately noted that the Petitioner needed mental therapy in lieu of physical therapy.

Further, the Arbitrator specifically finds that any lumbar treatment after August 14, 2014, especially the L3-4 surgery, post-operative care, or any other medical conditions, remain the responsibility of Petitioner and/or her group insurance carrier and not Respondent's workers' compensation insurance.

Respondent shall be given a credit under Section 8(j) of the Act for the amount paid by the group health insurance carrier. Respondent shall also be given a credit for the amounts it paid directly to the providers. The parties have stipulated that any remaining unpaid medical bills dated on or prior to August 14, 2014 shall be paid directly to the providers per the fee schedule. (T. 9)

K. What temporary benefits are in dispute?

Benefits before March 15, 2013

The first 19(b) award is the "law of the case" and the parties agreed that Petitioner was entitled to TTD benefits between October 20, 2011 and January 7, 2013. (ARB X #1) Despite having reservations about the prior claim, the Arbitrator will not tamper with this agreement. Petitioner returned to light duty work, then later, full duty on February 11, 2013.

Benefits after March 15, 2013

The Respondent did not dispute the second accident on March 15, 2013. (ARB X #1) As a result, the Arbitrator must adopt Dr. Daniel Troy's opinion accepting a temporary aggravation of a pre-existing condition stemming from the second accident. However, Dr. Troy also stated that Petitioner's earlier 2012 permanent restrictions were based upon her subjective complaints

and the record reflects this to be true, more than Dr. Troy suspected. As a result, the Arbitrator will only award TTD benefits until the date of his examination on February 13, 2014.

To summarize, the Arbitrator awards temporary total disability benefits from the date Petitioner was placed off work from the second accident – March 20, 2013 until February 13, 2014, the date of Dr. Troy's Section 12 examination (IME).

Maintenance benefits are awarded until from February 14, 2014 until August 14, 2014, the date of the indeterminate FCE. On February 13, 2014, Dr. Troy recommended another FCE to determine the Petitioner's capabilities. This examination wasn't scheduled until months later and Petitioner opted out of a large portion of it. This result confirms Dr. Troy's findings of exaggerated symptoms and the Arbitrator finds that the Petitioner's permanent restrictions, regardless of the year or claim, are patently unreliable.

It appears Respondent erroneously paid TTD benefits until September 22, 2016. (ARB X #1) As a result, it is allowed a credit for the same.

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

An employee is totally and permanently disabled when he is "unable to make some contribution to the work force sufficient to justify the payment of wages. *Gates Division, Harris-Intertype Corp v. Industrial Commission*, 78 Ill.2d 264, 399 N.E.2d 1308 (1980). The petitioner may also establish that there is no reasonably stable labor market available. *Valley Mould & Iron v. Industrial Commission*, 69 Ill.2d 273, 371 N.E.2d 610 (1977). It is not enough to show that there is an inability to perform strenuous work. If the petitioner is able to perform employment

without endangering his health or life, he is not entitled to an award of permanent total disability. *A.M.T.C. of Illinois, Inc. v. Industrial Commission*, 77 Ill.2d 481, 387 N.E.2d 804, 34 Ill.Dec 132 (1979). Furthermore, the Commission has held that when the petitioner lacks the intent to return work, the employee is not entitled to benefits and was permanently and totally disabled. *Schoon v. Industrial Commission*, 259 Ill.App.3d 587, 630 N.E.2d 1341, 197 Ill.Dec 217 (3rd Dist. 1994).

As stated earlier, the Petitioner's present pain complaints are patently untrustworthy. Likewise, the vocational rehabilitation assessment and permanent restrictions imposed by Dr. Amir El Shami crumble as they are based on Petitioner's troublesome veracity. It is unclear to the Arbitrator what data Dr. El Shami based his 5 lb. restrictions on. There was no new FCE on record. And he might have forgotten about his earlier statement that Petitioner could go back to truck driving "but for" her unrelated psychological state. (PX #13 p.1211)

The Petitioner testified that she has not applied for any jobs, including light-duty jobs since 2016. Petitioner did not request a reasonable accommodation with Respondent under the American's with Disability Act. The Supreme Court has held that, it is the petitioner's obligation to make "good-faith efforts to cooperate in the rehabilitation effort." *Archer Daniels Midland Co. v. Industrial Commission*, 138 Ill.2d 107, 561, N.E.2d 623, 149 Ill.Dec 253 (1990). It is clear from the evidence and from Petitioner's testimony, that has misled her doctors, vocational rehabilitation counselors, The Illinois Secretary of State and The Illinois Workers' Compensation Commission. Therefore, the Arbitrator finds that Petitioner has not established that she is totally and permanently disabled and her permanent restrictions are not firmly established.

An AMA impairment rating was not done in this matter; however, Section 8.1(b) of the Act requires consideration of five factors in determining permanent partial disability:

1. The reported level of impairment;
2. Petitioner's occupation;
3. Petitioner's age at the time of the injury;
4. Petitioner's future earning capacity; and
5. Petitioner's evidence of disability corroborated by treating medical records.

Section 8.1(b) also states, "[n]o single 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 presorted by a physician must be examined." The term "impairment" in relation to the AMA Guide to Evaluation of Permanent Impairment 6th Edition is not synonymous with the term "disability" as it relates to the ultimate permanent partial disability award.

1. Reported Level of Impairment

An AMA impairment rating was not done in this case. This does not preclude an award for partial permanent disability.

2. Petitioner's Occupation

Petitioner's occupation was motor truck driver for the City of Chicago.

3. Petitioner's Age at the Time of Injury

Petitioner was 48-years old at the time of her first date of loss, September 20, 2010. (PX #1) Her birthday is listed as 09-28-1961. (PX #4a) Petitioner was 53-years old at the time of her second date of loss, March 15, 2013, not 57, as stated on the request of hearing form (ARB X #1) As a result, Petitioner is currently 58 years old. The Petitioner's age was incorrectly stated on the request of hearing sheet. (ARB X #1)

4. Petition's Future Earning Capacity

Petitioner's future earning capacity is not clearly diminished as a result of the work-accidents. Petitioner's work capabilities are unclear as the result of her exaggerated pain complaints, drug use and inability to meaningfully participate in vocational rehabilitation efforts. Her work restrictions are not based on a realistic estimate of her physical capabilities. The Arbitrator places little weight on this factor.

5. Evidence of Disability Corroborated by Medical Records.

The "law of the case" dictates that Petitioner suffered an injury to her lower back on September 20, 2010, which required L4-5 fusion. Post-operative, her pain might have continued radiating down her left leg, but it is difficult to be certain. Petitioner engaged in some form of drug abuse and was not candid with her doctors nor the court. Her permanent restrictions are unclear. As a result of the above, she is entitled to have and receive from Respondent 125 weeks of PPD at a rate of $669.64 per week, representative of a 25% loss of a person as a whole.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC003042
Case Name	TURNER, REGINA v. CITY OF CHICAGO
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0002
Number of Pages of Decision	44
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	James Ridge
Respondent Attorney	Devin Mapes

DATE FILED: 1/4/2022

/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

Regina Turner,

Petitioner,

vs. No. 16 WC 3042

City of Chicago,

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 care, temporary disability ("TTD"), maintenance benefits and permanent disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Petitioner filed two claims which were tried together. Although the Arbitrator issued one decision for both claims, the Commission now issues a separate decision for each claim. This decision is for case number, 16 WC 3042, only.

Petitioner, a 48-y/o truck driver, alleged that on September 20, 2010, while driving a truck over potholes, she struck her head on the cab's roof and then immediately felt low back pain. Following a §19(b) hearing on October 19, 2011, an arbitrator found her condition to be causally related to her accident and awarded her, inter alia, lumbar fusion surgery at L4-L5. Dr. Goldberg performed that procedure on March 6, 2012, after which he reported Petitioner attained maximum medical improvement ("MMI") on October 17, 2012. Dr. Goldberg then released Petitioner to work with restrictions; in January 2013, he lifted all restrictions. Petitioner returned to and worked her prior job until March 15, 2013.

Petitioner's second accident (this case, 16 WC 3042) occurred on March 15, 2013. She was sitting in the cab of her dump truck while it was being filled. A heavy load of asphalt was dropped into the truck, which caused it to shake, and caused Petitioner to experience increased symptoms in her low back.

Petitioner treated with Dr. Slavin, who referred her to a pain management doctor. A lumbar MRI on November 16, 2013 showed unremarkable post-surgical changes at L4-5 and minimal generalized bulging at L3-L4. Petitioner remained off work and was treated with pain medication, physical therapy, injections, acupuncture and a trial of a spinal cord stimulator, none of which, she reported, improved her pain.

On February 13, 2014, Petitioner was examined by Respondent's Section 12 expert, Dr. Troy. He opined that Petitioner's second work incident in March 2013 was a reaggravation injury, and that she required sedentary work restrictions. However, Dr. Troy found that her objective tests did not match her neurologic function, and reported she exhibited significant symptom magnification.

On May 7, 2014, Petitioner underwent an EMG which was reported as normal. On August 14, 2014, she underwent an FCE in which her participation was found to be, "Indeterminate." A repeat FCE on September 29, 2014 was reported as valid, and found Petitioner capable of working at a Light duty physical demand level. Petitioner's usual job as a truck driver was classified as Light-Medium.

On December 20, 2014, Dr. El Shami referred Petitioner to the Rehabilitation Institute of Chicago ("RIC") for a multi-disciplinary pain program, because of her multiple failed interventional treatments. She began pain treatment there on July 16, 2015, but was discharged from the program two months later after failing 3 urine drug screening tests. Those tests were negative for opioids, which Petitioner claimed she had been consistently taking 3 times a day. The tests were also positive for non-prescribed benzodiazepines, which Dr. Bouffard believed Petitioner had been taking illegally from friends or buying on the street. At arbitration, Petitioner offered no testimony to contradict or rebut Dr. Bouffard's report.

Petitioner participated in a job search with MedVoc Rehabilitation between May 2015 and September 2016. MedVoc sent her job leads for light duty positions like front desk clerk, office clerk and greeter – positions which allowed her to alternate sitting and standing throughout the work day. Petitioner did not find work within her restrictions while working with MedVoc.

A lumbar MRI taken in December 2015 revealed worsening degenerative changes to Petitioner's lumbar spine. On February 5, 2016, Dr. El Shami gave Petitioner work restrictions which included limiting her workday to 4 hours/day in a sitting position, one hour of continuous sitting, and six minutes of standing. On April 19, 2016, a physical therapist at ATI Physical

Therapy wrote an amendment to ATI's September 2014 FCE report, adding a recommendation that Petitioner work only 4 hours a day.

Petitioner's surgeon, Dr. Siemionow, testified at a March 13, 2018 deposition that Petitioner developed adjacent segmental degeneration following her first lumbar surgery, and would benefit from a second surgery. On September 23, 2016, he performed a spinal fusion at L3-L5. Following that surgery, Dr. Siemionow found Petitioner able to work light duty. Dr. Siemionow believed that while Petitioner's September 29, 2014 FCE report had been valid, it might not be an accurate representation of her current abilities. At his deposition, Dr. Siemionow did not testify Petitioner required restrictions on the number of hours she could work.

In Dr. El Shami's March 27, 2018 work status report, he also found Petitioner able to work light duty with a 5 lb. lifting restriction. Similar to Dr. Siemionow, Dr. El Shami placed no limitation on the number of hours Petitioner could work.

Lisa Helma, Petitioner's certified vocational rehabilitation counselor, interviewed and evaluated Petitioner on February 25, 2015. Ms. Helma testified at a December 19, 2018 deposition that Petitioner had no transferrable skills, was totally disabled and was unemployable. She testified that Petitioner's 4-hour a day work tolerance was a significant factor which limited Petitioner's employability.

In an addendum report dated March 2, 2017, Dr. Troy opined Petitioner's need for surgery on September 23, 2016 was not causally related to her September 20, 2010 work accident. He believed Petitioner reached MMI for that accident on September 29, 2014.

At arbitration, Petitioner testified that she recently renewed her commercial driver's license ("CDL"), along with endorsements which allowed her to transport hazmat, tankers and passengers. She testified she is still employed by the City, and that she renewed her CDL, "just in case." Petitioner testified that although the City has not offered her a job within her restrictions, she has not requested accommodations from the City's Disability Officer under the American with Disabilities Act, or looked for any other work since her second surgery. Contrary to Petitioner's claim that MedVoc did not provide her with computer or keyboard training, MedVoc reported that Petitioner did not do keyboarding assignments or turn in daily typing tests which they requested.

Regarding Petitioner's first accident of September 20, 2010 (10 WC 46707), the Arbitrator awarded her TTD, maintenance, medical expenses, and 25% person as a whole. However, the Arbitrator denied Petitioner benefits after August 14, 2014 – the date of her indeterminate FCE. In so finding, the Arbitrator expressed grave issues with Petitioner's credibility, noting inter alia her: 3 failed drug tests at RIC; failure to take narcotics which had been prescribed to her for pain; exaggerated pain symptoms, and misleading testimony to the Court. The Arbitrator noted that while Petitioner denied receiving lumbar injuries and treatment prior to her two work accidents, her medical records revealed that she had, in 2009 – following a T-bone vehicle accident in which her car was totaled.

The Arbitrator did not find persuasive Dr. Siemionow's opinion that Petitioner developed adjacent segment disorder following her first fusion surgery, because he believed Dr. Siemionow was probably unaware of Petitioner's 2014 negative EMG and 2016 negative CT scan, and because no other doctors reported that problem. The Arbitrator imagined it would take longer than 2 years for adjacent segment disorder to manifest, especially given that Petitioner was inactive. The Arbitrator believed that the progression of Petitioner's condition could have as easily been caused by the passage of time or by the lumbar injections she received.

In Petitioner's companion case (10 WC 46707), the Commission has found Petitioner proved she developed adjacent segment degeneration (transitional syndrome) at L3-L4 as a result of her first, causally related, surgery, and that her need for a second lumbar surgery on September 23, 2016 was a sequela related to her first surgery. In that case, the Commission found Petitioner's lumbar spine condition continued to be causally related to her September 20, 2010 work accident through September 23, 2017 – the date Dr. Siemionow testified Petitioner attained MMI from her second lumbar surgery. The Commission awarded Petitioner, in 10 WC 46707, medical expenses, TTD benefits, and 45% person as a whole.

With regard to Petitioner's March 15, 2013 accident (this case, 16 WC 3042), the Arbitrator denied all benefits. The Arbitrator noted that Dr. Goldberg, Dr. Troy and Dr. Siemionow all agreed that Petitioner suffered only a temporary aggravation of a pre-existing condition.

The Commission agrees, and finds Petitioner's March 15, 2013 accident resulted in only a temporary aggravation of her prior condition. The Commission finds that accident did not measurably contribute to Petitioner's lumbar spine condition at that time, which condition still related back to Petitioner's first accident of September 20, 2010.

Although Petitioner did incur lost time and medical expenses following her March 15, 2013 accident, the Commission finds those were incurred as a result of Petitioner's first accident of September 30, 2010. Accordingly, the Commission has awarded benefits to Petitioner for the TTD, medical expenses, and permanent partial disability she incurred after March 15, 2013, in her companion claim, 10 WC 46707. The Commission finds Petitioner has not suffered any permanent partial disability as a result of her March 15, 2013 accident.

IT IS THEREFORE ORDERED BY THE COMMISSION that the May 5, 2020 Decision of the Arbitrator relating to Petitioner's claim number 16 WC 3042 is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that all benefits in this case, 16 WC 3042, are denied, the Commission finding that all benefits claimed as a result of this accident are related to, and have been awarded to Petitioner in, her companion case, 10 WC 46707.

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

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

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

January 4, 2022

/s/ *Marc Parker*
Marc Parker

MP/mcp
o-11/18/21
068

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

21IWCC0002

TURNER, REGINA
Employee/Petitioner

Case# **10WC046707**

16WC003042

CITY OF CHICAGO
Employer/Respondent

On 5/5/2020, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0412 RIDGE & DOWNES
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CHICAGO, IL 60606

0010 CITY OF CHICAGO LAW DEPT
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30 N LASALLE ST SUITE 800
CHICAGO, IL 60602

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Regina Turner
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # **10** WC **046707**

Consolidated cases: **16 WC 03042**

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 **October 10, 2019 & January 10, 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 **September 20, 2010 and March 15, 2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being ***is*** causally related to the accident of September 20, 2010.

In the year preceding the injury, Petitioner earned $**68,890.12**; the average weekly wage was $**1,324.81**.

On the date of accident, Petitioner was **57** 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 $**182,831.50** for TTD, $**0.00** for TPD, $**77,726.00** for maintenance, and $**15,528.90** for other benefits, for a total credit of $**276.086.40**.

Respondent is entitled to a credit of $**42.895.16** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner **temporary total disability benefits** of $883.21/week for 111 weeks, representing the periods of time from 10-20-11 through 01-07-13 (63.714 weeks) and the period of 03-20-13 through 02-13-14, (47.286 weeks) the date of Dr. Daniel Troy's IME.

Respondent shall pay Petitioner **maintenance benefits** of $883.21/ week for 26 weeks, representing the period of time from 02-14-14 through 08-14-14, (26 weeks) the date of the indeterminate FCE.

Respondent shall be liable all reasonable and necessary **medical services** related to the L4-5 fusion and post-operative care, as provided in Sections 8(a) and 8.2. of the Act. Conversely, Respondent is not liable for any medical bills, under the Act after 08-14-14, the date of the indeterminate FCE. Further, Respondent is not liable for the L3-4 surgery of September 23, 2016.

Petitioner is entitled to have and receive from Respondent 125 weeks at a rate of $669.64 per week, representative of a 25% loss of a person as a whole.

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

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

Signature of Arbitrator

05-02-20
Date

MAY 5 - 2020

IN THE WORKERS' COMPENSATION COMMISSION OF THE STATE OF ILLINOIS

REGINA TURNER,	)	
	)	Case No. 10 WC 46707
Petitioner,	)	16 WC 03042
v.	)	
	)	Kurt Carlson, Arbitrator
CITY OF CHICAGO,	)	
Respondent,	)	

DECISION OF ARBITRATOR

Statement of Facts

Procedural History

Regina Turner ("Petitioner") was a motor truck driver for the City of Chicago Department of Transportation. The City of Chicago ("Respondent") is a municipal corporation and body politic.

Earlier 19(b) Hearing - 01-06-12

An earlier hearing under section 19(b) of the Act was held in 2012. (PX #1) The Petitioner won and was awarded prospective medical care in the form of a lumbar decompression and fusion surgery (L4-L5) that was recommended by Dr. Fardon. (PX #1).

The "law of the case" provides that where an issue has been litigated and decided, a court's unreversed decision on a question or law or fact settles that question for all subsequent stages of the suit. See *Norton v. City of Chicago*, 293 Ill. App. 3d 620, 624, 690 N.E.2d 119, 123

(1st Dist. 1997). As such, all conclusions of law in the January 6, 2012 19(b) arbitration decision are adopted and incorporated into this decision. (PX #1)

After the 19(b) hearing, the Petitioner's lumbar surgery was performed by Dr. Edward Goldberg (not Fardon) and the Petitioner was paid TTD until January 8, 2013, when she returned to work. Soon afterwards, she was involved in another accident with the City and the two claims were consolidated.

Present workers' compensation hearing:

On January 10, 2020, the parties closed proofs on the present matter listing both dates of loss on the request for hearing form. (ARB X #1) Neither accident was disputed. *(Id.)* Petitioner is claiming to be permanently and totally disabled.

History of the claim after the 1st 19(b) hearing

Dr. Edward Goldberg

On March 6, 2012, Petitioner underwent a surgical decompression and fusion at L4-L5 with Dr. Edward Goldberg (not Dr. Fardon) at Midwest Orthopaedics at RUSH. (PX #2) Post-operative physical therapy at ATI ended on September 5, 2012 when she underwent a Functional Capacity Examination. ("FCE") (PX # 4b) Petitioner was unable to complete assessment activities during the second half of the FCE, but the exam was still determined as VALID by the athletic trainer. Dr. Goldberg endorsed the results and released Petitioner back to work with light duty restrictions. (PX #2) Petitioner continued to complain of severe pain in the left buttock with radiation down the left leg. She was still on Norco. (PX #2)

Post-operative MRI

On October 1, 2012, because of persistent pain complaints, Petitioner underwent an MRI of her lumbar spine with gadolinium at Streeterview Open MRI. (PX #2) overall impression was mild to moderate foraminal stenosis at L4-5 and L5-S1, mild stenosis at L3-4.

On October 17, 2012, Dr. Goldberg wrote that she still had some chronic right radiculopathy at L5. (PX #2) She had no active nerve compression on the MRI scan. He did not recommend any additional surgery. *(Id.)* Instead, he recommended return to work, light duty with permanent restrictions per her FCE. *(Id.)* Petitioner had reached MMI. *(Id.)* Petitioner could follow up care with her personal physician. She was taken off Norco *(Id.)*

Full duty release (trial basis)

Petitioner obtained a full-duty release by Dr. Goldberg on January 8, 2013. (PX #2) Petitioner returned to her job as a motor-truck driver, a LIGHT to MEDIUM occupation. *(Id.)* Dr. Goldberg had referred the Petitioner to Dr. Myria Dmytriv for pain management. *(Id.)*

Dr. Myria Dmytriv – UIC – pain management

On January 16, 2013, Petitioner was treated by Dr. Myria Dmytriv who ordered continued occupational therapy for the Petitioner's right wrist pain, for a possible radio-scaphoid ligament injury. She stated that Petitioner's low back is doing better, but she needed a prescription for diazepam and hydrocodone for occasional pain and muscle spasm. She was given 60 tablets. (PX #13, p.997) Petitioner was back on Norco.

On January 22, 2013, Petitioner treated with Dr. Dmytriv who wrote, "her c/o L foot pain that started last Thu with the spasm while laying down on R side. Pain was 10/10, worse with even touching her skin, impaired walking. The diagnosis was acute leg pain, L-S radiculopathy. Worsening radicular symptoms. (PX #13 p.996)

Petitioner returns to full duty work – February 11, 2013

Petitioner returned to full duty work on February 11, 2013. (PX #2) She testified that upon returning to work she was still symptomatic, with complaints of pain radiating down her left leg to her toes. (T. 11) Petitioner's job as a motor truck driver required a valid CDL.

Dr. Krystof Siemionow - UIC

The University of Illinois – Chicago ("UIC") records show that Petitioner was examined by Dr. Siemionow on February 12, 2013. He found a negative straight leg raise bilaterally. Petitioner was walking with a slightly antalgic gait. He reviewed Dr. Goldberg's latest MRI and ordered a CT-Scan to assess for any screw loosening or pseudoarthrosis. (PX #13 p.1143)

On February 19, 2013, Petitioner was prescribed methylprednisone by Dr. Jonathan Watson. (PX #11) His records are not in evidence.

On February 28, 2013, Petitioner was seen by Dr. Dmytiv who wrote that Petitioner's chief complaint was "back pain…" "The onset was gradual." Her reported pain scale was 6. Petitioner had an appointment with orthopaedics and was still on Norco. (PX #13 p.991)

Petitioner underwent a CT-Scan of the lumbar spine at UIC on March 2, 2013. (PX #2) (PX #9b)

Second Accident – March 15, 2013

On March 15, 2013, Petitioner testified that she was assigned to a dump truck crew that patched potholes. (T. 12) The truck could allegedly hold up to ten tons of asphalt and it was loaded in scoops; each averaging about five tons. *(Id.)* Petitioner testified that the truck shook when the asphalt was dropped into the payload area of the truck bed and that the shaking caused

her to re-experience lower back pain. (T. 12-14) The pain was so severe that she had trouble walking. *(Id.)*

On March 19, 2013, Petitioner was examined by Dr. Krystof Siemionow at UIC who found a negative bilateral straight leg raise and stated, "there does not appear to be any ongoing compression that could explain her pain." We recommend that she see from pain service that she has been having ongoing issues with pain and is requiring narcotic medications to control this pain." (PX #13 p.1141) "There is currently no surgical recommendations from our standpoint to help her with her pain." *(Id.)* Petitioner was also seen by Dr. Kristin Baier on this date at UIC, who prescribed more Norco. (PX #13 p.922, 989-990)

The next day, March 20, 2013, Petitioner sought medical care at UIC with Dr. Mariya Dmytriv (pain management) at UIC. Her back pain was reportedly to be severe and constant. (PX #13 p.986)

Dr. Konstantin Slavin - UIC

On April 1, 2013, Petitioner sought treatment at The University of Illinois- Chicago ("UIC") with Dr. Konstantin Slavin (neurosurgeon) who wrote the clinical exam "today was pretty much unremarkable" and the CT-Scan showed good alignment with no stenosis. (PX #13 p.1513) Yet, the Petitioner still complained of left leg pain. (PX #3 p.6) He recommended a referral to a pain clinic and an injection which was performed on April 23, 2013. (PX #3)

On April 18, 2013, the Petitioner was seen by Dr. Mariya Dmytriv at UIC who wrote that Petitioner was complaining of worsening pain in the left foot, worse at night, "spares Norco because is afraid of getting addicted." She was advised to get steroid injections at the pain clinic. Petitioner was thinking about disability since she cannot drive a truck anymore. She was prescribed Norco. (PX #13 p.983)

On April 29, 2013 Petitioner returned to Dr. Goldberg's office on unprescribed crutches and saw physicians' assistant – Brandon Sessler at Midwest Orthopaedics. (T. 15) stating that she was back on Norco, taking three to four tablets a day and taking meloxicam at bedtime. (PX #2) Dr. Sessler diagnosed chronic left lumbar radiculopathy in the L5 distribution. *(Id.)* Petitioner's straight leg raise was positive on the left, negative on the right. (PX #2) In PA–Sessler's opinion, Petitioner did not suffer a new injury or present new symptoms; rather, she suffered a reaggravation of her previous injury and an increase in symptoms that previously existed. She was not reporting new symptoms, just an increase in pain since March 15, 2013. Drs. Sessler and Goldberg would defer the Petitioner's work status to Dr. Siemionow. It was reasonable to consider injections. (PX #2 p.7)

On April 30, 2013, the Petitioner told Dr. Siemionow about her recent flare up. He noted Petitioner's negative bilateral straight leg raise and he agreed with a conservative treatment course. (PX #13 p.1139)

Dr. Konstantin Slavin - UIC

On September 23, 2013, the Petitioner was examined by Dr. Konstantin Slavin (neurologist) wrote, "Unfortunately, the patient's pain has changed. Right now, she has new pain that goes into her right leg and foot and she has no good explanation for it. …I do not have any explanation for it." (PX #13 p.1066) He thought the Petitioner's unprescribed crutches might have something to do with it. *(Id.)*

On October 29, 2013, Petitioner complained of new right-sided radiating pain to Dr. Siemionow. (PX #13 p.1136) Her straight leg raise was mild bilaterally. *(Id.)*

On November 5, 2013, Petitioner began her physical therapy evaluation at UIC and stated that the initial onset of her low back pain was in 2010 when she hit a bump while driving a truck at work. (PX #13 p.1414) She thought she that failed the earlier FCE at ATI. *(Id.)*

MRI – lumbar spine – November 16, 2013

An MRI of the lumbar spine was performed on November 16, 2013 and interpreted as unremarkable at L4-5 and minimal generalized bulging disc at L3-4. There was no spinal canal stenosis. (PX #10 p.7) Dr. Slavin reviewed it a month later and described the surgical area as "nice and clean." He described the bulging at L3-4 as mild. (PX #13 p.1062) There was no stenosis or nerve impingement. *(Id.)* Dr. El Shami (UIC) agreed and stated it was "unremarkable." (PX #13 p. 1259)

On December 10, 2013, the Petitioner was examined by Dr. Siemionow and stated that the pain no longer radiates any further down the right leg. (PX #13 p.1133) She was walking with a normal gait and her physical examination was negative. (*Id.*) Dr. Siemionow reviewed the MRI and stated that it did not show anything that warranted surgery. (*Id.*)

On January 10, 2014, Petitioner told her physical therapist that she cannot even go to the movies with her husband because standing in line for popcorn, and sitting still for 1.5 hours are too much for her left leg to handle. (PX #13 p.1398)

Respondent's IME with Dr. Daniel Troy – February 13, 2014

Petitioner underwent a Section 12 Examination ("IME") with Dr. Daniel Troy at Respondent's request on February 13, 2014. (RX #2) He noted that when Dr. Goldberg substituted the Petitioner's Norco for Aleve, she began treating with Dr. Krzysztof Siemionow at UIC. *(Id.)* More importantly, on physical exam, he stated that Petitioner was significantly magnifying her symptoms. He reviewed four lumbar MRIs. Her objective testing did not match

her true neurological function because she was neurologically intact with 5/5 strength and no sensory or motor deficits. Her response to palpation was magnified and she displayed marked cogwheel rigidity, no gross sensory deficits, and was found to have a significant number of Waddell factors, all of which indicate non-organic or a psychological component to her back pain. (*Id.)* In addressing her work capacity, Dr. Troy recommended a new FCE, but not at ATI. However, he also noted that Petitioner's sedentary work restrictions were based on her subjective statements. (*Id.*)

On February 14, 2014, UIC physical therapist Josiah Sault wrote that Petitioner should consider seeking psychiatric counseling. (PX #13 p.1388)

On March 10, 2014, Dr. Konstantin Slavin wrote that "The orthopedic doctors did not feel that she needs more surgeries and sent her to me for consideration of a spinal cord stimulator. (PX #13 p.1054)

On March 28, 2014, physical therapist Josiah Sault wrote that "PT is not the most important option for her at this point." Pain was still limiting all function and Petitioner spent an extensive amount of time talking about the RIC program instead of performing her stretches and exercises. (PX #13 p.1379)

EMG -May 7, 2014 - negative

On May 7, 2014 and EMG/NCV performed at UIC was interpreted as normal. "This is a normal study. There is no EDX evidence to support a peripheral nerve lesion, lumbosacral plexopathy, myopathy, lumbosacral root lesion or polyneuropathy." (PX #10 p.15) Please see also, (PX #9b). The original report is not in evidence.

On June 16, 2014, Petitioner told Dr. El Shami that after the 2010 work accident, she felt that she had broken her hip and she had to use crutches off and on since then. (PX #10 p.1251)

The doctor wrote that both the recent MRI and EMG appear to be within normal limits. *(Id.)* The Petitioner did not have a fractured hip.

On June 27, 2014, Dr. El Shami recommended that the Petitioner "stop using the cane as I see no significant weakness or need for it." (PX #13 p.1246)

Functional Capacity Examination - indeterminate

Petitioner underwent an FCE on August 14, 2014 at ATI which was deemed by the athletic trainer to be INDETERMINATE. She quit the exam and simply did not complete enough activities to make any recommendation. (PX #4c)

On August 28, 2014, Dr. El Shami wrote that Petitioner should have an epidural steroid injection for diagnostic purposes. He was becoming somewhat skeptical since the EMG was completely normal. He wanted to see a FCE to determine if the Petitioner's findings were validated. (PX #13 p.1232)

Functional Capacity Examination – valid - 2014

Petitioner underwent another FCE on September 29, 2014 at ATI. This time Petitioner was found to put in a VALID level of participation. The FCE report noted that Petitioner was capable of work within the light physical demand level. (PX #4d)

Epidural Steroid Injections

Petitioner testified that she continued to treat at UIC through the remainder of 2014. Her treatment included an epidural steroid injection (ESI) on October 14, 2014 and a medial branch block on December 9, 2014. (T. 18)

On October 31, 2014, Dr. El Shami wrote that Petitioner's imaging has "only showed mild residual deficits." (PX #13 p.1220) The Petitioner has been taking 3-4 Norcos per day and

has had two recent suicidal ideations. She needed a multi-disciplinary approach to deal with her chronic pain including psychological treatment. *(Id.)*

On November 20, 2014, Dr. Amir El Shami admitted that everything they've tried so far has been unsuccessful. "At this point, more from a psychological standpoint, I do not feel the patient is ready to return to work physically. I do not see any risk of her returning to work as a truck driver." (PX #13 p.1210-11) Dr. El Shami thought the benefit of future injections was low, as she failed to respond to all previous interventions. (PX #13 p.1203) Nevertheless, he wanted her to attend RIC before she tried to return to work. (PX #13 p. 1211)

Petitioner also obtained a prescription for hydrocodone-acetaminophin from Dr. Humera Asem at UIC (obstetrician-gynecologist). (PX #11)

Initial Vocational Assessment – CRC – Lisa Helma

On February 25, 2015, vocational rehabilitation consultant, Lisa Helma, wrote that Petitioner was still treating with Dr. El Shami for pain management once a month for medication refills (narcotics). (PX #6a) She cannot get her Norco refilled without seeing him. The Arbitrator notes that Dr. El Shami's name is not on any of the CVS prescription logs. (PX #11) On this date, she also stated that Dr. El Shami prescribed the cane. *(Id. p.2)* Further, she stated that "she was capable of standing for a maximum of 5 to 10 minutes, but that she would be unable to walk the next day." *(Id. p.4)* In Ms. Helma's opinion, Petitioner age, disability and lack of transferable skills meant that Petitioner's disability was permanent and total. *(Id. p.11)*

On February 9, 2015, the Petitioner sought treatment at the UIC emergency room, but those records are not in evidence. (PX #7b) Apparently, it was for superficial thrombophlebitis (PX #13 p.1202)

MRI – lumbar spine – April 22, 2015

April 22, 2015, an MRI showed minimal generalized bulging at L3-4 and no spinal stenosis (PX #10 p.15). One week later, Dr. El Shami's physical exam was negative. (PX #13 p.1201). He hoped RIC would wean Petitioner off narcotics and possibly other interventions. *(Id.)*

Vocational Rehabilitation – MedVoc – May 1, 2015

On April 23, 2015, Petitioner met with MedVoc Rehabilitation consultants Diamond Warren and Jacqueline Bethell. MedVoc prepared an initial rehabilitation report on May 1, 2015. (RX #6) The MedVoc report noted that Petitioner had already started a job search and had job logs with her at the initial meeting. (*Id.*) According to the report, Petitioner was looking for cashier positions in retails stores and hospitals. The report noted Petitioner had outdated computer training from the late 1980's and recommended up-to-date computer training through MedVoc's home-study program. *(Id.)* Petitioner declined to participate. *(Id.)* Nevertheless, Petitioner testified that she participated in MedVoc from May of 2015 through September of 2016. (T. 27)

On June 2, 2015, Petitioner underwent a left joint steroid injection with Dr. Pichurko. (PX #10 p.15)

On June 19, 2015, Dr. Amir El Shami referred the Petitioner to the Rehabilitation Institute of Chicago ("RIC"), to focus on psychological treatment and physical therapy. Another one of his concerns was that Petitioner said she was taking 3-4 Norco per day. (PX #13 p.1198) He gave her a copy of the latest MRI and EMG for the RIC physicians to review as well. *(Id.)*

Pain Treatment at RIC – three failed drug screenings in 2015!

Petitioner began pain treatment with Dr. Karina Bouffard at Rehabilitation Institute of Chicago ("RIC") on July 16, 2015, as UIC does not have a multi-disciplinary pain clinic. (PX #10 p.14) (PX #13 p.1198) These records show that the Petitioner gave a poor effort for her "nocieptive somatic back pain." (PX #10) Petitioner admitted that she had thoughts of hurting herself from 2010–2013 and underwent four suicide attempts during this time. (*Id.* p.9) Petitioner was able to stand on her heels and toes. *(Id. p.16)* Petitioner had treatment for psychiatric care during this time, but those records are not in evidence. Petitioner denied ever using illegal drugs *(Id. p.11),* but was soon discharged from the pain management program after two months for testing positive for unprescribed medications. *(Id. p.51, 212, 214)* Petitioner had three noncompliant urinary drug screening (UDS) tests! *(Id. p.51, 57)* According to Dr. Bouffard, after checking a controlled substance database, Petitioner had no prescription by any physician in Illinois or Indiana for benzodiazephines or "benzos," but somehow kept coming up positive for them. Ironically, she tested negative for opioids containing hydrocodone (Norco), which were prescribed, and the Petitioner had claimed to taking three-four times a day since 2013 for her pain! *(Id. p.53, 57)* Dr. Bouffard counseled the Petitioner several times about her poor progress, lack of motivation, absences, tardiness and noncompliant UDS before discharging Petitioner from the program. *(Id. p. 51, 59)* Dr. Bouffard concluded that she was getting her benzos from the street or taking friends medications. *(Id. p. 51)* Petitioner had nothing to say in her defense after speaking at length with Dr. Bouffard and Dr. Colin Franz upon discharge. *(Id.)*

Towards the end of the treatment at RIC, Petitioner began to complain of bilateral and right upper extremity radiculopathy. *(Id. p.6, 22)* The physical therapist also noted that her pain

location changed from day to day during her time at RIC. *(Id. p.98)* Nothing ever came of these complaints. Similar non-anatomical complaints were also documented by Dr. Votta-Vaelis during the Summer of 2015 when Petitioner stated that her lower back pain radiates into her arms with numbness and tingling. (PX #13 p.781 & 785)

Petitioner's prescription medication record with CVS Pharmacy is labeled PX #11. While these documents may not show a complete history of Petitioner's prescription drug use, one can see that she continued to obtain narcotic medication (hydrocodone and tramadol) from various doctors to the present time. *(Id.)*

Petitioner's acetaminophen-hydrocodone prescriptions were refilled by Dr. Valero-Vargas (UIC -clinical exercise physiologist) on October 27, 2015 and December 1, 2015. (PX #13 p.1193)

UIC – Physical Therapy

Despite the above, Petitioner continued to follow up regularly at UIC for physical therapy, pain treatment and narcotic medication refills from Dr. Votta-Velis. (PX #11) (PX #13 p. 1192-3)

Petitioner's failed urinary drug screening failures were not disclosed to her treating physicians at UIC, as they made no mention of it in their records and kept prescribing narcotic medication. (PX #13) (PX #2) In fact, Petitioner misled Dr. El Shami on November 13, 2015, by telling him that she completed the program at RIC, was "happy with the pain program and result it has given her" and is "now only taking 60 narcotic tablets a month instead of 120; but…her pain was still the same." (PX #13 p.1196) Petitioner carried on as if nothing ever happened. Dr. El-Shami did not recommend any further interventions as she was in no distress. She was not using an assistive device at this appointment. Nevertheless, he recommended that Petitioner try

and wean herself off narcotics. (PX #13 p. 1731 & 2) He would follow up with her on an as needed basis. *(Id.)*

MRI – lumbar spine – December 31, 2015

Petitioner underwent another lumbar MRI (without contrast) on December 31, 2015. (PX #13 p.1692) "Since 2013, there worsening degenerative changes noted at the L3-4 level including tiny, bilateral, facet-related synovial cysts that result in moderate central spinal canal and moderate to severe left neural foraminal and moderative right neural foraminal stenosis. (PX #13 p.1692)

On January 14, 2016, Dr. Amir El Shami reviewed the above MRI and stated that it demonstrated "slightly progressive" findings from the MRI just over 2 years ago. He recommended foot orthotics and facet block injections. (PX #13 p.1183)

On February 5, 2016, Dr. Amir El Shami stated that Petitioner should only work four hours a day per the September 2014 FCE. (PX #13 p.1176)

On February 22, 2016, Dr. Konstantin Slavin wrote that "I feel that the chance of her getting better from lumbar decompression is small but real…" (PX #13 p.1048) On February 28, 2016, the Petitioner sought medical care at the UIC emergency room. (PX #7b) Those records are not in evidence.

Petitioner restricted to 4-hour workday by ATI

On April 19, 2016, an athletic trainer at ATI created an addendum report to the FCE that was performed in September of 2014 clarifying to Dr. El Shami that a 4-hour workday is recommended only if sitting, standing or walking are required. (PX #4e)

Repeat EMG/NCV – May 11, 2016 – positive?

On May 11, 2016, the Petitioner underwent another EMG/NCV, which showed mild chronic right-sided radiculopathy at L5. There was no evidence to support a peripheral nerve lesion, lumbosacral plexopathy, myopathy or polyneuropathy. (PX #13 p.1579-83) This matches Dr. Goldberg's finding back in 2012.

CT-lumbar Spine – June 8, 2016 - no stenosis

A CT- lumbar spine was performed by UIC on June 8, 2016 and showed posterior disc bulge at L3-4 and L5-S1 without evidence of stenosis or significant neural foraminal narrowing. The laminectomy appeared stable. The anterolisthesis of L4 on 5 was describes a "grade 1" or mild. (PX #3 p.182) (PX #13 p.1573)

Another ESI was performed later that month. (PX #3 p.68)

On July 19, 2016, over three years after the second work accident, Dr. Krysztof Siemionow recommended a L3-L5 decompression and fusion. (PX #7a). In his view, Petitioner had failed conservative treatment and the degeneration at L3-L4 was a direct result of the earlier L4-L5 fusion Dr. Goldberg had performed. *(Id.)* His plan was to remove and replace the screws at L4 and L5 then extend the fusion up a level. (PX #13 p.1122) The surgery was delayed until the end of September.

On August 12, 2016, Petitioner was discharged from UIC physical therapy stating that "her pain levels are the same" and she plans to have her surgery at the end of September. She had no plans to return to work. (PX #13 p.1366-7) The therapist wrote that her minimal progress was "most likely secondary to outside psychosocial factors that will need to be addressed if she wants to have long term improvement." (*Id.* p.1368)

Dr. Siemionow – UIC -fusion surgery L3-4

Surgery was performed on September 23, 2016. (PX #13 p.1607) The preoperative diagnosis was L3-4 spinal stenosis, adjacent segment degeneration, status post L4-5 decompression and fusion. *(Id.)*

Petitioner's post-operative care was complicated by an unrelated pulmonary embolism, requiring the Petitioner to be hospitalized until October 7, 2016. (T. 20)

Trip to Mexico

On October 18, 2016, Petitioner admitted to her therapist that she felt rage related to her injury and the victimization she felt at the City of Chicago's hands. (PX #3 –folder 7 – addendum psych records p.15) Petitioner also stated she suffered a traumatic brain injury (TBI) when she drove over the pothole and hit her head in 2010. *(Id.)* She also spoke of her recent trip to Mexico. The specific travel dates were not mentioned. *(Id.)*

Unprescribed wheelchair

On November 3, 2016, Petitioner went to UIC for a medication refill with Dr. Chukwudi Okpala. His physical examination was negative, and he noted that Petitioner arrived in a wheelchair. (PX #3 p.179) Nevertheless, he wrote her a prescription for hydrocodone-acetaminophen. (PX #11) Petitioner also began physical therapy at ATI and continued there until discharged on August 8, 2017. (T. 21)

IME – Dr. Daniel Troy – January 23, 2017

On January 23, 2017, Petitioner had a follow up IME with Dr. Troy. (RX #3) Dr. Troy stated that the September 23, 2016 fusion was based "purely on Petitioner's subjective complaints of discomfort and the MRI findings of the December 31, 2015." Dr. Troy further opined that the need for surgical intervention was not causally connected to the work injury suffered in 2010 or the reaggravation in 2013. *(Id.)* Dr. Troy expounded on his opinion by

pointing to the significant degree of symptom magnification on the part of Petitioner. He added that he recommended Petitioner undergo a new FCE, not at ATI. He noted that after the first invalid FCE, a second, independent location should have been used. (*Id.*) Lastly, Dr. Troy noted that Petitioner's FCE results on the September 29, 2014 were very similar to the previous FCE of 2012, therefore indicating that Petitioner had returned to her previous job level predating the March 2013 injury. (*Id.*)

Physical Therapist recommends discharge – March 9, 2017

On March 9, 2017, UIC physical therapist Bradley Myers wrote that the Petitioner was "resistant to interventions.... transition to a health club and independent exercise is needed as progressed is slowed." (PX #3 p.716) Ten days later, CT imaging showed "good location of pedicle screws. There is no hardware failure. There is good fusion. There is no pseudoarthrosis. There is no adjacent segment degeneration." (PX #3 p.645)

Petitioner underwent another caudal ESI later that month. (PX #3 p.68)

On May 24, 2017, Petitioner was back in physical therapy. (PX #13 p.1444)

CT – lumbar spine – August 21, 2017

On August 21, 2017, Petitioner underwent a CT of the lumbar spine which showed no radiographic evidence of complication, a stable laminectomy and posterior fusion at L4-5 and L5-S1. There was posterior disc bulging seen at L3-3 and L5-S1, but no central or neural foraminal stenosis. Petitioner was diagnosed with "failed back syndrome." (PX #3 p.84)

Neuropsychological Evaluation – October 23, 2017

Petitioner underwent a neuropsychological evaluation on October 23, 2017 by Dr. Konstantin Slavin at The University of Illinois Hospital prior to the placement of a spinal cord stimulator. (PX #3) Petitioner denied any history of substance abuse. The doctor found no

contraindications from a neuropsychological standpoint with her undergoing the spinal cord stimulator process. (*Id.*)

The Arbitrator notes that The University of Illinois Hospital has "blacked-out" portions of the Petitioner's past and current medical history from the medical records submitted into evidence. Two good examples of this are on page 254 and 413 of PX #3. However, there are dozens of "blacked out" lines of treatment plans, diagnoses, and assessment plans. The medical record adminstrator, Ciox Health, indicated in a cover letter that records involving substance abuse or HIV/AIDs would not be released with a general release. (PX #3) Apparently, a general release was sent to the health care provider instead of an Illinois subpoena. The Arbitrator notes that the records in PX #2 appear to be "full and complete," but they are not. For instance, there is no operative report from the second fusion performed by Dr. Siemienow on September 23, 2016, nor is there a copy of the EMG report dated May 11, 2016 enclosed in the record. These key documents are located in PX #13, a two-volume set.

On December 27, 2017, Petitioner was examined at the UIC pain clinic. Her physical examination was largely normal. (PX #3 p.96) All provocative testing was normal except for supine straight leg raise. (*Id.*) The sitting straight leg raise was not performed. (*Id.*) Deep tendon reflexes and strength were normal all around. (*Id.*) Four days later, the Petitioner filled a prescription for hydrocodone. (PX #11)

On February 21, 2018, the Petitioner physical exam was negative, except for complaints of pain. (PX #3 p.3) Later that day, Petitioner filled a prescription for narcotic medication. (P #11)

Spinal Cord Stimulator – February 27, 2018

On February 27, 2018, Petitioner had a spinal cord stimulator trial while under the care of Dr. Slavin. (T. 21). After one week, the Petitioner was unsatisfied with the results and had the electrodes removed. (PX # 3 p.634)

On April 23, 2018, Petitioner underwent yet another MRI of the lumbar spine which showed no stenosis at any level. (PX #3 p.1298)

In May of 2018, Petitioner's treating doctor's at UIC requested another FCE (PX #3 p.640). There is some indication in the medical records that Respondent requested another FCE in December of 2018. (PX #3 p.395, 402, 685) In any event, Petitioner told her doctors that "things were not worse, they just aren't any different." (PX #3 p.687) There is no record of FCE being performed in 2018.

Permanent light duty restrictions – March 27, 2018

On March 27, 2018, Dr. Siemionow wrote the following, "At this time, given that the patient has exhausted a lot of her operative and non-operative treatment, we do not think the patient is a good target for surgery, as everything radiographically appears to be in good surgical order." (PX #3 p.643) The Petitioner complained of pain, but the physical examination was unremarkable. (*Id.*) The Petitioner was referred to Dr. El Shami for non-surgical treatment.

On this same above date, Dr. Amir El Shami then imposed permanent light duty restrictions, "as per FCE, of no lifting, pushing, pulling or carrying greater than 5 pounds and climbing stairs or ladders." (PX #12b) But there was no new FCE.

MRI – lumbar spine – April 4, 2018

On April 4, 2018, Petitioner indicated on an Owestry survey that her pain prevents her from all travel except for visits to the physician, therapist, or hospital. (PX #3 p.679) Later that

month, Petitioner underwent an MRI of the lumbar spine that showed no spinal stenosis at any level. The spinal canal appeared patent. (PX #3 p.79)

Petitioner's drug screening results from UIC have been "blacked out." (PX #3 p.836, 837)

Currently still treating – minimal progress

Petitioner kept treating. Dr. Abbas Hyderi referred the Petitioner to Schwab Rehabilitation Hospital for physical therapy from September 5, 2018 to December 18, 2018. (PX #5) Petitioner made minimal progress and stated to the therapist that she had radiating pain down both legs to her toes. She stated, "I know I'm always going to have pain, the doctor told me, and that I'll probably need therapy for the rest of my life." (PX #5) She was still being prescribed Norco, Lyrica, and Nortriptyline. She was still using a walker. *(Id.)*

The CVS prescription log shows that Petitioner was receiving prescriptions for hydrocodone-acetaminophen from Dr. Rani Chovatiya (pain specialist) as recently at August 29, 2019. (PX #11)

Petitioner's job description was forwarded to the ATI by Respondent. The minimum qualifications include having a valid CDL. (PX #4a)

Trial testimony

At the second and final workers' compensation arbitration hearing, on October 10, 2019, Petitioner ambulated with a walker. Sometimes, she uses the rolling walker that belongs to her mother. (PX #3 p.176) She testified that she continues to experience symptoms today, including a constant aching and pain down her leg all the way to her left foot. (T. 27) Petitioner also testified that she has not sought any employment since September of 2016. (T. 30) Nevertheless,

Petitioner testified she recently renewed her Illinois State commercial driver's license and classifications ("CDL"). Petitioner indicated she renewed her CDL in case she was called back to work for Respondent. Petitioner stated no medical documentation was required for renewing her CDL, because she only drives in the City, not across the state or interstate. (T. 45-48). Petitioner indicated that she would be interested in returning to work for Respondent but admitted that she has not applied for any jobs or sought reasonable accommodations under the American's with Disability Act. ("ADA")

Updated Vocational Assessment

On October 24, 2018, Vocamotive provided an updated report. (PX# 6c). It concluded Petitioner does not have access to any stable labor market. *Id.*

Ms. Helma offered testimony by way of an evidence deposition. (PX# 6d). Ms. Helma's testimony was largely consistent with her reports. It is noted however, that Ms. Helma admitted that the way in which ATI calculated Petitioner's work-day restriction of 4 hours is uncommon. If you add up the hours listed for sitting, standing, and walking, the sum of which is greater than 4 hours, but the FCE concluded she was limiting to a 4-hour workday. Ms. Helma was aware that Petitioner currently held a Commercial Drivers' License – B (CDL) and it was currently valid. (PX# 6a)

Conclusions of Law

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

An injury is compensable under the Illinois Workers' Compensation Act only if it arises out of and in the course of employment. *Panagos v. Industrial Commission*, 177 Ill. App.3d 12,

524 N.E.2d 1018 (1988). The burden is upon the party seeking an award to prove by the preponderance of the credible evidence the elements of her claim. *Peoria County Nursing Home v. Industrial Commission*, 115 Ill.2d 524, 505 N.E.2d 1026 (1987). The burden of proof is on claimant to establish the elements of her right to compensation, and unless that 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 Comm.* 44 Ill.2d at 214, 254 N.E.2d 522 (1969). Critical to the determination of the aforementioned is the petitioner's credibility.

The Arbitrator finds that there are grave issues with Petitioner's credibility based on the following eight observations.

First, Petitioner was discharged from the pain treatment program at Rehabilitation Institute of Chicago ("RIC") for failing three drug tests. (PX #10) At that time, Petitioner told her doctors that she took Norco 3-4 times a day for her low back pain, but this was untrue. Instead, she was taking unprescribed benzodiazepines, an anti-anxiety drug. It is important to note that Petitioner was not trading one kind of pain medication for another. One can only conclude that Petitioner's pain must not have been as severe as she claimed and therefore her subjective complaints, the ones she made to her doctors to justify years of additional treatment and prescription medication were not genuine. Petitioner's complaints contributed significantly to her treatment for years and Dr. Siemionow's decision to perform the second fusion was largely based upon them. Moreover, those same complaints had an impact on her FCEs, work restrictions, vocational rehabilitation and ongoing medical treatment. Oddly, no matter what treatment she's received, her complaints have stayed the same. Sometimes, they migrated to her left hip, foot (PX #13 p.1698, 1706), neck (PX #13 p.1694), or wrists (PX #12 p.1731, 1721).

As a result, she continued to receive narcotic pain medication for nearly a decade and there is no reliable indication in the record of her true physical capabilities.

Second, the diagnostic evidence performed soon after the second accident does not support a re-injury or worsening of symptoms. Please recall that the first MRI after March 13, 2013 (the second accident date) was negative. (PX #10 p.7) Likewise an EMG done in November of 2016 showed no neuropathy. (PX #10 p.15) While it is true that the December 2015 MRI showed moderate to severe left stenosis (PX #13 p.1692), this was three years after the Petitioner's last day of work. It was read by a resident, not an MD, it wasn't compared with the most recent studies showing no stenosis. And no other doctor diagnosed adjacent segment degeneration or a herniation after years of treatment. In summary, the weight of the diagnostic evidence does not match the Petitioner's tenacious pain complaints and the second fusion was unwarranted. Further, it is difficult to believe that Dr. Siemionow would have prescribed a second fusion had he known about the three failed drug tests, lack of compliance in physical therapy, psychological concerns and the negative MRIs, CT-Scans and EMG studies.

Please observe a similar pattern of medical treatment for Petitioner's earlier, consolidated claim – 10 WC3042. In that case, Dr. Fardon did not think her clinical signs or diagnostic imaging warranted surgery, (the first MRI showed no nerve root compression at L5-S1 and a moderate bulge at L4-5 with only an early suggestion of stenosis) (PX#1) but because of Petitioner's relentless pain complaints, fusion surgery was finally prescribed. Similarly, Petitioner had problems completing a valid FCE afterwards. (PX# 4b)

Third, unprescribed crutches, canes, walkers and wheelchairs are always troublesome to the trier of fact in that they raise the specter of symptom magnification. These assistive, but unprescribed devices are probably acceptable when used on a temporary basis, but not when

constantly employed. While it may be true that Petitioner's treaters often tolerated Petitioner's use of these devices, they never prescribed them. This behavior corroborates Dr. Daniel Troy's observation of symptom magnification and strongly suggests that Petitioner can do more.

Fourth, Petitioner's first FCE was declared INDETERMINATE by ATI. In a similar fashion, the Petitioner's physical therapy records show a pattern of "opting out" of exercises and stretches due to subjective complaints of pain. (PX #3 p.753) (PX #4b)

On a related note, Petitioner exaggerated her pain symptoms. Perhaps she went too far when she told the vocational rehabilitation counselor that she was capable of standing for a maximum of 5 to 10 minutes, but that she would be "unable to walk the next day." (PX# 6a) If this were true, how could she travel to Mexico? Again, this behavior corroborates Dr. Troy's observation of symptom magnification at his first Section 12 examination on February 13, 2014. (RX# 2 & 3)

Sixth, Petitioner testified that she renewed her commercial driver's license ("CDL") within the last year. (T. 46-48) She told the vocational counselor that she had hazmat, tanker and passenger endorsements. (PX# 6a) Petitioner was questioned about this at trial and stated she needed no medical certificate to obtain her license.

The Arbitrator does not believe that Petitioner obtained her CDL recertification in good faith. It's no secret that in the interest of public safety, commercial motor vehicle drivers are held to higher physical, mental and emotional standards than passenger car drivers. The medical rules and requirements are governed by the Federal Motor Carrier Safety Administration (FMSCA) which prohibits opioids from being used by drivers, even when prescribed by a doctor. When the Petitioner renewed her license, she was undoubtedly asked about her prescription and non-prescription drug use. Any driver that takes a controlled substance included in 21 CFR 1308.11

(391.42(b)(12), or other habit-forming drug, is medically unqualified to drive. Using prescribed hydrocodone and/or unprescribed benzodiazepines is a disqualifying event. In addition to her CDL "B" certification, Petitioner told the vocational rehabilitation counselor that she had a hazmat, tanker and passenger endorsement. (PX# 6a) In all likelihood, Petitioner was required by the Secretary of State to provide a medical certification or at least self-certify her medical condition to obtain a renewal. So…what did Petitioner disclose about her physical, mental and emotional status in order to have her CDL renewed? Her lack of candor with The Illinois Secretary of State parallels the same with her doctors, physical therapists, vocational rehabilitation counselors and The Illinois Workers' Compensation Commission. It also indicates a gross disregard for her own safety as well as the safety of others.

The Arbitrator notes that it would have been illegal for Respondent to have allowed the Petitioner back to work as a motor truck driver under the circumstances.

Regarding the second date of injury, March 15, 2013, the evidence suggests that "perhaps" Petitioner suffered a temporary aggravation of a pre-existing condition. While it is true that Respondent did not dispute the issue of accident in either case, Dr. Goldberg, Dr. Troy & Dr. Siemionow all agree on a temporary aggravation, and Dr. Troy (Respondent's IME) correctly found evidence of symptom magnification in that her objective findings did not match her reported symptoms. (RX# 2 & 3) The Arbitrator is impressed at Dr. Troy's ability discern symptom magnification without the aid of all the surrounding corroborative evidence that was presented to the Arbitrator. Dr. Troy did not have the benefit of reviewing a bankers' box of medical records from various treaters. The Arbitrator finds that the weight this evidence supports Dr. Troy's findings in favor of Respondent. Petitioner's permanent restrictions are unreliable as

they are based on Petitioner's subjective complaints. Stated another way, her disability is not work related.

Damaging the Petitioner's credibility further, one can see that her original testimony from the first 19(b) hearing (10 WC 46707 (date of loss 09-20-10)) was misleading to the Court. Petitioner denied having any prior medical treatment to the lower spine. (PX #1) Remarkably, the medical records from UIC unearthed a dramatic, non-work-related motor vehicle accident that occurred on March 14, 2009 that resulted in the Petitioner being transported to the Jackson Park Hospital (ER) then follow up treatment at Parkview Orthopaedics, Accelerated Rehabilitation, chiropractic care then another stint of treatment at UIC. (PX #13 p.1158, 1262, & 1527)

On March 14, 2009, Petitioner's car was t-boned in a head on collision at an intersection by an 86-year-old lady who allegedly blew the red light. Petitioner's car was totaled. There was litigation. An MRI and EMG (right lower extremity) were performed. (PX #13 p.1028, 1158) The results of the MRI was reportedly to showing mild spondylosis at L4-5 and L5-S1; (PX #13 p.1263) The EMG showed mild neuropathy. (PX #13 p.1588-91) For that injury, Petitioner also complained of left lower radiculopathy and received an epidural steroid injection at UIC in March of 2010 after complaining of bilateral radiculopathy. (*Id.* p.1150) (PX #13 p.872) She was diagnosed with L5 spondylolisthesis by UIC. *(Id.)* At that time, her gait was slightly antalgic and there were no neurological deficits. (PX #13 p.1154) It was also described as "moderate spinal stenosis" by Dr. Nicola Terry. CT Scans were performed at UIC. (PX #13 p.1265) In January of 2010, Petitioner described her pain as 7-8 out of 10. (PX #13 p.1268) Constant 5-6/10 in intensity with an electric shock in nature. (PX #13 p.1528) She was still treating in March of 2010 and re-scheduled for more physical therapy. *(Id. p.872)* There is no indication that

Petitioner was ever discharged nor reached maximum medical improvement from this accident. The records are incomplete.

Somehow, this pre-existing medical history was insulated from the doctors involved in the original 19(b) hearing back in 2012 (PX #1) as well as the ones in the current hearing in 2020. Likewise, Petitioner never disclosed it to the court. Instead, she consistently stated that her original complaints were from driving over a pothole and/or a being inside a shaking truck while it was being loaded with asphalt. Incredibly, she never mentioned getting t-boned at the intersection. Frankly, the above revelation calls into question the issue of accident in both workers' compensation claims.

Dr. Siemionow's testimony – 03-13-18

Dr. Siemionow justified his September 23, 2016 fusion surgery, stating there was a herniation at L3-4. (PX #7b p.8) In his opinion, Petitioner's had "segment degeneration" at L3-L4. Segment degeneration is when the disc levels above and/or below the original fusion site are stressed and therefore "wear out" faster. (*Id.* p. 19) According to Dr. Siemionow, adjacent segmental degeneration usually only takes two to three years to develop. (*Id.* p.26) He performed fusion surgery at L3-4 because he thought some of the pain was coming from that level. (*Id.* p.27) In his opinion, Petitioner's current pain was from the L4-5 surgery, which is where Dr. Goldberg fused. *(Id. p.32)* Nevertheless, he thought Dr. Goldberg had done a nice job and no further surgery was unnecessary. (*Id.*) While the EMG showed chronic right-sided radiculopathy at L4-5, Siemionow testified that he did not operate at that level. (*Id.* p.27) and his surgery would not have corrected it. (*Id.* at 27-32) As result, his L3-4 fusion addressed a new problem. (*Id.* p.23) The only medical treatment he could endorse was his own and the future spinal cord stimulator. (*Id.* p.24) In his opinion, the Petitioner initially reached MMI on September 24, 2014,

the date of the FCE. (*Id.* p.22) He admittedly did not review the medical records of other physicians. (*Id.* p.9)

He expected MMI from his surgery in September of 2017. (*Id.* p.34) Further, Dr. Siemionow stated that spinal cord stimulators are designed to reduce pain and keep patients away from narcotics. *(Id.)* He would recommend the stimulator and another FCE. *(Id. p.29)* The earlier FCE in 2014 may not be an accurate representation of her abilities. *(Id.)* Petitioner could work light duty.

Analysis of Dr. Siemionow's testimony

Dr. Siemionow focused on the December 31, 2015 MRI to justify his surgery, which was interpreted as "worsening degenerative changes at L3-4, with tiny cysts that result in moderate central stenosis, moderate-severe left neural foraminal and moderate right neural foraminal stenosis." (PX #3 p.143) However, this MRI was two and half years after the Petitioner's first fusion and his theory of "adjacent segment disorder" is not in accordance with the November 2013 MRI. (PX #10 p.7) nor the April 22, 2015 MRI, (PX #10 p.15) and he was probably unaware of the negative EMG on May 7, 2014, (PX #10 p.15) or the negative CT-Scan on June 8, 2016 showing no stenosis. None of those diagnostic studies characterized Petitioner's condition at L3-4 as a "herniation" nor did any other doctor diagnose "adjacent segment disorder." They all stated no stenosis. In any event, one would imagine that it would take longer than two years for adjacent segment disorder to manifest itself, especially if the patient was inactive like Petitioner. In any event, the diagnosis of adjacent segment disorder is more of a theory than a fact, in this Petitioner's case. It would be extremely difficult, if not impossible to distinguish his diagnosis from the normal degenerative aging process and Petitioner's slight

progression could have just as easily been caused by the passage of time or all the lumbar injections she received throughout the course of her treatment. It could be caused by the cysts observed on the MRI. Further, Petitioner's pain complaints have never wavered and they are suspect because of her history of drug abuse, questionable psychological state and the paucity of diagnostic findings involved in not only her low back, but her hip, foot, and arms.

In noting the above, the Arbitrator does not find Dr. Siemionow's reasoning to be very compelling as his characterizations seem somewhat overstated to justify further surgery. (PX # 7b p.30) But there's another issue. Please recall that Dr. Siemionow stated he did not operate at the L4-5 level (PX #7b p.23), but the UIC medical records state otherwise. It looks as though he revised Dr. Goldberg's earlier fusion at L4-5. (PX #3 p.174, 185-186, 791) In short, many of the UIC records suggest that he operated at both levels and performed a revision (PX #3 p.791) (PX #13 p.1122) and the operative report states he removed two Goldberg screws and replaced them with his own. *(Id.)* Since he did, in fact, operate on L5 level, why state otherwise? The effect diminishes the weight of Dr. Siemionow's testimony and rationale for the second fusion.

The fact that Petitioner still complains of the same symptoms as she did before the surgery, further supports Dr. Troy's opinion that the second surgery was not needed. In 2012, Petitioner's complaints were similar when Dr. Goldberg (treater) viewed an MRI with gadolinium and stated no surgery was necessary. His assessment agrees with Dr. Troy's (IME) later opinion that no surgery was necessary. (PX #2) Drs. El Shami agreed no surgery was necessary, Dr. Slavin agreed it only had a small possibility of succeeding, after earlier stating it was not necessary. (PX #13 p.833)

In conclusion, the second fusion was not necessary and while the Arbitrator finds that Petitioner' current condition of ill-being is but partly related to the September 20, 2010 work

injury, it is not at all related to the 2013 event and that her exaggerated pain complaints cloud her true physical abilities and future employment prospects. Throughout a decade of medical care, her pain symptoms "just aren't any different." The root of this never-ending medical treatment is more likely than not related to her unresolved psychological state of mind and/or drug abuse; both which are unrelated to the work occurrences. In fact, all this medical treatment may have been triggered by the t-bone MVA in 2009! As a result of the above, there is no causal connection between either accident or the second fusion at L3-4 performed by Dr. Siemionow.

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 that Respondent is liable for medical services until August 14, 2014, the date that Petitioner's FCE at ATI was deemed INDETERMINATE. The Arbitrator bases his decision on the credible opinion of Dr. Daniel Troy who examined the Petitioner on February 13, 2014. (RX #2 & 3) Please recall that he stated Petitioner was engaged in symptom magnification and recommended a new FCE to determine if any further treatment was necessary. It was INDETERMINATE, which is a polite way of stating it was invalid. Petitioner thought she had failed. As a result, The Arbitrator awards no additional medical treatment for the Petitioner's lumbar spine after her first FCE at ATI on August 14, 2014. Dr. Troy's dissatisfaction with ATI is well founded as its business model is based upon service administered by athletic trainers (AT) instead of physical therapists. The business model is attractive to Respondents' as it appears to be an inexpensive way to provide physical therapy, but the product might be inferior to some, like Dr. Troy, because in their estimation an athletic trainer is less qualified than a physical

therapist. In the present claim, some of the physical therapists immediately noted that the Petitioner needed mental therapy in lieu of physical therapy.

Further, the Arbitrator specifically finds that any lumbar treatment after August 14, 2014, especially the L3-4 surgery, post-operative care, or any other medical conditions, remain the responsibility of Petitioner and/or her group insurance carrier and not Respondent's workers' compensation insurance.

Respondent shall be given a credit under Section 8(j) of the Act for the amount paid by the group health insurance carrier. Respondent shall also be given a credit for the amounts it paid directly to the providers. The parties have stipulated that any remaining unpaid medical bills dated on or prior to August 14, 2014 shall be paid directly to the providers per the fee schedule. (T. 9)

K. What temporary benefits are in dispute?

Benefits before March 15, 2013

The first 19(b) award is the "law of the case" and the parties agreed that Petitioner was entitled to TTD benefits between October 20, 2011 and January 7, 2013. (ARB X #1) Despite having reservations about the prior claim, the Arbitrator will not tamper with this agreement. Petitioner returned to light duty work, then later, full duty on February 11, 2013.

Benefits after March 15, 2013

The Respondent did not dispute the second accident on March 15, 2013. (ARB X #1) As a result, the Arbitrator must adopt Dr. Daniel Troy's opinion accepting a temporary aggravation of a pre-existing condition stemming from the second accident. However, Dr. Troy also stated that Petitioner's earlier 2012 permanent restrictions were based upon her subjective complaints

and the record reflects this to be true, more than Dr. Troy suspected. As a result, the Arbitrator will only award TTD benefits until the date of his examination on February 13, 2014.

To summarize, the Arbitrator awards temporary total disability benefits from the date Petitioner was placed off work from the second accident – March 20, 2013 until February 13, 2014, the date of Dr. Troy's Section 12 examination (IME).

Maintenance benefits are awarded until from February 14, 2014 until August 14, 2014, the date of the indeterminate FCE. On February 13, 2014, Dr. Troy recommended another FCE to determine the Petitioner's capabilities. This examination wasn't scheduled until months later and Petitioner opted out of a large portion of it. This result confirms Dr. Troy's findings of exaggerated symptoms and the Arbitrator finds that the Petitioner's permanent restrictions, regardless of the year or claim, are patently unreliable.

It appears Respondent erroneously paid TTD benefits until September 22, 2016. (ARB X #1) As a result, it is allowed a credit for the same.

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

An employee is totally and permanently disabled when he is "unable to make some contribution to the work force sufficient to justify the payment of wages. *Gates Division, Harris-Intertype Corp v. Industrial Commission*, 78 Ill.2d 264, 399 N.E.2d 1308 (1980). The petitioner may also establish that there is no reasonably stable labor market available. *Valley Mould & Iron v. Industrial Commission*, 69 Ill.2d 273, 371 N.E.2d 610 (1977). It is not enough to show that there is an inability to perform strenuous work. If the petitioner is able to perform employment

without endangering his health or life, he is not entitled to an award of permanent total disability. *A.M.T.C. of Illinois, Inc. v. Industrial Commission*, 77 Ill.2d 481, 387 N.E.2d 804, 34 Ill.Dec 132 (1979). Furthermore, the Commission has held that when the petitioner lacks the intent to return work, the employee is not entitled to benefits and was permanently and totally disabled. *Schoon v. Industrial Commission*, 259 Ill.App.3d 587, 630 N.E.2d 1341, 197 Ill.Dec 217 (3rd Dist. 1994).

As stated earlier, the Petitioner's present pain complaints are patently untrustworthy. Likewise, the vocational rehabilitation assessment and permanent restrictions imposed by Dr. Amir El Shami crumble as they are based on Petitioner's troublesome veracity. It is unclear to the Arbitrator what data Dr. El Shami based his 5 lb. restrictions on. There was no new FCE on record. And he might have forgotten about his earlier statement that Petitioner could go back to truck driving "but for" her unrelated psychological state. (PX #13 p.1211)

The Petitioner testified that she has not applied for any jobs, including light-duty jobs since 2016. Petitioner did not request a reasonable accommodation with Respondent under the American's with Disability Act. The Supreme Court has held that, it is the petitioner's obligation to make "good-faith efforts to cooperate in the rehabilitation effort." *Archer Daniels Midland Co. v. Industrial Commission*, 138 Ill.2d 107, 561, N.E.2d 623, 149 Ill.Dec 253 (1990). It is clear from the evidence and from Petitioner's testimony, that has misled her doctors, vocational rehabilitation counselors, The Illinois Secretary of State and The Illinois Workers' Compensation Commission. Therefore, the Arbitrator finds that Petitioner has not established that she is totally and permanently disabled and her permanent restrictions are not firmly established.

An AMA impairment rating was not done in this matter; however, Section 8.1(b) of the Act requires consideration of five factors in determining permanent partial disability:

1. The reported level of impairment;
2. Petitioner's occupation;
3. Petitioner's age at the time of the injury;
4. Petitioner's future earning capacity; and
5. Petitioner's evidence of disability corroborated by treating medical records.

Section 8.1(b) also states, "[n]o single 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 presorted by a physician must be examined." The term "impairment" in relation to the AMA Guide to Evaluation of Permanent Impairment 6th Edition is not synonymous with the term "disability" as it relates to the ultimate permanent partial disability award.

1. Reported Level of Impairment

An AMA impairment rating was not done in this case. This does not preclude an award for partial permanent disability.

2. Petitioner's Occupation

Petitioner's occupation was motor truck driver for the City of Chicago.

3. Petitioner's Age at the Time of Injury

Petitioner was 48-years old at the time of her first date of loss, September 20, 2010. (PX #1) Her birthday is listed as 09-28-1961. (PX #4a) Petitioner was 53-years old at the time of her second date of loss, March 15, 2013, not 57, as stated on the request of hearing form (ARB X #1) As a result, Petitioner is currently 58 years old. The Petitioner's age was incorrectly stated on the request of hearing sheet. (ARB X #1)

4. Petition's Future Earning Capacity

Petitioner's future earning capacity is not clearly diminished as a result of the work-accidents. Petitioner's work capabilities are unclear as the result of her exaggerated pain complaints, drug use and inability to meaningfully participate in vocational rehabilitation efforts. Her work restrictions are not based on a realistic estimate of her physical capabilities. The Arbitrator places little weight on this factor.

5. Evidence of Disability Corroborated by Medical Records.

The "law of the case" dictates that Petitioner suffered an injury to her lower back on September 20, 2010, which required L4-5 fusion. Post-operative, her pain might have continued radiating down her left leg, but it is difficult to be certain. Petitioner engaged in some form of drug abuse and was not candid with her doctors nor the court. Her permanent restrictions are unclear. As a result of the above, she is entitled to have and receive from Respondent 125 weeks of PPD at a rate of $669.64 per week, representative of a 25% loss of a person as a whole.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC035140
Case Name	SMITH, LAQUANDA v. ADVOCATE LUTHERAN GENERAL HOSPITAL
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remanded Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0003
Number of Pages of Decision	23
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Matt Walker
Respondent Attorney	Andrew Rane

DATE FILED: 1/5/2022

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LAQUANDA SMITH,

Petitioner,

vs. NO: 18 WC 35140

ADVOCATE LUTHERAN GENERAL HOSPITAL,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, entitlement to incurred 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 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 11, 2020 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner temporary partial disability benefits in the amount of $1,123.28 per week for a period of 12 & 3/7ths weeks, representing December 2, 2018 through February 26, 2019, as provided in §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,352.69 per week for a period of 73 weeks, representing February 27, 2019 through July 21, 2020, 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 and necessary medical expenses detailed in Petitioner's Exhibit 14, as provided in §8(a), 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 shall provide and pay for prospective medical in the form of ongoing treatment for both shoulders, including surgery for the left shoulder as recommended by her treating surgeon, Dr. Breslow as provided in §8(a) of the Act.

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. Respondent overpaid weekly benefits in the amount of $1,153.53. Otherwise, all weekly benefits to date have been paid in full by the Respondent.

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 $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.

January 5, 2022

/s/ *Deborah J. Baker*

DJB/lc

O: 11/17/21

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b)/8(a) ARBITRATOR DECISION

21IWCC0003

SMITH, LAQUANDA
Employee/Petitioner

Case# **18WC035140**

ADVOCATE LUTHERAN GENERAL HOSPITAL
Employer/Respondent

On 8/11/2020, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.12% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

5669 ALEKSY BELCHER
MATTHEW B WALKER
350 N LASALLE ST SUITE 750
CHICAGO, IL 60654

1109 GAROFALO SCHREIBER & STORM
ANDREW L RANE
55 W WACKER DR 10TH FL
CHICAGO, IL 60601

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(B)/8(A)

Laquanda Smith
Employee/Petitioner

v.

Advocate Lutheran General Hospital
Employer/Respondent

Case # **18** WC **35140**

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 **Molly Mason**, Arbitrator of the Commission, in the city of **Chicago**, on **July 21, 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. ☒ 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 **TPD/TTD Overpayment by Respondent in the amount of $1,153.53 - stipulated**

FINDINGS

On the date of accident, **8-15-2018**, 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 bilateral shoulder condition of ill-being ***is*** causally related to the accident. Petitioner also established causation as to the need for a cervical spine work-up.

In the year preceding the injury, Petitioner earned $**105,509.56**; the average weekly wage was $**2029.03**.

On the date of accident, Petitioner was **28** 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 $**98,746.37** for TTD, $**15,114.25** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**114,860.62**.

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

ORDER

Respondent shall pay Petitioner temporary partial disability benefits of $1,123.28/week for 12 3/7 weeks, commencing 12/2/18 through 2/26/19, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $1,352.69 / week for 73 weeks, commencing 2/27/19 through 7/21/20, as provided in Section 8(b) of the Act.

The parties agree that Respondent overpaid weekly benefits in the amount of $1,153.53. Otherwise, all weekly benefits to date have been paid in full by the Respondent.

Respondent shall pay reasonable and necessary medical services as provided in Sections 8(a) and 8.2 of the Act. PX 14.

Petitioner is entitled to prospective medical in the form of ongoing treatment for both shoulders, including surgery for the left shoulder as recommended by her treating surgeon, Dr. Breslow.

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.

Molly C Mason

Signature of Arbitrator

8/7/20
Date

AUG 11 2020

Laquanda Smith v. Advocate Lutheran General Hospital
18 WC 35140

Summary of Disputed Issues

There is no dispute that Petitioner, a 28-year-old MRI technologist, injured her right shoulder on August 15, 2018, while helping transfer a 250-pound patient. Petitioner testified she experienced right shoulder and neck pain while extending both arms and pushing the patient during the transfer. She began a course of care at Respondent's Employee Health Services on August 22, 2018. A nurse practitioner at that facility diagnosed right shoulder and right trapezius strains. She imposed restrictions, which Respondent accommodated. On September 5, 2018, Petitioner returned to Employee Health and complained of tingling in both palms. Five days later, Petitioner underwent treatment at Respondent's Emergency Room, where she provided a history of bilateral shoulder pain of two weeks' duration and tingling in her fingertips of a few days' duration. She denied any injury other than the work accident. On September 12, 2018, the nurse practitioner at Employee Health added "cervical radiculopathy" to the list of Petitioner's diagnoses. Petitioner first saw an orthopedic surgeon, Dr. Breslow, in November 2018. PX 5. Following a right shoulder MR arthrogram, Dr. Breslow diagnosed a labral tear. He performed a labral repair in February 2019 and a revision surgery in December 2019. Respondent does not dispute the need for these surgeries. Dr. Breslow also diagnosed a left labral tear and has recommended surgery. Respondent disputes causation as to Petitioner's claim that she developed a left shoulder condition due to the August 15, 2018 accident. As of the Section 8(a) hearing held on July 21, 2020, Petitioner remained off work. She seeks prospective care in the form of additional right shoulder treatment and left shoulder surgery.

The disputed issues include causation as to the left shoulder and cervical spine conditions of ill-being, medical expenses and prospective care.

Arbitrator's Findings of Fact

Petitioner testified she was born on December 22, 1989. She was 30 years old as of the hearing. She obtained a B.S. in imaging and radiology. She also holds certifications relative to CT and MRI imaging.

Petitioner testified she began working as an MRI technologist for Respondent in July 2016. Her job involves preparing and positioning patients for MRI scans. She is required to perform lifting. Some patients are confined to wheelchairs. Others are unable to move on their own and have to be slid into position. Petitioner testified that, while Respondent attempts to assign two technologists to each patient, her job description provides that she must be able to lift 100 pounds on her own. She works at both Respondent's main hospital and its outpatient center. The work she performs at the hospital is more physically demanding. She typically slides patients three times every 8-hour shift.

Petitioner had a concurrent employer, Compuray Medical, as of the August 15, 2018 accident. Petitioner testified she began working as an MRI technologist for Compuray, a staffing agency, in January 2018. Compuray placed her at the University of Chicago. Petitioner testified that all the patients she dealt with at the University of Chicago were mobile. She was required to lift only a "coil" or camera that weighed 5 pounds.

Petitioner testified that, at the time of the accident, she was working at Respondent's main hospital. She and a co-worker were transferring a heavy patient from a table to a cart. The patient weighed at least 250 pounds and had dislocated his knee. Due to the knee dislocation, Petitioner and her co-worker were unable to use a mechanical hoist to move the patient. Petitioner testified she was pushing the patient, with both of her arms extended outward, when she felt pain in her right shoulder and neck. She told her charge technician, Nirmal Gangaloo, she had injured her right shoulder. She managed to finish her shift and drive home, although her symptoms did not improve. She continued working during the next five days but her pain worsened. On August 20, 2018, she reported the accident to her supervisor, Ralph Kennar. At Kennar's direction, she completed an incident report. Respondent did not offer this report into evidence.

Petitioner testified she first sought treatment on August 22, 2018, at which point she was directed to Respondent's Employee Health Services. The only records in evidence from this facility are four "Work Status Discharge Instructions" dated August 22, September 5, September 12 and October 5, 2018. PX 1. On each of these dates, Petitioner saw a nurse practitioner, Teresa Hyrc. Each of Hyrc's notes reflects that Petitioner was injured on August 15, 2018, while assisting in positioning a patient. On August 22, 2018, Hyrc diagnosed the following conditions: "right upper arm strain, right trapezius strain, right shoulder strain." The note does not mention Petitioner's complaints or Hyrc's examination findings. Hyrc prescribed Ibuprofen and released Petitioner to light duty with no repetitive motion, no work above shoulder level and no lifting, pushing or pulling over 10 pounds. PX 1.

Petitioner testified that Respondent provided her with work within Hyrc's restrictions. She returned to Employee Health Services on September 5, 2018. Hyrc's note of that date sets forth the same diagnoses. Hyrc prescribed Ibuprofen and home exercises. She continued the previous restrictions. PX 1, p. 3.

Petitioner testified she went to Respondent's Emergency Room on September 10, 2018 because she was experiencing pain in her left shoulder, arm and hand as well as tingling in both hands. The examining physician, Dr. Mary Naughton, recorded a consistent history of the work accident. She described Petitioner as immediately experiencing right shoulder pain after this accident. She also noted that during the preceding two weeks Petitioner had "bilateral shoulder and arm discomfort that is constant" and that, during the preceding few days, she had experienced "numbness and tingling of her fingertips bilaterally." She indicated that Petitioner "denied any other injury other than the right shoulder pain initially which started when she was pushing the patient." She felt it was "possible [Petitioner] has cervical radiculopathy versus a

herniated disc in her neck," although she described her neurologic examination findings as "reassuring." Petitioner also saw Dr. Beth Hillman, who documented the following complaints:

> "This 28-year-old is an MRI tech here at Lutheran General Hospital. Last month she was lifting a patient and she suddenly got a severe sharp pain in her right shoulder. The pain has persisted in spite of seeing the APN in occupational health and taking Ibuprofen. She gets pains in her right shoulder as well as her neck and she gets pain and tingling radiating down both arms now. She also feels like her hands are weak sometimes."

On examination, Dr. Hillman noted right trapezius and supraspinatus tenderness and no focal neurological deficits. She indicated Petitioner "may have a herniated disc causing her upper extremity tingling." She saw no need for an emergency MRI, given her examination findings, but indicated Petitioner might require an MRI if her symptoms persisted. PX 2, pp. 34-36. She prescribed Diazepam and a Medrol Dosepak. She directed Petitioner to follow up with occupational health. PX 2, p. 17. Two brief entries in the Emergency Room records reflect that Petitioner was in "Belize, Mexico . . . 8/18." PX 2, pp. 39, 42. Petitioner did not testify to visiting Belize or Mexico and it is not clear to the Arbitrator whether the entry means she went there on August 18, 2018 or in August 2018. No other records mention this trip.

Petitioner returned to Employee Health Services on September 12, 2018 and again saw nurse practitioner Hyrc. Hyrc added "cervical radiculopathy" to her list of diagnoses. She prescribed physical therapy and continued the previous work restrictions. PX 1, p. 4. PX 4, p. 32.

On September 26, 2018, Petitioner underwent an initial physical therapy evaluation at Athletico. The evaluating therapist, Ronald Iglesia, PT, recorded the following history:

> "Pt reports was injured while assisting to transfer a patient while at work. She notes that her pain originated in the right shoulder but has recently been progressing to her left side and neck. She says that pain has recently gotten worse the past 2 weeks."

Iglesia described Petitioner as denying any functional limitations prior to the work accident. PX 4.

Petitioner testified she was working at Respondent on the evening of September 29, 2018 when her left arm became weak. She returned to Respondent's Emergency Room, where she saw Dr. Peabody. The doctor recorded the following history:

> "This 28-year-old woman is presenting to the ER with acute onset of left arm weakness by tech here at the hospital. She

> was working in [sic] sitting and then felt her left arm get weak where she could not squeeze her hand or lift her arm . . . She feels some mild discomfort in her neck and in her right arm is worse with moving. The patient it sounds like underwent an injury on August 15 while moving a patient here at work. She had some bilateral arm tingling and pain. She was seen here a couple of weeks ago diagnosed with cervical radiculitis prescribed a Medrol Dosepak and Valium. It sounds like her symptoms have persisted. She [has] been undergoing physical therapy and then had the acute onset of the arm weakness tonight."

On examination, Dr. Peabody noted that Petitioner "seems weak in the left arm." He described Petitioner as having "trouble abducting her arm past 45 degrees at the shoulder." He also noted that Petitioner "seems weaker with hand grip as well as flexion and extension at the elbow." He ordered a cervical spine MRI. This study, performed without contrast, showed mild broad-based disc bulges, resulting in minimal spinal canal stenosis, at C5-C6 and C6-C7. The radiologist noted that Petitioner originally injured the right side of her neck and upper arm while moving a patient on August 15, 2018 and was currently experiencing neck pain, bilateral arm numbness and left arm weakness. PX 2, p. 145. Following the MRI, Dr. Peabody prescribed Diazepam and directed Petitioner to follow up with Employee Health Services and see Dr. Vergara. PX 2, p. 121.

Petitioner returned to Employee Health Services for a fourth and final visit on October 5, 2018. Nurse practitioner Hyrc diagnosed "cervical radiculopathy." She prescribed Ibuprofen and Valium and continued the previous work restrictions. PX 1, p. 5.

On October 10, 2018, Petitioner saw Dr. Vergara of Advocate Medical Group. The doctor described Petitioner as falling at work on August 15th while pushing a very obese patient and experiencing right shoulder and arm pain after falling. The doctor also noted that Petitioner "started having neck pain on the right side after few days" and experiencing pain radiating to the left side on September 10, 2018. She indicated that Petitioner was assisting patients at work the previous Saturday when her left arm "got completely weak," prompting her to seek care at the Emergency Room. On examination, Dr. Vergara noted that Petitioner had difficulty turning her head from side to side. She also noted tenderness at the posterior neck region and bilateral trapezius and scapula. She described sensation as normal in the hands and arms. She started Petitioner on a muscle relaxant and recommended that Petitioner see a pain specialist. PX 3, pp. 3-4.

Petitioner saw Dr. Clay, a pain management specialist (PX 13, p. 10-11), on October 29, 2018. Dr. Clay wrote to Dr. Vergara the same day, documenting the work accident and medical care to date. He noted that therapy had been discontinued after three sessions and that Petitioner was complaining of 7/10 pain in her bilateral shoulder region, upper trapezius and mid cervical region. He also noted that Petitioner was tolerating light duty and experiencing increased symptoms at night. On examination, he noted 5/5 strength in both arms,

provocation of axial neck pain with cervical extension and rotation bilaterally, positive Hawkins and Neer's signs, positive "empty can" testing on the right, mild right bicipital tenderness with palpation and tenderness of the left shoulder with passive range of motion. He indicated he contacted the radiologist at Respondent after reviewing the cervical spine MRI images, noting that the radiologist "was under the impression that this was a normal study." He found it plausible that Petitioner was presenting "with a more dynamic picture of cervical impingement based on certain activities." He also found it "quite evident" that Petitioner "does have a fair amount of intrinsic right shoulder pathology and also a lesser degree of left shoulder pathology." Based on the reported mechanism of injury, he suspected a rotator cuff strain or tear. He prescribed a right shoulder MRI and recommended additional right shoulder and cervical spine therapy. He also prescribed Tramadol for severe breakthrough pain. He recommended that Petitioner return in one month. PX 5, pp. 5-6.

The right shoulder MRI, performed without contrast on November 7, 2018, showed a superior/posterosuperior and anteroinferior labral tear, an anterosuperior labral tear "versus normal variant," no definite posteroinferior labral tear, minimal distal infraspinatus tendinosis without discrete rotator cuff tear and trace biceps tenosynovitis. PX 5, pp. 16-17.

On November 16, 2018, Petitioner saw Dr. Breslow, another orthopedic surgeon at Illinois Bone & Joint Institute, at Dr. Clay's referral. Dr. Breslow wrote to Katie Buesser, the adjuster, the same day, documenting the work accident and subsequent care. He indicated that Petitioner reported injuring her cervical spine and shoulders. On examination (apparently of the right shoulder), he noted pain with impingement and Speed's. He interpreted right shoulder X-rays as showing no fractures, dislocations or other abnormalities. He interpreted the right shoulder MRI images as demonstrating an "equivocal labral tear." He diagnosed a right rotator cuff strain with tendinosis and equivocal labral tear. He prescribed physical therapy and imposed restrictions of no overhead work and no lifting over 10 pounds with the right arm. PX 5, pp. 13-15.

Petitioner returned to Respondent's Emergency Room on the evening of November 19, 2018. She again saw Dr. Peabody. The doctor noted a history of the work accident and subsequent care, including the prior Emergency Room evaluation of left arm weakness. He indicated that, earlier that evening, Petitioner had been sitting at her machine at work, doing her job, when she again experienced left arm weakness. He noted that Petitioner reported this to her supervisor, who directed her to the Emergency Room. He also noted that Petitioner was seeing a spine physician and undergoing therapy. On examination, he found Petitioner "somewhat weak in the left arm somewhat diffusely involving the deltoid biceps, triceps, wrist flexors and hand grip." He reviewed Petitioner's symptoms with Dr. Li, the on-call neurologist, who suggested an office evaluation and possibly an EMG. He diagnosed cervical radiculitis and neurapraxia of the left upper extremity. He recommended that Petitioner see Dr. Li and continue to see the spine physician. PX 2, pp. 87-89.

Petitioner returned to Dr. Clay on November 28, 2018. Petitioner reported some improvement of her pain, secondary to therapy. She complained of intermittent pain,

aggravated by overhead activity, and intermittent left arm weakness. The doctor noted the MRI results and indicated Petitioner was seeing Dr. Breslow. He found Petitioner to be at maximum medical improvement with respect to her cervical spine but recommended that she see a neurologist for her transient left arm weakness. PX 5, pp. 22-23.

Petitioner testified she stopped working for Respondent on December 1, 2018, after adjuster Katie Buesser told her that Respondent could no longer accommodate her restrictions. She continued working for Compuray on a part-time basis.

Petitioner returned to Dr. Breslow on December 14, 2018. The doctor noted that Petitioner was now off work, "as her employer cannot accommodate light duty." He also noted persistent right shoulder complaints and an exacerbation of the left shoulder symptoms, "so much so that she went to the ER for evaluation." He administered a right shoulder injection and recommended additional therapy. He noted that Petitioner was awaiting approval for a visit to a neurologist, pending an IME. He directed Petitioner to remain off work but noted she was "not pleased" and "ready to return without restrictions." PX 5, pp. 26-27.

At Respondent's request, Petitioner underwent a Section 12 examination by Dr. Biafora on December 20, 2018. In his report of December 26, 2018 (RX 1, Exh 2), Dr. Biafora documented a history of the work accident. He noted that Petitioner reported initially experiencing pain in the right side of her neck and anterior shoulder, which worsened over the following days. He also noted that Petitioner reported developing left-sided neck and left shoulder pain radiating to her hands "a few weeks later." He indicated that Petitioner had sought Emergency Room care after episodes of left arm weakness. He noted complaints of pain when lying on either shoulder. He indicated that Petitioner described her right shoulder pain as much greater than the left. He noted that Petitioner was no longer working at Respondent, due to the unavailability of accommodated duty, but was continuing to work part-time, five to ten hours per week, as an MRI technician for another employer. On examination, Dr. Biafora noted no cervical or trapezius tenderness, negative Spurling's, very mild right shoulder tenderness anteriorly, no left shoulder tenderness, symmetric shoulder motion and no instability. He described the left shoulder examination as unremarkable except for "trace discomfort with Hawkins." He interpreted the right shoulder MRI images as showing "some irregularity in the superior labrum with possible undercutting of fluid with possible superior labral tear."

Dr. Biafora indicated he reviewed various medical records, including occupational medicine notes. He indicated that, per these notes, Petitioner was initially thought to have a right shoulder sprain but complained of "some tingling in both of the palms of her hands" on September 5 and 12, 2018 and occasional pain shooting down her arms on September 12, 2018.

Dr. Biafora diagnosed right shoulder pain with a possible superior labral tear and left shoulder subjective pain and weakness with minimally remarkable examination findings. He indicated that Petitioner's subjective complaints did not completely correlate with the objective findings. He did not believe that Petitioner had any functionally limiting left shoulder condition.

He was unable to pinpoint any findings consistent with Petitioner's claim of bilateral arm weakness. He saw no signs of inappropriate illness behavior but indicated that Petitioner's examination was "not as remarkable as one would anticipate given her presenting complaints." Based on his records review, he saw no evidence of prior injuries or pre-existing conditions. He found causation as to the right shoulder complaints, indicating that the mechanism of injury Petitioner described could cause a labral injury. He did not find a causal relationship between the accident and Petitioner's left shoulder complaints, noting that those complaints did not surface until some time after the accident. He characterized the right shoulder treatment to date as reasonable, necessary and related to the accident. He saw no need for left shoulder diagnostics. He indicated it would be reasonable for Petitioner to undergo a bilateral upper extremity EMG but did not link the need for this study to the work accident. With respect to the right shoulder, he recommended additional therapy, a repeat injection (if Petitioner remained symptomatic) and potentially an arthroscopy with labral repair. He also recommended restrictions of no overhead lifting and no lifting, pushing or pulling over 20 pounds. With respect to the left shoulder, he saw no need for care but indicated Petitioner could undergo therapy if her findings worsened. He did not link the need for therapy to the work accident. He saw no need for restrictions relative to the left shoulder. Biafora Dep Exh 2.

Petitioner returned to Dr. Breslow on January 11, 2019 and reported incomplete relief following the right shoulder injection. Petitioner also reported some episodes of right hand numbness and weakness. After re-examining Petitioner, Dr. Breslow recommended she proceed with a scheduled EMG and undergo a right shoulder MR arthrogram. PX 5, pp. 30-31.

The right shoulder MR arthrogram, performed on January 30, 2019, revealed "extensive, near circumferential, labral tear with relative sparing of the posteroinferior labrum, mild infraspinatus tendinosis without discrete rotator cuff tear and early degenerative changes at the acromioclavicular joint." PX 5, pp. 57-58.

Petitioner underwent a bilateral upper extremity EMG on February 1, 2019. The examining neurologist, Dr. Yu, noted complaints of intermittent weakness and numbness of both arms, left greater than right, since a work injury in August 2019. He described the EMG results as normal. He found no evidence of a focal neuropathy, polyneuropathy or cervical radiculopathy. PX 5, pp. 45-48.

On February 6, 2019, Dr. Breslow reviewed the EMG and MR arthrogram results with Petitioner. He interpreted the MR arthrogram as showing an "almost circumferential labral tear." He recommended a right shoulder arthroscopic labral repair and possible capsulorrhaphy. He directed Petitioner to continue therapy and remain off work. PX 5, pp. 32-35.

On February 11, 2019, Dr. Yu reviewed the EMG results with Petitioner and referred her back to her primary care physician.

Petitioner testified she stopped working at Compuray on February 26, 2019.

Dr. Breslow operated on February 28, 2019, performing right shoulder arthroscopic Bankart and SLAP repairs and a capsulorrhaphy. PX 5, pp. 64-66.

On March 13, 2019, Dr. Breslow sent a report to Petitioner's counsel, outlining the treatment to date and addressing causation. He found a causal relationship between the work accident and Petitioner's bilateral shoulder and cervical spine conditions. He noted that Petitioner had no left shoulder or neck complaints prior to the work accident. He also noted that the records documented left shoulder complaints secondary to a strain at the time of the accident. He indicated he had focused solely on the right shoulder to date, indicating he would evaluate the left shoulder as Petitioner came out of her brace and regained some right shoulder motion. He deferred to Dr. Clay with respect to treatment of the cervical spine. PX 5, pp. 49-52.

Petitioner continued seeing Dr. Breslow postoperatively. She began a course of therapy at ATI on March 25, 2019. On April 15, 2019, Dr. Breslow expressed concern about stiffness in the right shoulder. He discontinued the sling, prescribed Ultracet and Ibuprofen and directed Petitioner to continue therapy and remain off work. PX 5, pp. 77-79.

Petitioner returned to Dr. Vergara on May 9, 2019 and complained of left shoulder pain and left arm weakness. Petitioner provided a history of the August 2018 work accident. She indicated she initially experienced neck and right shoulder pain and began experiencing left-sided symptoms a couple of weeks after the accident. The doctor obtained left shoulder X-rays, which showed substantial widening of the left acromiohumeral interval, suggestive of inferior subluxation of the humeral head, and no acute bony abnormality. The doctor recommended therapy and a left shoulder MRI. PX 3, pp. 71-79.

Dr. Breslow evaluated Petitioner's left shoulder on June 3, 2019. He interpreted a left shoulder MRI of May 21, 2019 (PX 3, pp. 79-80) as showing a possible SLAP tear. He recommended therapy for both shoulders and continued to keep Petitioner off work. PX 5, p. 86.

On August 5, 2019, Dr. Breslow noted that Petitioner remained symptomatic but that workers' compensation was not authorizing additional therapy. He injected the right shoulder, prescribed additional therapy and directed Petitioner to remain off work. PX 5, pp. 91-93. At the next visit, on September 6, 2019, he recommended a right shoulder MR arthrogram due to persistent complaints. PX 5, pp. 95-96. Petitioner underwent this study on September 20, 2019. On September 27, 2019, Dr. Breslow interpreted the arthrogram as showing post-surgical changes and "equivocal evidence of recurrent tear." He administered another right shoulder injection. He prescribed more therapy and directed Petitioner to remain off work, noting she might need revision surgery. PX 5, pp. 95-98. On October 25, 2019, he noted that Petitioner reported worsening symptoms, despite the injection. He prescribed revision surgery along with a possible biceps tenotomy and tenodesis. PX 5, pp. 100-102. Adjuster Katie Buesser authorized this surgery on November 1, 2019. PX 5, p. 104.

Dr. Breslow testified by way of evidence deposition on November 26, 2019. PX 13. Dr. Breslow testified he underwent fellowship training in sports medicine and arthroscopy at Temple University. He is board certified in orthopedic surgery and has a sub-specialty certification in sports medicine and arthroscopy. PX 13, pp. 6-7. Breslow Dep Exh 1.

Dr. Breslow testified he devotes about half of his practice to shoulder conditions. He performs over 100 shoulder surgeries annually. PX 13, p. 8. He issued a report concerning Petitioner on March 13, 2019. PX 13, pp. 8-9. Breslow Dep Exh 2. He independently recalls Petitioner. He reviewed records and Dr. Biafora's report before he issued his March 13, 2019 report. PX 13, p. 10.

Dr. Breslow testified that Petitioner provided a history of the work accident when he first saw her on November 16, 2018. Petitioner told him she was lifting a patient awkwardly on August 15, 2018 and injured her cervical spine and shoulders. PX 13, p. 10. Dr. Clay, a pain management specialist in his practice, referred Petitioner to him. PX 13, pp. 10-11. At the initial visit, he looked at right shoulder MRI images, which were suspicious for a tear of the superior labrum. He imposed work restrictions and recommended therapy. PX 13, pp. 11-12. He reviewed Dr. Vergara's note of November 30, 2018, which indicated that Petitioner initially experienced right shoulder pain and later developed right-sided neck and left shoulder pain. PX 13, pp. 13-14. He also reviewed the September 10, 2018 Emergency Room records and Dr. Yu's notes. PX 13, pp. 15-16.

Dr. Breslow opined that the work accident caused bilateral shoulder strains. He noted that Petitioner had no left shoulder symptoms before the accident. He recommended that Petitioner undergo left shoulder imaging after she recovered somewhat from the right shoulder surgery. PX 13, p. 18. He is currently recommended a revision right shoulder surgery. The left shoulder MRI of May 21, 2019 showed a labral tear. He is concentrating on the right shoulder for now because that is more symptomatic than the left. PX 13, p. 19. He prescribed left shoulder therapy on June 3, 2019 but noted that the workers' compensation carrier stopped authorizing therapy in August. PX 13, p. 20. He has injected the right shoulder but not the left. If Petitioner's left shoulder remains symptomatic, he will obtain an MR arthrogram. PX 13, p. 22. He also found causation as to Petitioner's neck condition. PX 13, p. 22.

Under cross-examination, Dr. Breslow testified he devotes the other half of his practice to knee conditions and other orthopedic conditions. He sees a good number of cervical spine problems because he frequently deals with upper extremities. He does not perform cervical spine surgery. PX 13, p. 24. Dr. Clay managed Petitioner's cervical spine condition. PX 13, p. 25. The earliest records he reviewed are those from September 10, 2018. PX 13, p. 27. He is not aware that Petitioner saw a physician before September 10, 2018. He did not review any Employee Health records. History can be an important factor in addressing causation. PX 13, p. 28. Petitioner's counsel did not inform him that Petitioner was seen on August 22, 2018 or September 5, 2018. He did not obtain left shoulder X-rays when he first saw Petitioner because she was not complaining of her left shoulder at that time. PX 13, pp. 30-31. The initial therapy

records show complaints of neck and right shoulder pain. PX 13, p. 34. The therapy records from November 2018 show the same complaints. PX 13, p. 36. All of his own initial diagnoses related to the right shoulder. PX 13, pp. 37-38. He noted no positive left shoulder findings when he re-examined Petitioner on December 14, 2018. PX 13, p. 38. He ordered a right shoulder MR arthrogram in January 2019. He did not order a left shoulder MR arthrogram at that time because it was the right shoulder that was bothering Petitioner. PX 13, p. 40. Dr. Vergara ordered the left shoulder MRI that Petitioner underwent on May 21, 2019. PX 13, p. 42. He had not ordered this study because he was "only approved to evaluate [Petitioner's] right shoulder." PX 13, p. 42. He was "never given permission to evaluate the left shoulder." PX 13, p. 43. When he ordered left shoulder therapy on June 3, 2019, it was under Petitioner's private health insurance. Petitioner "would complain to [him] about her [left] shoulder" and he would tell her he "couldn't evaluate it because it wasn't approved by work comp." He did not document this in his notes. PX 13, p. 44. Respondent's MRI magnet "is not great" and the left shoulder study was non-arthrogram. The radiologist claimed there was a tear of the superior labrum. When he reviewed the left shoulder MRI, he thought there was a suspicion of a tear "due to the fact it was a non-arthrogram MRI." PX 13, p. 45. He sees labral tears quite frequently. Petitioner's right shoulder labral tear was acute in nature. PX 13, p. 46. A labral tear usually causes pain with overhead activities and lifting. It can also cause nighttime pain when you lie on your side. Some people have pain even at rest. Others can experience popping, clicking or grinding of the shoulder. PX 13, p. 47. Symptoms can occur immediately after a labral tear. They can also occur "further on down the road depending on other associated" symptoms. PX 13, pp. 47-48. An isolated trauma would more likely than not cause immediate symptoms. If the person has other injuries, however, the symptoms might not be immediate. PX 13, p. 48. Over the years, he has treated patients who have bilateral SLAP tears. He has never repaired such tears on the same day. He would want a patient to recover from the first repair before he would move forward on the contralateral side. PX 13, p. 49. You might never have to operate on the second side. PX 13, p. 49. It is possible for a patient to differentiate pain in one side versus the other. It is also possible for a patient to indicate he or she is experiencing bilateral pain. PX 13, pp. 49-50.

On redirect, Dr. Breslow indicated he diagnosed a left shoulder strain but the MRI made him suspicious of a left SLAP tear. PX 13, p. 50. On October 10, 2018, Petitioner complained of bilateral shoulder pain. PX 13, p. 51. Petitioner was 28 years old at the initial visit and thus fairly young. He would not expect a person of that age to have a degenerative SLAP tear. PX 13, p. 51. Petitioner's complaints of left shoulder pain could have been indicative of a labral tear. The right shoulder was more symptomatic and thus could have distracted Petitioner from the left shoulder injury. PX 13, p. 52. Petitioner had left shoulder symptoms early on in his treatment of her but he was not approved to evaluate them. PX 13, p. 53. Petitioner is currently awaiting right shoulder revision surgery. This would further delay left shoulder intervention. He would want to obtain a left shoulder MR arthrogram to fully evaluate the injury. PX 13, p. 54.

Dr. Biafora testified by way of evidence deposition on November 27, 2019. RX 1. Dr. Biafora testified he is a fellowship-trained upper extremity surgeon. He obtained board

certification in 2010 and has a subspecialty certificate in hand surgery. RX 1, pp. 6-8. Biafora Dep Exh 1. About 20 to 25% of the surgeries he performs involve the shoulder. RX 1, p. 9. He devotes maybe 10% of his practice to performing Section 12 examinations. He averages four such examinations per week. RX 1, p. 10. Most of these examinations are for employers. RX 1, p. 10. He typically sees about 100 patients per week. RX 1, p. 14.

Dr. Biafora testified he examined Petitioner twice, at the request of Gallagher Bassett Services. He first examined Petitioner on December 20, 2018. He generated a nine-page report on December 26, 2018. RX 1, pp. 12-13. He did not specifically recall Petitioner. RX 1, p. 14. His report reflects that Petitioner voiced bilateral shoulder complaints secondary to a work accident of August 15, 2018 during which she assisted co-workers in transferring a 250-pound patient from an MRI cart to another cart. Petitioner indicated she was reaching with her arms extended, while pushing the patient, when she experienced right shoulder and right-sided neck pain. She reported initially undergoing treatment at Employee Health Services and developing left-sided and bilateral hand symptoms a few weeks after the accident. RX 1, p. 16. Petitioner also reported an episode of left upper extremity weakness for which she sought Emergency Room care. She described her right shoulder complaints as much worse than the left. RX 1, p. 17.

Dr. Biafora testified that, when he initially examined Petitioner's shoulders, he noted some mild right shoulder tenderness anteriorly, pain with O'Brien's on the right, very mild occasional crepitus on the right, no left shoulder tenderness, equal shoulder motion, some laxity but no gross instability and no weakness. He described the left shoulder examination as unremarkable "although there was some trace discomfort with Hawkins testing." RX 1, p. 19. He obtained bilateral shoulder X-rays which demonstrated no significant abnormalities. RX 1, p. 20.

Dr. Biafora testified he believed that Petitioner might have a right labral tear, based on the MRI. He did not believe Petitioner had any significant left shoulder findings. Petitioner had undergone a right shoulder injection just days prior to his examination so he recommended she wait to see how she responded. She might require another injection and/or an arthroscopy. He found causation as to the right shoulder, based on the mechanism of injury Petitioner described, but found no causal relationship between the accident and the left shoulder. Petitioner did not voice left-sided complaints until a few weeks after the accident and even then the initial complaints were of weakness and numbness, not pain. RX 1, p. 28. He felt it would be reasonable for Petitioner to undergo a bilateral upper extremity EMG, although he did not attribute the need for this study to the accident. RX 1, p. 29. Petitioner did undergo this EMG. The negative results do not affect his opinions. RX 1, pp. 30-31. The right shoulder treatment to date was reasonable and necessary. Petitioner requires restrictions relative to the right shoulder but not the left. RX 1, p. 31.

Dr. Biafora testified he re-examined Petitioner on August 20, 2019. He issued a report concerning the re-examination on August 27, 2019. RX 1, pp. 33-34. Biafora Dep Exh 3. Petitioner reported some improvement following her right shoulder surgery. She also reported

attending therapy for both shoulders, following a left shoulder MRI. RX 1, p. 35. On re-examination, Dr. Biafora noted tenderness at the right shoulder anterior joint line and no left shoulder tenderness. He also noted a click with motion arc and mild pain with resisted forward flexion, Hawkins and O'Brien's, with respect to the right shoulder. He further noted some laxity but no clear subluxation of the left shoulder and mild pain with Hawkins and O'Brien's. Dr. Biafora testified that Petitioner was six months out from the right shoulder surgery and had a little more pain than would be expected. The left shoulder examination was a little more remarkable than the one he had performed months earlier. There was some suggestion of pathology with the O'Brien's test. RX 1, pp. 37-38.

Dr. Biafora testified that, on August 20, 2019, he reviewed the right shoulder MR arthrogram images of January 30, 2019 and the left shoulder MRI images of May 21, 2019. The arthrogram showed a likely superior labral or SLAP tear extending into the anterior labrum also. The left shoulder MRI revealed a possible superior labral tear. The rotator cuff looked okay. RX 1, p. 39. The MRI was performed without contrast. Without dye, it can be difficult to define a labral tear. RX 1, pp. 39-40. He felt that additional right shoulder treatment was warranted. He believed a repeat MR arthrogram was reasonable. If that study showed a re-tear, it would be reasonable for Petitioner to undergo additional surgery. He believed Petitioner still needed restrictions relative to the right shoulder. RX 1, pp. 41-43. His causation opinion concerning the left shoulder remained unchanged. Petitioner did not present with left shoulder complaints within a reasonable time frame following the accident. RX 1, p. 44. The fact that Petitioner might have a left labral tear on MRI does not mean the accident caused that tear. RX 1, p. 44. A labral tear typically results from a traction-type injury, using force overhead. A labral tear typically causes immediate shoulder pain or pain within a day or two of the injury. For Petitioner, the only presentation she had was several weeks later, when she complained of numbness and weakness. Those symptoms are not representative of a labral tear. RX 1, p. 45. A person who sustains a labral tear sometimes feels a pull, pop or snap and typically experiences pain within a few hours and into the next day. RX 1, p. 46. A labral tear "certainly wouldn't" cause numbness or weakness of the arm. RX 1, p. 47.

Under cross-examination, Dr. Biafora testified he performed examinations on behalf of Gallagher Bassett before December 20, 2018. He does not know how many examinations he performs for Gallagher Bassett as opposed to other entities. RX 1, p. 48. He is not rendering any opinions concerning the cervical spine. RX 1, p. 49. The left shoulder treatment to date has been reasonable and necessary. Petitioner is not malingering. RX 1, p. 50. He gives more weight to subjective complaints when a patient is not malingering. RX 1, p. 51. Pain is subjective. He has no doubt that Petitioner is experiencing left shoulder pain. RX 1, p. 51. Petitioner told him she was using both arms when she transferred the 250-pound patient. RX 1, p. 52. The Emergency Room records of September 10, 2018 reflect that Petitioner complained of bilateral arm pain and tingling as well as upper back pain. RX 1, p. 53. Those records reflect that these complaints were of two weeks' duration. RX 1, p. 55. He has heard the term "distracting pain." If a person injures his right shoulder, he is going to use his uninjured left shoulder more, in compensation. RX 1, p. 57. When he examined Petitioner, he was asked to address both shoulders. RX 1, p. 58. The mechanism of injury Petitioner described would have

been adequate to cause a shoulder strain. It is "impossible to say" how much force is required to cause a shoulder strain. Petitioner, at 135 pounds, was much smaller than the patient she was attempting to move. RX 1, pp. 58-59. The injury she described could have caused labral tears in both shoulders but the left-sided complaints were vague and delayed. The fact that a left shoulder MRI showed a labral tear does not mean that the tear was symptomatic or that it resulted from the work accident. RX 1, p. 60. He saw no records indicating Petitioner had any shoulder or neck complaints before the accident. A 28-year-old is less likely to have degenerative changes in the labrum. RX 1, p. 60. If you want to determine whether a patient has a labral tear, you need to use an MR arthrogram. It would be reasonable for Petitioner to undergo a left shoulder MR arthrogram. RX 1, p. 61. If the actual lag time between the accident and the appearance of left shoulder complaints was 12 days as opposed to several weeks, he would need to know whether Petitioner was seeing clinicians in the meantime and what those examinations showed. RX 1, p. 61. His flat rate for an examination and records review is $1250. He charges extra for X-rays. RX 1, p. 62.

On redirect, Dr. Biafora testified he reviewed the September 10, 2018 Emergency Room records in connection with his December 20, 2018 examination. RX 1, p. 63. Petitioner's accident occurred more than two weeks before the Emergency Room visit. When Petitioner went to Employee Health on September 5, 2018, the person who examined her noted complaints of right shoulder pain and some tingling in the palms of both hands. Such tingling is not indicative of a labral tear. RX 1, p. 65. No left shoulder complaints were documented during the three weeks following the accident. RX 1, p. 66.

On December 19, 2019, Dr. Breslow operated on the right shoulder again, performing an arthroscopic Bankart repair, a biceps tenotomy and tenodesis and a subacromial decompression. PX 5, pp. 109-111. In his operative report, he noted that the superior labrum had slightly pulled off and that the most inferior portion of the prior Bankart repair had not healed completely. PX 5, p. 110.

Petitioner continued seeing Dr. Breslow following the revision surgery. She restarted therapy and remained off work at his direction. PX 5, pp. 139-140. PX 6.

At Respondent's request, Dr. Biafora re-examined Petitioner on June 11, 2020. In his report of June 16, 2020 (RX 3), Dr. Biafora noted that Petitioner reported improvement following the revision surgery but was still symptomatic and undergoing therapy. He also noted he had not been provided with the report concerning the revision surgery. He examined the right shoulder and obtained right shoulder X-rays, which showed post-operative changes. He described Petitioner as "reasonably deconditioned." He recommended four weeks of work conditioning. He indicated Petitioner currently required right shoulder restrictions but would be capable of resuming full duty once she completed the work conditioning. He estimated she would reach maximum medical improvement for the right shoulder in about two months. He did not examine or comment on the left shoulder. RX 3.

At Dr. Breslow's recommendation, Petitioner underwent a left shoulder MR arthrogram on July 15, 2020. The interpreting radiologist interpreted this study as showing contrast uptake in the bicipital labral complex extending into the anterior and posterior superior glenois labrum "with a SLAP tear" and mild superaspinatus, infraspinatus and subscapularis tendinosis and thickening. PX 6. Petitioner testified that, on July 17, 2020 (four days before the hearing), Dr. Breslow reviewed the arthrogram images with her and recommended a left labral repair.

Petitioner testified she is still off work and undergoing therapy at ATI. As of the hearing, her right shoulder felt better but she was still experiencing pain when reaching overhead, rotating the arm and sleeping on her right side. She takes Ibuprofen for these symptoms. Her left shoulder has a better range of motion than her right but she is not able to sleep on her left side. She wants to undergo the recommended left shoulder surgery to relieve her pain.

Petitioner identified PX 14 as a collection of injury-related medical bills. She identified PX 15 as copies of paycheck stubs from Compuray.

Petitioner testified she is next scheduled to undergo therapy on July 23, 2020. She is scheduled to return to Dr. Breslow on August 7, 2020.

In response to questions posed by the Arbitrator, Petitioner testified she is right-handed. When she performed light duty for Respondent, she performed her usual tasks but avoided lifting, pushing or pulling over 10 pounds. A co-worker would help her if she had to move a heavy coil.

Under cross-examination, Petitioner denied experiencing any shoulder symptoms or undergoing any shoulder treatment prior to the August 15, 2018 accident. She reported her injury to the charge technician on August 15th but did not complete an accident report that day. She told the charge technician she experienced right shoulder pain immediately after the accident. On August 20, 2018, she spoke with Ralph Kennar. She mentioned her right shoulder to him but is not sure whether she also mentioned her neck. When she completed an incident report on August 20th, she did not mention any left shoulder symptoms. She typed the report on a computer. She did not mention her left shoulder when she went to Employee Health on August 22, 2018. She has not seen the records concerning that visit. All of the treatment that was recommended on August 22nd was for her right shoulder and neck. Between August 22, 2018 and December 1, 2018, she performed light duty for Respondent and also worked for Compuray. The work she performed at the University of Chicago between August 22 and December 1, 2018 was within her restrictions. After December 1, 2018, she worked solely for Compuray at the University of Chicago until February 1, 2019. Neither Respondent nor Compuray has offered her work since February 26, 2019. She has not seen the September 5, 2018 note from Employee Health but would agree if the note does not mention the left shoulder. The Emergency Room records of September 10, 2018 mention bilateral shoulder and arm discomfort as well as numbness and tingling of the fingertips in both hands. On September 12, 2018, at Employee Health, she complained of symptoms in her hands and down both arms. At the Emergency Room on September 29-30, 2018, she reported an acute onset of left arm

weakness occurring earlier that day. She underwent a cervical spine MRI at the Emergency Room. She last saw Dr. Clay on November 28, 2018, at which point he found her to be at maximum medical improvement with respect to her cervical spine. She underwent an EMG on February 1, 2019. The neurologist who performed this study told her it was normal. She saw Dr. Biafora on three occasions. She answered his questions truthfully. She underwent a right shoulder MRI in November 2018 and a right shoulder MR arthrogram in January 2019. No left shoulder studies were ordered at that time.

In addition to Dr. Biafora's reports and deposition, Respondent offered into evidence a GENEX utilization review report of July 23, 2019 non-certifying therapy sessions between July 17 and September 17, 2019. The reviewing physician, Dr. Simon, noted that Petitioner had completed fifty therapy sessions and did not demonstrate improvement between June 24 and July 17, 2019. He indicated "it appears that additional therapy sessions will not be of benefit." RX 2. The Arbitrator sustained Petitioner's hearsay objection to RX 2 and marked RX 2 as a rejected exhibit.

Arbitrator's Credibility Assessment

Petitioner was a poised, articulate witness. The Arbitrator found her very credible. Her testimony that she was extending both arms and using force to transfer a 250-pound patient at the time of the accident finds support in her medical records. Her denial of pre-accident shoulder problems is consistent with those records.

Respondent relies on the September 10, 2018 Emergency Room records in arguing that Petitioner was on vacation in "Belize, Mexico" after the accident. Specifically, Respondent argues that, according to those records, Petitioner was on vacation on August 18, 2018, three days after the accident. Petitioner was not asked about this. She testified she continued working, with her symptoms worsening, between the accident and August 20th, the date she completed an incident report. The Arbitrator would have to engage in speculation to conclude that Petitioner was on vacation on August 18, 2018. The Compuray payroll records show that Petitioner worked 20.50 hours between August 6 and 19, 2018. PX 15, p. 16. Respondent could have offered payroll records to establish that Petitioner took vacation time after the accident but did not do so. The Emergency Room records of September 10, 2018 simply reflect that, in response to a standard question asking whether she had been out of the country, Petitioner reported being in "Belize, Mexico" in "8/18". The term "8/18" could refer to August 2018, not August 18, 2018. More significantly, there is no evidence indicating Petitioner injured her left shoulder after the August 15, 2018 work accident. When Petitioner sought Emergency Room care on September 10, 2018, she denied experiencing any injury other than on August 15, 2018.

Respondent's examiner, Dr. Biafora, did not note any inappropriate illness behavior. RX 1, p. 50. While Dr. Biafora did not link Petitioner's left shoulder condition to the work accident, he conceded that the mechanism of injury Petitioner described could have caused bilateral labral tears.

Arbitrator's Conclusions of Law

Did Petitioner establish a causal connection between the undisputed work accident of August 15, 2018 and her claimed left shoulder and cervical conditions of ill-being?

As noted at the outset, Respondent does not dispute causation as to the right shoulder or the need for the two right shoulder surgeries.

The Arbitrator finds that Petitioner also established causation as to her left shoulder and cervical spine conditions. The Arbitrator further finds that Petitioner established causation as to the need for the recommended left shoulder surgery and the cervical spine work-up, including imaging, therapy and the EMG.

In finding causation as to the left shoulder, the Arbitrator relies on the following: 1) Petitioner's credible testimony that she was extending both arms and applying force at the time of the accident; 2) Petitioner's credible description of the size of the patient she was transferring at the time of the accident; 3) the fact that the early records document complaints relative to the neck and upper back as well as the right shoulder; 4) the September 10, 2018 Emergency Room records, which reflect that Petitioner provided a two-week history of bilateral shoulder problems and denied any injuries other than the one occurring on August 15, 2018; 5) the opinions Dr. Breslow expressed in his report and at his deposition; and 6) Dr. Biafora's significant concession that the mechanism of injury Petitioner described could have caused labral tears in both shoulders. The Arbitrator finds persuasive Dr. Breslow's opinion that the right shoulder injury, which involved Petitioner's dominant arm, produced more symptoms and, at least initially, could have overshadowed the left shoulder injury. The Arbitrator also notes that both Drs. Breslow and Biafora testified that Petitioner would not likely have a degenerative labral tear at her young age. If the forceful pushing Petitioner performed on August 15, 2018 was sufficient to cause a right labral tear, as Respondent concedes, it seems likely it was also sufficient to cause a left labral tear. Dr. Biafora did not dispute the existence of this tear.

The Arbitrator recognizes that no left shoulder complaints were documented early on. The Arbitrator also recognizes that Dr. Breslow's initial notes do not mention the left shoulder. At his deposition, Dr. Breslow explained that, while Petitioner complained of the left shoulder from the outset, i.e., when he first saw her, he was not authorized to treat the left shoulder and thus did not formally document the complaints in his records.

In finding causation as to the cervical spine, the Arbitrator relies on the following: 1) Petitioner's credible testimony that she experienced neck pain after the accident; 2) the Emergency Room records of September 10 and 29, 2018; 3) the fact that nurse practitioner Hyrc of Employee Health added a diagnosis of "cervical radiculopathy" on September 12, 2018; and 4) Dr. Clay's records. Based on Petitioner's complaints of neck pain and arm weakness, it was reasonable for her to undergo a cervical spine work-up, including MRI imaging and an EMG. The Arbitrator also notes that Respondent's examiner, Dr. Biafora, did not advance any

causation opinions relative to the cervical spine. RX 1, p. 49. Dr. Breslow, while not a spine surgeon, found causation as to the cervical spine.

Is Petitioner entitled to reasonable and necessary medical expenses?

Petitioner claims the medical expenses enumerated in PX 14. With the exception of the non-certified physical therapy (RX 2, rejected by the Arbitrator), Respondent does not dispute the right shoulder treatment. The Arbitrator notes that Respondent's examiner, Dr. Biafora, characterized the right shoulder treatment, including the disputed therapy, as reasonable and necessary. The Arbitrator has previously found that Petitioner established causation as to the left shoulder and cervical spine. Dr. Biafora agreed with the need for left shoulder imaging and treatment, while disputing causation, and declined to comment on the cervical spine.

The Arbitrator awards the claimed medical expenses, subject to the fee schedule, and with Respondent receiving credit for the payments it has made to date.

Was there a TTD/TPD overpayment?

The parties stipulated to a TTD/TPD overpayment of $1,153.53. Respondent shall have credit for this.

Is Petitioner entitled to prospective care?

The Arbitrator has previously found in Petitioner's favor on the issue of causation. While Dr. Biafora did not link Petitioner's left shoulder condition to the work accident, he conceded that the MRI showed a labral tear and that it would be reasonable for Petitioner to undergo a left shoulder MR arthrogram. This study re-demonstrated the labral tear. Petitioner credibly testified that Dr. Breslow prescribed left shoulder surgery following the MR arthrogram. The Arbitrator awards prospective care for both shoulders, including but not limited to left shoulder surgery, as recommended by Dr. Breslow.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC000398
Case Name	CIACCIO, TERESA v. RIVERSIDE MEDICAL CENTER
Consolidated Cases	
Proceeding Type	Remand
Decision Type	Commission Decision
Commission Decision Number	22IWCC0004
Number of Pages of Decision	5
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Sandra Loeb
Respondent Attorney	Edward A. Coghlan

DATE FILED: 1/5/2022

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TERESA CIACCIO,

Petitioner,

vs. NO: 16 WC 398

RIVERSIDE MEDICAL CENTER,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Circuit Court of Kankakee County. In an Order dated July 7, 2020, the Honorable Judge William S. Dickenson reversed the Commission's Decision, which was issued on March 25, 2019, with respect to its finding that Petitioner's injury did not occur in the course of her employment and remanded this case back to the Commission to specifically determine whether Petitioner's injury arose out of her employment.

Petitioner was employed as a trauma registrar and an emergency preparedness specialist for Respondent. In addition to her regular job duties from these positions, Petitioner also served as a chairperson on Respondent's Partners in Care Committee (hereinafter, the "Committee"). Petitioner testified that Respondent encouraged her to serve on the Committee and her participation was considered in her employee reviews. As a chairperson, Petitioner oversaw the Committee's fundraisers. Petitioner was paid for the days that she put on the fundraisers the same way she was paid for any other workday.

On November 20, 2015, Petitioner oversaw a treadmill-a-thon fundraiser for the Committee in which employees exercised on treadmills or stationary bikes for 24 hours and made pledges through payroll deduction or with cash. All proceeds from the fundraiser went to the Committee. The fundraiser took place during normal business hours in Respondent's lobby. A

temporary barrier was placed around the fundraiser's exercise area to divide it from the rest of the lobby. Only employees could enter the designated exercise area.

One of Petitioner's duties during the fundraiser was to hand sanitation wipes to participants as they concluded their exercise sessions on the treadmills and stationary bikes. Petitioner testified that it was not easy to reach the participants to pass on the wipes, as there was approximately three feet between the participants and the barrier, so she chose to step over the barrier to reach the participants on their exercise machines. When questioned as to why she did not walk around the barrier, Petitioner testified that one side of the exercise area was blocked by equipment and coolers and the other side was where participants changed their shoes and made exchanges.

While Petitioner was stepping over the temporary barrier in the process of giving wipes to participants, her high heel shoe got caught in the temporary barrier's chain and caused her to fall onto her left side. Petitioner was thereafter diagnosed with a closed fracture of the left wrist's distal radius and underwent an open reduction internal fixation surgery on December 7, 2015.

Petitioner testified that the surveillance footage in RX 1 accurately depicted her November 20, 2015 accident. Although Petitioner testified that coolers had prevented her from entering the exercise area on the west side, when asked to point to the coolers blocking her way in the surveillance footage, Petitioner testified that she could not see them. Petitioner admitted that there was nothing visible in the footage blocking the stanchion on the west or east sides. Petitioner further testified that the photographs contained in RX 1 also accurately depicted the scene on the accident date. She conceded that in the photographs, the coolers appeared to be far enough away from the stanchions where people could enter in front of the machines instead of having to walk around them to get to the machines. Petitioner further testified that the exercise participants entered the machines from each side, and for instance, the male and female participants depicted in RX 1's photographs could enter their machines without having to climb over the stanchion.

Lynn Marie Christian, an employee wellness manager for Respondent who sat on the Committee with Petitioner, also testified that the photographs in RX 2 were consistent with how the exercise area looked at the November 2015 event. Although Ms. Christian was not present during the treadmill-a-thon, she was familiar with how the exercise area looked, because she had helped with its initial setup and was present after the event. Ms. Christian testified that the purpose of the stanchions was to keep the general public away from the equipment for safety purposes. She explained that one side of the stanchion was open for participants to enter and the other side was for volunteers to enter. Ms. Christian confirmed that Petitioner had participated as an employee volunteer at the 2015 event.

This matter has been remanded to the Commission for a further determination as to whether Petitioner's injuries arose out of her employment as required under the Illinois Workers' Compensation Act. To obtain compensation under the Act, an employee bears the burden of showing, by a preponderance of the evidence, that she has sustained accidental injuries arising out of and in the course of her employment. 820 ILCS 305/1(d). To satisfy the "arising out of"

component, 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. *McAllister v. Illinois Workers' Comp. Comm'n*, 2020 IL 124848, ¶36. Generally, all risks to which a claimant may be exposed fall within one of three categories: (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. Personal risks are generally non-compensable. *Id.* at ¶42.

In consideration of the above, the Commission finds that Petitioner's injury did not arise out of her employment, and instead, represented a personal risk separate from her employment responsibilities. In so finding, the Commission determines that the present matter is analogous to *Purcell v. Illinois Workers' Comp. Comm'n*, 2021 IL App (4th) 200359WC. In *Purcell*, the claimant was a temporary administrative assistant employed by the University of Illinois who was required to turn in her time card at the Personnel Services Building. *Id.* at ¶3-4. On September 9, 2016, the claimant was walking toward the Personnel Services Building to drop off her time card when she approached a chain barrier/fence and attempted to hop over it, however, in doing so, the heel of the claimant's shoe got caught and caused her to fall onto her right elbow. *Id.* at ¶5. Although the route that the claimant had attempted to take was the most direct route to her destination, there was an area without a fence approximately 10 to 15 feet to the left of where she fell. *Id.* at ¶6. The claimant admitted that there were no obstructions that would have prevented her from taking the route that would have allowed her to avoid hopping the chain fence. *Id.*

The Illinois Appellate Court ruled that the *Purcell* claimant's decision to voluntarily hop over the chain fence where the heel of her shoe got caught exposed her to an unnecessary danger entirely separate from her employment responsibilities. *Id.* at ¶24. The Appellate Court indicated that the claimant's decision not to use the designated walkway, which would have been safer and taken only a few extra seconds, was for her own benefit. *Id.* The Appellate Court then found that an injury does not arise out of employment when a non-traveling employee voluntarily exposes herself to an unnecessary personal danger solely for her convenience. *Id.*

Analogous to *Purcell*, the Petitioner in the present matter fell when she got the heel of her shoe caught while hopping over a chain barrier that was a short distance from an open area designated as a walkway. Although Petitioner claimed that she chose not to walk around the barrier because one side was blocked by equipment and coolers and the other side was where participants changed their shoes and made exchanges, the photographs in RX 2 depict no such obstacles. Instead, the exercise area appears to be open on the sides for ingress and egress. The surveillance video in RX 1 was viewed by two of the Commissioners; however, after the original review, the surveillance video was lost. Nevertheless, a majority of two Commissioners also determined that the surveillance video depicted no obstacles blocking the entrances to each side of the exercise area. Moreover, Ms. Christian testified that the exercise area was set up in a way that kept one side of the stanchion open for participants to enter and the other side open for volunteers, such as Petitioner, to enter.

No testimony was presented to suggest that Petitioner was instructed by Respondent to hop over the temporary barrier in the fulfillment of her employment duties. Instead, Petitioner voluntarily chose to hop over the temporary barrier instead of using the walkway designated by Respondent for her own convenience while handing out wipes to the nearby participants. Similar to *Purcell*, this act of jumping over the barrier in her high heel shoes was a personal risk Petitioner voluntarily took separate from her employment responsibilities. The Commission thus finds that Petitioner failed to prove that her injuries arose out of her employment, and as such, denies all benefits accordingly.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner failed to prove that her injury arose out of her employment on November 20, 2015.

IT IS THEREFORE ORDERED BY THE COMMISSION that all benefits under the Act are denied, as Petitioner's accident on November 20, 2015 did not arise out of her employment.

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.

January 5, 2022

/s/*Deborah L. Simpson*
Deborah L. Simpson

/s/*Stephen J. Mathis*
Stephen J. Mathis

/s/*Deborah J. Baker*
Deborah J. Baker

DLS/met
R- 7/7/20
46

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC013258
Case Name	VILLALOBOS, HERLINDA v. STATE OF ILLINOIS DEPARTMENT OF HUMAN SERVICES
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0005
Number of Pages of Decision	8
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Kenneth Lubinski
Respondent Attorney	Sidney Gui

DATE FILED: 1/5/2022

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

HERLINDA VILLALOBOS,

Petitioner,

vs. NO: 14 WC 13258

STATE OF ILLINOIS – DEPARTMENT OF HUMAN SERVICES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, and the nature and extent of Petitioner's permanent partial disability, and being advised of the facts and law, reverses the Decision of the Arbitrator, finds that Petitioner did not sustain her burden of proving repetitive traumatic accidents causing her current condition of ill-being of bilateral carpal tunnel syndrome, and denies benefits.

Findings of Fact – Testimony

Petitioner testified that in March 2014 she worked for Respondent as a case worker. She had worked for the State of Illinois in that capacity since 1988. As a case worker, she processed benefit applications. Because she was bilingual, Petitioner got Spanish-speaking clients. She would sit at her workstation and have two monitors, a regular, rectangle keyboard on a slide-out tray, and her chair had armrests. She had a mouse and "sometimes" had a mouse pad. Sometimes the mouse got stuck. Her keyboard was wobbly because it was uneven. It was that way for her entire time of employment with the State of Illinois. Her wrists were in a downward flexed position when using the keyboard, which was "all day."

Petitioner testified she had to use the mouse to change monitors, which was a lot. She had to hit the "return" key repeatedly to change screens with her right index finger. She used the computer while interviewing clients. She was typing throughout the entire interviews with clients. She also had to answer e-mails on the computer, answered the phone, and took notes on the computer. She worked 40-hour days five days a week. She estimated she typed 90 to 95% of her workday. The rest of the day she spent filing. She placed files in boxes, and she would have to retrieve the files from the boxes. She would then put the files in a box by her desk. Two or three times a week she would take the boxes and put the files in a cabinet. The boxes weighed about 30 pounds.

If the client could not fill out an application by themselves, she would have to manually fill out the forms. That happened "daily, but not very often." On average, Petitioner had 15 to 20 clients a day of which "maybe like 15" did not have their applications completely filled out.

Petitioner acknowledged that she had prior right carpal tunnel surgery ("CTS") in 1999. The surgery helped her pain, but she still had some weakness and pain. However, the pain gradually worsened around 2014, radiated into her shoulder, and she experienced increased tingling/numbness/weakness/swelling on her arm/hand. While she continued to have these symptoms after her surgery, the symptoms worsened in 2014. At that time, the tingling was in her hand/wrist and pain in her whole hand and arm. As her symptoms increased, she had more difficulty performing activities of daily living. She had symptoms in both hands, but right was worse than left.

In 2014 all her work activities caused pain and she always used braces on her wrists/elbows bilaterally. Her condition affected her sleep. She first saw a doctor, Dr. Ro, in March of 2014 because the pain and swelling got worse. After an EMG, Dr. Ro diagnosed bilateral CTS. Dr. Ro gave her the option of another surgery or injections. Petitioner decided against surgery because CTS recurred after the first surgery and she thought it would again return after the second. She also did not take the injections because co-workers told her they really did not work.

Petitioner followed up with Dr. Panno, who recommended physical therapy. She treated her CTS with Tylenol, had massages about once a month, and squeezed a rubber ball. She paid for the massages with cash ($40 per massage) but she did not have receipts. In December of 2019, she reduced her massages to once every two months because she was taking care of her mother, who became ill.

After her first visit with Dr. Ro, Petitioner informed her supervisor that he had diagnosed her with CTS, which was caused by her work, and she could not lift more than 30 pounds. Petitioner attributed her condition to her work because it hurt while she was working.

Petitioner also testified that currently, she experienced numbness, tingling, pain, swelling, and weakness in her hands bilaterally throughout the day, every day. She has difficulty with activities of daily living and household chores. She has not lost time because of her condition and had no intention of having surgery.

On cross examination, Petitioner testified that in her 27 years working for Respondent she did not work at the same desk; she did not switch desks often, about three times. Each keyboard she worked on was wobbly "because of how it was set." She had two, 15-minute breaks and a half hour lunch break a day. Her interviews with clients were about 30 minutes. She used the armrests that were on her chair. The desk was smooth, but the mouse still got stuck.

Petitioner testified she does not have a computer at home and does not use one anywhere but at work. She has an I-Phone but does not use it often. She has not worked since her retirement from Respondent. She is diabetic for which she receives medical treatment from her primary care physician. She has not had the physical therapy prescribed by her doctors and currently took no medication.

Findings of Fact – Medical Records

An EMG taken on March 7, 2014 was consistent with bilateral CTS, left worse than right, with no evidence of cervical radiculopathy. On March 18, 2014, Petitioner went to an Emergency Room complaining of arm pain and shortness of breath. She was admitted to rule out a heart attack. She had a history of chronic arm pain, but it recently worsened. About two weeks earlier she was diagnosed with CTS. Petitioner reported she sits at a computer seven and a half hours a day. Activity aggravated her pain. She also reported some occasional leg pain bilaterally. Petitioner was 160 lbs; no height is noted.

It was also noted that she had diabetes and history of pinched nerve in her neck. It appears she was discharged on March 21st. On April 3, 2014, Petitioner returned to an Emergency Room and was admitted for chest and right-arm pain. She had a history of insulin dependent diabetes, coronary artery disease, hypertension, and hyperlipidemia.

On May 7th, Petitioner presented to Dr. Ro on referral from Dr. Mitchell for a neurologic evaluation. She complained of pain in the arms and numbness/tingling in the hands. The symptoms began about a year previously but got worse in March of 2014. Tingling/numbness was worse on the left. EMG showed bilateral CTS, left worse than right. She had diabetes and had right CTS surgery in 1999. Dr. Ro recommended a cervical MRI to rule out cervical radiculopathy, use of wrist braces, and orthopedic consultation.

Findings of Fact – Doctor Depositions

Dr. Ro testified by deposition on November 13, 2019 that he is board-certified in neurology and electrodiagnosis. He diagnoses and treats diseases of the nervous system. He does not perform surgery. He treats CTS which is a condition of peripheral nerves. He did an EMG on Petitioner which showed bilateral CTS. Thereafter, Dr. Mitchell referred Petitioner to him for a consultation for evaluation of CTS and to rule out cervical involvement.

Dr. Ro testified he was not aware of Petitioner's job activities. He was asked to assume that she typed on a keyboard all day that is "wobbly and broken and moves when she types, that her mouse that she utilizes has to frequently be jostled because there is no mouse pad, that she has to lift it off of her desk and bend her elbows and wrists repeatedly *** that her keyboard was higher than her desk," so that her performing her job in a downward flexed position, she has to repeatedly hit certain keys and has to perform these activities seven and a half hours a day. The Arbitrator overruled Respondent's objection to the question.

After the EMG, Dr. Ro diagnosed bilateral CTS, left worse than right. On the left both the motor and sensory was abnormal while on the right only the sensory was mildly abnormal. She complained of pain with numbness and tingling in her hands. She reported that she was unable to work. Dr. Ro found positive Tinel signs in the wrists on both sides and decreased sensation in the median nerve distribution. After his examination, Dr. Ro recommended Petitioner wear a wrist brace, ordered a cervical MRI, and referred her for a consultation with an orthopedic surgeon.

Dr. Ro testified that the hypothetical job description presented by Petitioner's lawyer was "significant" and which can cause CTS, "because repetitive hand movements in a flexion of the wrist, those can cause" CTS. Therefore "it was quite possible" that Petitioner's CTS was due to her work activities.

Dr. Ro agreed that the only treatment Petitioner had that he was aware of consisted of the EMG and his consultation. He recommended a brace and referred her to an orthopedic surgeon, which was all he could do. He thought it would have been difficult for her to perform her job activities based on his clinical exam and the test results. Surgery can cure CTS, but it can also recur after surgery. It can recur because scar tissue can pinch the nerve again. He did not know whether Petitioner had any permanent restrictions because of her CTS.

On cross examination, Dr. Ro agreed that he had not seen Petitioner since May 8, 2014 and he did not know of her current condition. He knew that Petitioner had diabetes and that increases the risk for developing CTS. He doubted whether obesity was a risk factor for developing CTS. He agreed that he had no recollection of any description of Petitioner's job duties. He recommended a cervical MRI because Petitioner complaints included symptoms that could be unrelated to CTS. If a patient reports proximal pain rather than distal pain on a Tinel's test, that would be uncharacteristic of CTS. He believed there were only a small number of cases that required repeat CTS surgery.

On redirect examination, Dr. Ro testified that he was aware that Petitioner had prior right CTS surgery in 1999. While it was possible that scarring from the first surgery caused recurrent CTS, it was also possible that the nerves did not completely recover after surgery and the condition could recur. Although she exhibited some unusual symptoms for CTS, there was no doubt that Petitioner had CTS.

Dr. Wysocki testified by deposition on November 1, 2019 that he is an orthopedic surgeon, specializing in hand and arm surgery. He sees about 130 patients, performs on average 20 surgeries a week, and performs about 175 Section 12 medical examinations per year. About 90% of exams are performed for respondents. He performed a Section 12 examination on Petitioner on May 20, 2019, reviewed medical records, examined her hands/wrists/elbows, and issued a report. On examination, Dr. Wysocki noted normal sensation neurologically. She did have "a tremor in the right hand that was primarily notable when she would focus on it." She had a positive Tinel's test on the right but all testing on the left was negative. She had no major loss of range of motion in the wrist, forearm, and elbow.

Dr. Wysocki testified that it appeared from the EMG that Petitioner had a history of CTS. She had right CTS release surgery which she reported resulted in about 50% improvement. He did not note "any current consistent signs of carpal tunnel or cubital carpal syndrome to either upper extremity. But based on her older EMG, bilateral [CTS] was likely an active diagnosis." Dr. Wysocki also testified he did not see any association between Petitioner's work activities and her CTS. He was concerned about Dr. Ro's indication for cervical issues which Dr. Wysocki did not feel competent to comment upon. Because of that he recommended a cervical evaluation. Petitioner did not need any work restrictions in her job as case worker based on the condition of her upper extremities.

On cross examination, Dr. Wysocki testified he did not disagree that Petitioner had bilateral CTS, but "it was debatable how clinically active it was." He understood Petitioner's job involved processing applications for public aid. She would interview applicants and input data into the computer system. Each such encounter lasted 30 minutes and she processed 10 to 12 applications per day. There was no heavy lifting or gripping component in her job. Dr. Wysocki was asked to assume that Petitioner testified she was on a keyboard for seven and a half hours a day, the keyboard was broken and wobbly, she had to jostle her mouse bending both elbows and wrists frequently, her wrists were in a forward flexed position, bent all day, and she had to hit certain keys repeatedly. He was then asked whether those activities could cause CTS. Dr. Wysocki answered that he did not believe side-to-side jostling of the mouse would be a factor and he did not expect the increased occasional key stroke would be an important factor.

Dr. Wysocki agreed that extreme prolonged positioning of the wrists flexed down can be a risk factor for CTS. However, he did not envision her being able to work in such a prolonged position; it's an inefficient position and not common to type in. In addition, from Petitioner's description of her work, it seemed that her work involved interviewing and would not entail constant keyboarding.

Dr. Wysocki also cited articles that suggest no correlation between typing and CTS and one study actually showed an inverse correlation. However, he was aware of studies on either side of the debate. He also noted that one also has to consider other known risk factors such as obesity, diabetes, and gender. He has lectured several times on keyboarding and its relationship to CTS.

Dr. Wysocki agreed that Petitioner had a positive Tinel's sign, but it radiated up the forearm primally, which is the opposite of what the CTS tests should show; "it's supposed to radiate distally toward the digits." In addition, she did not have a positive median nerve compression test.

Dr. Wysocki agreed that he believed he performed other Section 12 examinations for the State of Illinois, but believed it represented 1% or less of such of his examinations. He did not believe that CTS surgery was indicated at the time he saw her in his examination. He noted that the EMG showed that the CTS was worse on the left, but there were not clinical signs for left-sided CTS in his examination. He also noted that it was not uncommon for patients to have positive EMGs even after CTS release. CTS surgery is not always 100% effective. Her condition did not seem to be progressing, so he did not believe surgery was indicated. He reiterated that he did not find consistent positive indications of CTS. Sensation was within normal limits which shows no consistent signs of nerve degeneration.

Conclusions of Law

The Arbitrator found that Petitioner sustained her burden of proving a repetitive traumatic accident and causation to her current condition of ill-being of bilateral CTS. In so doing, he found Petitioner's testimony credible, unrebutted, and consistent with the medical records. He also found the opinions of Dr. Ro persuasive and noted that Dr. Wysocki agreed that prolonged, extreme wrist positioning is a risk factor in developing CTS. He also noted that Dr. Wysocki did not know that Petitioner had to lift/carry 30-pound boxes.

Respondent argues that the Arbitrator erred in finding accident/causation. It stresses that the Arbitrator should have relied on the credible opinion of Dr. Wysocki over that of the "factually deficient opinions of Dr. Ro." It notes that while Dr. Wysocki had a good grasp of Petitioner's job duties, Dr. Ro acknowledged that he really knew nothing about her job activities and Respondent argues his opinions were nothing short of speculation.

The Commission reverses the Decision of the Arbitrator and finds no accident or causation. Petitioner basically testified that she used a broken keyboard for her entire 27-year employment with Respondent. We agree with Respondent that the testimony of Dr. Wysocki is persuasive that it makes no sense empirically for a person to continue to type in such an extremely flexed position for years without seeking some redress. Not only would it cause discomfort, it would simply make her job very difficult to perform.

The Commission also finds difficult to accept that Petitioner typed continually for seven and a half hours a day, when she had other administrative duties to perform. Even if she did type for such an extended period of time, we do not accept that fact, in itself, is sufficient to prove accident/causation. In addition, she had non-occupational risk factors such as gender, age, and prior CTS, which, based on her own testimony, apparently had never completely resolved. We also agree with Respondent that Dr. Ro's testimony was not very persuasive. He was not independently aware of Petitioner's work activities, based his opinions only on Petitioner's lawyer's recitation of his version of Petitioner's job activities, and his opinion was only that it would be possible that the work activities caused her condition and not even that it was more likely than not. Finally, Dr. Ro also acknowledged that her CTS could have been caused by scar tissue from the initial surgery or that the 1999 surgery never resolved her condition.

Based on the entire records before us, the Commission reverses the Decision of the Arbitrator, finds that Petitioner did not sustain her burden of proving repetitive traumatic accidents or causation to her current condition of ill-being of bilateral CTS, and denies compensation. Based on our determination that Petitioner failed to sustain her burden of proving accident and causation benefits are denied and analysis of all remaining issues is moot.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated September 30, 2020 is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner has failed to sustain her burden of proving a compensable accident or causation to a current condition of ill-being of bilateral CTS, and compensation is denied.

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

January 5, 2022

DLS/dw
O-11/10/21
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	18WC036265
Case Name	MCDONALD, DEANNA v. STATE OF ILLINOIS CHESTER MENTAL HEALTH CENTER
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remanded Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0006
Number of Pages of Decision	17
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Kenton Owens

DATE FILED: 1/6/2022

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DEANNA McDONALD,
Petitioner,

vs. NO: 18 WC 36265

STATE OF ILLINOIS – CHESTER MENTAL HEALTH CENTER,
Respondent.

DECISION AND OPINION ON REVIEW

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

This matter was consolidated with 19 WC 14325. In that claim, the Arbitrator found that Petitioner proved she sustained an accident on May 3, 2019, but the Arbitrator also found that the accident did not contribute to her lumbar condition of ill-being, which she found related back to the instant claim. Through a separate decision, the Commission affirmed and adopted the Decision of the Arbitrator in 19 WC 14325.

In the instant claim, the Arbitrator awarded Petitioner 28&2/7 weeks of TTD, medical bills submitted into evidence, and ordered Respondent to authorize and pay for prospective treatment recommended by Dr. Gornet. The Arbitrator also awarded Respondent $14,429.29 in credit for paid TTD.

The Commission agrees with the Decision of the Arbitrator regarding the issues of causal connection, as well as her award of TTD, medical expenses both current and prospective, and credit due Respondent. Accordingly, the Commission affirms and adopts those aspects of the Decision of the Arbitrator.

At Arbitration, Respondent moved for the Arbitrator to certify its subpoena to Arndt Court Reporting to the Circuit Court for enforcement. Respondent explained that it wanted the subpoena enforced in order to show how many times Petitioner's law firm had deposed Dr. Gornet to establish a continuing business relationship between Petitioner's lawyer and Petitioner's treating doctor, Dr. Gornet, and to suggest possible bias on the part of Dr. Gornet. The Arbitrator denied Respondent's motion because she determined the relationship between Dr. Gornet, and Petitioner's lawyers was irrelevant. The Arbitrator also noted that Dr. Gornet was deposed in this matter, he was not asked questions about his previous depositions by Petitioner's law firm, and the deposition would have been a more proper venue to explore that issue than to issue a subpoena to a non-interested third party. We generally agree with the reasoning of the Arbitrator. In addition, the Commission notes that Respondent's actual subpoena to Arndt Court Reporting is not in the transcript before us so we do not have authority to address the issue.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator issued on December 2, 2020, is hereby affirmed and adopted with the explanation above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $549.87 per week for a period of 58&2/7 weeks, from March 13, 2020 through April 4, 2020, and from April 7, 2020 to the date of arbitration September 28, 2020, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay reasonable and necessary medical expenses submitted in Petitioner's Exhibit 1 under §8(a), subject to the applicable medical fee schedule in §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent authorize and pay for prospective treatment recommended by Dr. Gornet, including but not limited to, a single-level disc replacement or fusion at L5-S1.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision.

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

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

January 6, 2022

DLS/dw
O-11/17/21
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
NOTICE OF 19(b) ARBITRATOR DECISION

22IWCC0006

McDONALD, DEANNA
Employee/Petitioner

Case# **18WC036265**
19WC014325

SOI/CHESTER MENTAL HEALTH CENTER
Employer/Respondent

On 12/2/2020, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0969 RICH RICH COOKSEY & CHAPPELL
THOMAS C RICH
6 EXECUTIVE DR SUITE 3
FAIRVIEW HTS, IL 62208

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

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

1745 DEPT OF HUMAN SERVICES
BUREAU OF RISK MANAGEMENT
801 S 7TH ST
SPRINGFIELD, IL 62794

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
SPRINGFIELD, IL 62704

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

DEC 2 - 2020

Brendan O'Rourke, Assistant Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

DEANNA MCDONALD
Employee/Petitioner

v.

STATE OF ILLINOIS/ CHESTER MENTAL HEALTH CENTER
Employer/Respondent

Case # 18 WC 36265

Consolidated cases: 19-WC-14325

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 **Collinsville,** on **September 28, 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. ☒ 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: Motion to Certify Subpoena for Circuit Court Enforcement

FINDINGS

On the date of accident, **August 26, 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 **$42,890.12**; the average weekly wage was **$824.81**.

On the date of accident, Petitioner was **41** years of age, ***married*** with **3** 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 **$14,429.29 plus service-connected days** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$14,429.29, plus service-connected days**.

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

ORDER

Respondent shall pay the reasonable and necessary medical services outlined in Petitioner's group exhibit 1, as provided in §8(a) and §8.2 of the Act. Respondent shall have credit for any amounts previously paid and shall indemnify and hold Petitioner harmless from claims made by any health providers arising from the expenses for which it claims credit.

Respondent shall authorize and pay for the treatment recommended by Dr. Matthew Gornet, including, but not limited to, a single-level disc replacement or fusion at L5-S1.

Respondent shall pay Petitioner temporary total disability benefits of **$549.87**/week for the period **3/13/20 through 4/4/20 and 4/7/20 through the date of arbitration, 9/28/20**, representing **28-2/7** weeks, as provided in Section 8(b) of the Act.

Respondent's Motion to Certify Enforcement of Subpoena in Circuit Court is denied. Respondent served a subpoena upon Arndt Reporting requesting a list of any and all depositions taken of Dr. Matthew Gornet by the law offices of Thomas C. Rich. The Arbitrator finds the subpoenaed documents are irrelevant to the proceedings before this court and are inadmissible.

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

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

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

Signature of Arbitrator

11/25/20
Date

ICArbDec19(b)

DEC 2 - 2020

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

DEANNA MCDONALD,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 18-WC-36265
	)	Consolidated Case No.: 19-WC-14325
STATE OF ILLINOIS/CHESTER MENTAL HEALTH CENTER,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Collinsville on September 28, 2020 pursuant to Section 19(b) of the Act. On or about December 11, 2018, Petitioner filed an Application for Adjustment of Claim alleging injuries to her back/body as a whole as a result of transferring an inmate from a wheelchair to the shower on August 26, 2018. On May 16, 2019, Petitioner filed an Application for Adjustment of Claim alleging injuries to her back/body as a whole as a result of catching a patient from falling on May 3, 2019 (Case No. 19-WC-14325). The cases were consolidated.

The issues in dispute in the present case (Case No. 18-WC-36265) are causal connection, medical bills, temporary total disability benefits, and prospective medical care. All other issues have been stipulated.

TESTIMONY

Petitioner was 41 years old, married, with three dependent children at the time of the accident. Petitioner testified she is a Security Therapy Aide for Respondent, Chester Mental Health Center. She aides nursing staff and provides security for nurses and patients. She suffered injury on August 26, 2018 when she was assisting a wheelchair bound patient in and out of the shower. She testified that the second time she and her coworker assisted him, he "proceeded to lift his legs" and put his full weight on them causing gradually increasing pain in her lower back. After she went home to rest and awoke in extreme pain, she reported the incident to Respondent and filled out an accident report.

Petitioner testified she was working full duty at the time of the accident and did not have any work restrictions. Petitioner testified she had prior low back symptoms in 2012 and 2013 that

resolved after undergoing physical therapy and an MRI performed in 2012. She testified she bent over to pick something up that caused her back pain. She testified she did not have any issues with her back from 2013 through August 2018 and has never seen an orthopedic surgeon or neurosurgeon prior to 8/26/18.

Following her accident on 8/26/18, Petitioner sought treatment with her primary care physician who ordered physical therapy and an MRI. She was placed on work restrictions of no bending, lifting, and to alternate standing and sitting, which Respondent accommodated. Petitioner testified her symptoms did not improve with physical therapy and she was referred to Dr. Gornet at the recommendation of her co-workers. Dr. Gornet prescribed two medications and ordered Petitioner to take Vitamin D, calcium pills, and lose weight. Dr. Gornet placed Petitioner on a 10-pound lifting restriction.

Petitioner testified she was evaluated by Dr. Robson at Respondent's request. She saw Dr. Robson twice and he returned her to work. Petitioner returned to full duty work on 5/3/19 when she sustained a second injury to her low back. She worked the evening shift from 3:00 p.m. to 11:00 p.m. and alleged her injury occurred at 3:45 p.m. on 5/3/19. Petitioner testified she was assisting a one-on-one patient with a gait belt when the patient slipped and she reached out to grab him. She felt pain shoot across her low back and down her legs. She immediately reported the accident to the Charge Therapy Aide. She filled out an accident report and was ordered to report to Respondent's medical clinic. Petitioner testified she was in significant pain and she was sent to the emergency room for evaluation. Petitioner testified she stopped working light duty on 12/3/19 when she exhausted the 180 days allowed by Respondent. Petitioner testified she has not worked full duty since 5/3/19. She worked light duty on 4/5/20 and 4/6/20 for which she received full pay. Petitioner has not returned to full duty work and she desires to undergo a lumbar fusion as recommended by Dr. Gornet.

Petitioner testified she does not have a life right now and depends on her 17-year old child to do things she normally did. She has undergone extensive physical therapy that has not improved her symptoms. Petitioner testified she has not suffered any additional injuries since her second accident on 5/3/19 and no additional incidents between her initial injury on 8/26/18 and 5/3/19.

MEDICAL HISTORY

Petitioner sought treatment at the office of Dr. Elvira Salarda at Quality Healthcare Clinic on 8/28/18. The attending nurse practitioner noted a consistent history of the injury, noted Petitioner had an abdominal hernia repair in July 2017, and noted Petitioner expressed concern over pain also present in her mid-abdomen. Physical examination demonstrated spasm of the peri-lumbar musculature, positive bilateral leg raise, pain with bending, and pain with palpation of peri-lumbar musculature. Petitioner was prescribed a Medrol dose Pak and Flexeril, instructed to use ice or heat, and was taken off work. On 9/4/18, Petitioner continued to report low back and groin pain, and daily spasms from her mid to low back that radiated up her spine. Nurse Murphy recommended x-rays, physical therapy, and additional time off work. X-rays showed moderate osteoarthritis but were otherwise normal.

Petitioner participated in physical therapy that was disrupted by spasms. Petitioner's physician encouraged her to continue physical therapy and return to light duty work. Petitioner's condition did not improve and a physical examination by Dr. Elvira Salarda revealed positive straight leg raising with radiculopathy in her bilateral legs, tenderness over the SI joint bilaterally, and tense lumbar muscles. Dr. Salarda ordered an MRI, advised Petitioner to take Naprosyn and Flexeril, and if needed to hold off on Naprosyn and use Toradol. The lumbar MRI was performed on 10/18/18 and showed bulging of the L5-S1 disc causing central canal neural foraminal narrowing bilaterally, and bulging of the L3-4 and L4-5 discs.

Petitioner began aquatic therapy and also tried traction that caused increased back pain and spasms that travelled down both legs into her calves. Petitioner also reported difficulty using pain medication at work due to sleepiness, which left her in increased pain. Petitioner was examined by Dr. Matthew Gornet on 11/6/18 who took a consistent history of the accident and noted Petitioner's worsening bilateral back pain with radiculopathy, particularly with prolonged sitting, standing, bending, or lifting. Dr. Gornet noted Petitioner's history of prior back problems for which she had chiropractic care. Physical examination revealed pain in Petitioner's low back into both buttocks, both hips, and intermittently inter her legs. Straight leg raise was positive and reproduced her low back pain bilaterally at 60 degrees. Dr. Gornet reviewed the MRI dated 10/18/18 and found it of moderate to poor quality. Dr. Gornet found strong suggestion of central disc injury and pathology at L5-S1 and perhaps an annular tear at L4-5. He recommended a new high-resolution MRI and, depending on the findings, considered steroid injections. Dr. Gornet believed Petitioner's current symptoms were causally connected to her described injury.

The high-resolution MRI was performed on 11/6/18 and revealed a central annular tear at L5-S1, along with a protrusion on the left at L4-5. The findings at L5-S1 were omitted by the radiologist, who only noted disc bulges at L3-4 and L4-5 with a probable left foraminal annular tear or fissure at L4-5. Dr. Gornet recommended an L5-S1 steroid injection and tentative discogram depending on Petitioner's response to the injection. He also placed Petitioner on light duty with a 10-pound lifting limit, with no repetitive bending or lifting, and instructions to alternate between sitting and standing as needed. Petitioner underwent an epidural steroid injection 11/20/18 which provided temporary relief. Petitioner returned to Dr. Gornet on 1/10/19 and reported continued low back pain into her bilateral hips and lower extremities, which he noted to be classic of discogenic pain. Dr. Gornet reviewed the MRI that was performed on 11/16/12 and compared same to her present scan, noting that the pathology present on Petitioner's current scan was not present on the 2012 MRI. Dr. Gornet recommended Petitioner lose weight before undergoing a CT discogram at L4-5 and L5-S1. In the meantime, Dr. Gornet managed Petitioner's condition with medication and ordered an MRI Spectroscopy. He also noted that although Petitioner was on light duty, she had "timed out" and was therefore off work.

On 4/9/19, Petitioner was examined by Dr. David Robson pursuant to Section 12 of the Act. Dr. Robson noted Petitioner's history of injury and course of medical care. He indicated Petitioner's prior back pain resolved with chiropractic treatment and she had no interval treatment. Dr. Robson also noted that Petitioner's description of the accident was consistent with the injury report and the job description he reviewed. Though physical examination was relatively normal compared with that of Petitioner's treating physicians, Dr. Robson felt the 8/26/18 incident caused the condition in Petitioner's lumbar spine and he believed her treatment

to date had been reasonable. However, Dr. Robson did not believe Petitioner to be a surgical candidate, and given that Petitioner had exhaustive conservative care, he believed no further treatment would alter her condition. Dr. Robson opined Petitioner had reached maximum medical improvement.

Based upon the opinion of Dr. Robson, Petitioner returned to full duty work on May 3, 2019 and allegedly sustained another low back injury as described above. Petitioner reported to the emergency room immediately following her accident and reported severe lumbar spine pain radiating into her right and left thighs. The attending clinician noted that the quality of Petitioner's pain was similar to prior episodes. Petitioner was again placed under restrictions of no lifting greater than 15 pounds, bending, or stooping until released and was advised to rest at home for two days.

Petitioner followed up with her family physician who assessed lumbosacral pain, bilateral hip pain, and exacerbation of her previous back injury. Petitioner was continued on Valium and Flexeril and advised to follow up with Dr. Gornet and complete her discogram. Petitioner returned to Dr. Gornet on 5/11/19 who noted Petitioner successfully lost some weight. He noted Petitioner's symptoms were similar in nature and location but were now more severe. Dr. Gornet believed Petitioner had an aggravation of her underlying condition and recommended moving forward with his initial plan of treatment, including an MRI spectroscopy and CT discogram. Dr. Gornet placed Petitioner back on light duty restrictions of no lifting greater than 10 pounds, no repetitive bending or lifting, and alternating between sitting and standing.

The CT discogram was performed on 5/29/19 that showed a provocative disc at L5-S1 with a posterior annular tear and concordant pain. Petitioner was stoic throughout the procedure and showed no functional overlays. Dr. Gornet noted the MRI Spectroscopy performed on 5/11/19 had artifact and could not be read. Based on the discogram, Dr. Gornet recommended a single-level disc replacement or possibly fusion at L5-S1. He kept Petitioner under restrictions and continued to relate Petitioner's condition to the first injury on 8/26/18.

Respondent requested a supplemental opinion from Dr. Robson after providing him with the CT Discogram which he interpreted to show minimal degenerative changes at L5-S1 and no herniation or extravasation of dye. Dr. Robson stated these studies reinforced his belief that Petitioner's medical care and treatment had been reasonable and necessary, but he believed Petitioner should accept her condition and not pursue further treatment.

Dr. Robson testified by way of evidence deposition. Dr. Robson is a board-certified orthopedic surgeon who treats spine injuries. He testified that his review of Petitioner's imaging studies revealed dehydration of the discs at L3-4, L4-5, and L5-S1, and a central L5-S1 protrusion which he classified as minimal. He acknowledged that Petitioner's protrusion at L5-S1 was as a result of the injury on 8/26/18. However, he did not believe that Petitioner required further treatment for same. Dr. Robson opined he would not perform surgery on anyone with a BMI greater than 35, and Petitioner's BMI was 37. He acknowledged that Dr. Gornet recommended that Petitioner lose weight. When asked what he would recommend if Petitioner lost weight and was still symptomatic, he testified Petitioner should live with her condition on account of the small degree of pathology.

Dr. Gornet testified by way of evidence deposition. Dr. Gornet is a board-certified orthopedic surgeon whose practice focuses on treatment and research concerning neck and back pain. He has participated in over 45 FDA IDE clinical trials for neck and back pain and is currently involved in a national study using genetically modified stem cells to regenerate injured discs. He testified he has been performing disc replacements since 2003 and authored the largest FDA clinical trial ever run for a spinal implant, which studied randomizing disc replacement at a single level compared with fusion at a single level. He testified that on average, disc replacement saved the employer/insured $200,000 per patient over their lifetime.

Dr. Gornet testified that it had been some time since Petitioner sought treatment for her pre-existing low back complaints, and that unlike before, she has been unable to return to work with conservative care. He stated that the positive straight leg testing elicited during physical examination was a soft indicator of structural back pain. He observed that the MRI studies showed central disc pathology at L5-S1, and he causally related same to her work injury of 8/26/18. He testified that his impression was corroborated by the CT discogram, which showed dye in the center of the disk travelling straight backwards toward the tear at L5-S1. The test reflected that Petitioner was provocative at that level, demonstrating that her pain was concordant with all of the objective findings on her diagnostic studies. Dr. Gornet also reviewed an MRI from 2012 and testified it did not show any of the disc pathology visualized on her current scans.

Dr. Gornet testified the CT discogram showed a small tear in Petitioner's disc at L4-5, but this was non-provocative. Dr. Gornet testified the MRI Spectroscopy was now an FDA approved diagnostic technique commercially available on the market. He testified that Petitioner's spectroscopy demonstrated normal chemicals at the levels outside of L5-S1 and he recommended single-level surgery at that level. Dr. Gornet testified that after his surgical recommendation, Petitioner sustained a second accident as a result of Dr. Robson's opinion that she could return to work full duty. Dr. Gornet testified that Petitioner has a known structural problem that is seen not only on MRI scan, but objectively proven on her CT discogram. The objective lesion correlates with her back pain and was concordant with her typical back pain.

Dr. Gornet testified that this type of disc injury is by *de facto* a surgical lesion because Petitioner has failed appropriate conservative care, it has been over six months, and she has objective pathology. Dr. Gornet opined Petitioner is not at maximum medical improvement as stated by Dr. Robson. Her subjective complaints and objective pathology have not reverted back to baseline and there is appropriate potential treatment that could cure and relieve the effects of that. Dr. Gornet opined he did not believe Petitioner would improve absent surgery, particularly given the fact that performing a regular work task exacerbated her symptoms. However, Dr. Gornet testified Petitioner could return to work full duty with surgical treatment. He testified that Petitioner's second accident did not change her course of care.

Dr. Gonet opined that within a reasonable degree of medical certainty Petitioner's need for surgery was causally related to her injury on 8/26/18. The 2012 MRI did not show central disc pathology and her initial MRI following the 8/26/18 accident did show central disc pathology. The subsequent MRI scan clearly showed central disc pathology and an annular tear.

The CT discogram clearly identified exactly the same pathology which correlated on the MRI. Petitioner was working full duty with no restrictions for three years up until the time of injury, and since that injury she has never returned to baseline. Finally, Dr. Gornet testified Petitioner's mechanism of injury is well-known to cause a disc injury, specifically when a sudden mechanical load is placed which is usually flexion and rotation.

CONCLUSIONS OF LAW

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

In addition to or aside from expert medical testimony, circumstantial evidence may also be used to prove a causal nexus between an accident and the resulting injury. *Gano Electric Contracting v. Industrial Comm'n*, 260 Ill.App.3d 92, 631 N.E.2d 724 (1994); *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982). A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the workers' compensation claimant's injury. *Shafer v. Illinois Workers' Comp. Comm'n*, 2011 IL App (4th) 100505WC, 976 N.E.2d 1 (2011). 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). Employers are to take their employees as they find them. *A.C. & S. v. Indus. Comm'n*, 304 Ill. App. 3d 875, 710 N.E.2d 837 (1999) citing *General Electric Co. v. Indus. Comm'n*, 89 Ill. 2d 432, 434, 433 N.E.2d 671, 672 (1982). If a preexisting condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Rock Road Constr. v. Indus. Comm'n*, 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 evidence shows Petitioner had pre-existing low back problems in 2012 and 2013 for which she received physical therapy and an MRI. There is no evidence Petitioner received treatment for her low back from 2013 through 8/26/18. Petitioner was working full duty without restrictions prior to her accidental injury. Petitioner's post-accident MRI, when compared with the 2012 MRI, showed new pathology which both Dr. Gornet and Dr. Robson causally relate to Petitioner's work accident that occurred on 8/26/18. Given that both physicians agree that Petitioner suffered from disc pathology at L5-S1 that was caused by the accidental injury on 8/26/18, the Arbitrator finds no legitimate basis to dispute causal connection. The point of contention between physicians is whether Petitioner is a surgical candidate, which the Arbitrator notes is an issue pertaining to reasonableness and necessity of prospective medical care.

The Arbitrator further finds that Petitioner's current condition of ill-being is not causally related to her subsequent accident that occurred on 5/3/19 but remains related to her initial accident on 8/26/18. The subsequent accident of 5/3/19 was an aggravation and continuation of the injuries Petitioner sustained on 8/26/18. The record suggests the 5/3/19 accident aggravated Petitioner's symptoms and that neither the character of her symptoms nor her recommended course of treatment was altered as a result thereof. It was noted in the emergency room on 5/3/19

that Petitioner's pain was similar to prior episodes. Similarly, Dr. Gornet noted that Petitioner's complaints were similar in nature and location and proceeded with his pre-planned course of care. While Petitioner's symptoms increased following the 5/3/19 accident, it is clear the second incident did not sever the chain of causal connection from the first incident. *Lasley Construction Co. v. Industrial Comm'n,* 274 Ill.App.3d 890, 893, 655 N.E.2d 5 (1995) (holding that "other incidents, whether work-related or not, may have aggravated the claimant's condition is irrelevant").

Therefore, the Arbitrator finds Petitioner's condition of ill-being remains causally related to the incident on August 26, 2018.

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 the 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 (2000). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 758 N.E.2d 18 (2001).

Based upon the above findings as to causal connection, the Arbitrator finds Petitioner is entitled to recovery for medical expenses. In support thereof, the Arbitrator notes that in addition to agreeing that Petitioner's condition of ill-being was causally related to the accident of August 26, 2018, Dr. Robson also acknowledged that all of Petitioner's care and treatment up to the proposed surgery had been reasonable and necessary.

The principal issue in dispute pertains to whether Petitioner is entitled to prospective surgery. While Dr. Gornet believes that Petitioner's lesion is a surgical one, Dr. Robson did not believe Petitioner was a surgical candidate. Given the weight of the evidence, the Arbitrator finds Dr. Gornet's opinion more persuasive. Petitioner made a good faith effort to return to her full duty job but was unable to do so. Though Dr. Robson felt Petitioner should live with her condition, the Arbitrator is not persuaded to ask Petitioner to forfeit her chance to return to her regular employment when there are treatment options available to return her to full duty work as opined by Dr. Gornet. Petitioner's symptoms and condition has not returned to her baseline, or pre-injury status, and she has not been able to make a consistent return to full duty work since her injuries occurred.

Respondent also objected to the reasonableness and necessity of the MRI spectroscopy utilized to verify the source of Petitioner's pain. The Arbitrator notes, however, that the supplemental report of Dr. Robson again opined that Petitioner's treatment up to his second opinion had been reasonable and necessary. It had been some time since Petitioner's prior scan, and the Arbitrator finds nothing unreasonable about obtaining a second scan, especially as the scan followed her second injury. The Commission has also awarded payment for MRI spectroscopy in prior cases. *See Robert Carlile v. Hiltz Propane Systems, Inc.*, 18 I.W.C.C. 0157 (2018) (wherein the respondent was ordered to authorize and pay for MRI spectroscopy); and

also *Jeremy Snow v. White County Coal,* 16 I.W.C.C. 0287 (2016); *William Taitt v. Ardent Mills*, 19 I.W.C.C. 0534 (2019).

Respondent shall therefore pay the expenses contained in Petitioner's group exhibit 1 as provided in Section 8(a) and Section 8.2 of the Act, including all medical expenses related to Petitioner's aggravating work-related injury that occurred on 5/3/19. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits 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.

Further, Petitioner has exhausted all conservative means to relieve the effects of her injury without lasting relief and has not reached maximum medical improvement pursuant to the medical records and Dr. Gornet's opinion. Respondent shall authorize and pay for the treatment recommended by Dr. Matthew Gornet, including, but not limited to, a single-level disc replacement or possible fusion at L5-S1.

Issue (L): 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 (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 (1990) citing *Ford Motor Co. v. Indus. Comm'n*, 126 Ill.App.3d 739, 743, 467 N.E.2d 1018 (1984).

Respondent was no longer able to accommodate Petitioner's light duty restrictions beyond 180 days. Petitioner remains unable to resume full duty work under the restrictions placed by Dr. Gornet as a result of the injury on 8/26/18. The parties stipulated that all temporary total disability benefits have been paid through 3/12/20 and Respondent is not entitled to an overpayment of TTD benefits. Based upon the above findings as to causation, the Arbitrator finds Petitioner is entitled to temporary total disability benefits of **$549.87**/week for the period 3/13/20 through 4/4/20 and 4/7/20 through the date of arbitration, 9/22/20, representing **28-2/7** weeks. Respondent shall be given a credit of $14,429.29 in TTD benefits, plus service-connected days.

Issue O: Motion to Certify Enforcement of Subpoena in Circuit Court.

On or about July 1, 2020, Respondent served a Subpoena upon Arndt Reporting requesting a list of any and all depositions taken of Dr. Matthew Gornet by the law offices of Thomas C. Rich, Rich, Rich and Cooksey, and/or Rich, Rich, Cooksey and Chappell from July 1, 2011 through the present. On September 18, 2020, Respondent filed a motion pursuant to Sections 9020.70 and 9030.50 seeking enforcement of the subpoena which was set for hearing on 9/28/20. Arguments were held on the record herein and Arbitrator Cantrell entered an order denying Respondent's motion finding the deposition transcripts of Dr. Gornet taken by Petitioner's counsel for the last nine years are irrelevant to the proceedings before this court and

are inadmissible. Respondent sought to use same to attack Dr. Gornet's credibility; however, Dr. Gornet was deposed and no questions were asked regarding same during his deposition.

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

Linda J. Cantrell

Linda. J. Cantrell, Arbitrator

11/25/20

DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC014325
Case Name	MCDONALD, DEANNA v. STATE OF ILLINOIS CHESTER MENTAL HEALTH CENTER
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remanded Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0007
Number of Pages of Decision	14
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Kenton Owens

DATE FILED: 1/6/2022

/s/ Deborah Simpson, 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

Deanna McDonald,

Petitioner,

vs. NO: 19 WC 14325

SOI/Chester Mental Health Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of 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 December 2, 2020, 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.

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.

January 6, 2022

o11/17/21
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 22IWCC0007
NOTICE OF 19(b) ARBITRATOR DECISION

McDONALD, DEANNA
Employee/Petitioner

Case# **19WC014325**
18WC036265

SOI/CHESTER MENTAL HEALTH CENTER
Employer/Respondent

On 12/2/2020, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0696 RICH RICH COOKSEY & CHAPPELL
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1745 DEPT OF HUMAN SERVICES
BUREAU OF RISK MANAGEMENT
801 S 7TH ST
SPRINGFIELD, IL 62794

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
SPRINGFIELD, IL 62704

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

DEC 2 - 2020

Brendan O'Rourke, Assistant Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

DEANNA MCDONALD
Employee/Petitioner

v.

STATE OF ILLINOIS/ CHESTER MENTAL HEALTH CENTER
Employer/Respondent

Case # **19** WC **14325**

Consolidated cases: **18-WC-36265**

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 **Collinsville,** on **September 28, 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. ☒ 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, **May 3, 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 **$44,156.28**; the average weekly wage was **$849.15**.

On the date of accident, Petitioner was **41** years of age, ***married*** with **3** dependent children.

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

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

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

ORDER

Based on the Arbitrator's decision that Petitioner's current condition of ill-being is not causally related to her subsequent accident that occurred on 5/3/19 but remains related to her initial accident on 8/26/18, and the Arbitrator having awarded Petitioner medical expenses, prospective medical treatment, and temporary total disability benefits in Case No. 18-WC-36265, the Arbitrator does not award further benefits herein.

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

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

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

Signature of Arbitrator

11/25/20
Date

ICArbDec19(b)

DEC 2 - 2020

STATE OF ILLINOIS)
) SS
COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

DEANNA MCDONALD,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 19-WC-14325
	)	Consolidated Case No.: 18-WC-36265
STATE OF ILLINOIS/CHESTER	)	
MENTAL HEALTH CENTER,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Collinsville on September 28, 2020 pursuant to Section 19(b) of the Act. On or about December 11, 2018, Petitioner filed an Application for Adjustment of Claim alleging injuries to her back/body as a whole as a result of transferring an inmate from a wheelchair to the shower on August 26, 2018. (Case No. 18-WC-36265). On May 16, 2019, Petitioner filed an Application for Adjustment of Claim alleging injuries to her back/body as a whole as a result of catching a patient from falling on May 3, 2019 (Case No. 19-WC-14325). The cases were consolidated.

The issues in dispute in the present case (Case No. 19-WC-14325) are accident, causal connection, medical bills, temporary total disability benefits, and prospective medical care. All other issues have been stipulated.

TESTIMONY

Petitioner was 41 years old, married, with three dependent children at the time of the accident. Petitioner testified she is a Security Therapy Aide for Respondent, Chester Mental Health Center. She aides nursing staff and provides security for nurses and patients. She initially suffered an injury on August 26, 2018 when she was assisting a wheelchair bound patient in and out of the shower. She testified that the second time she and her coworker assisted him, he "proceeded to lift his legs" and put his full weight on them causing gradually increasing pain in her lower back. After she went home to rest and awoke in extreme pain, she reported the incident to Respondent and filled out an accident report.

Petitioner testified she was working full duty at the time of the 8/26/18 accident and did not have any work restrictions. Petitioner testified she had prior low back symptoms in 2012 and

2013 that resolved after undergoing physical therapy and an MRI performed in 2012. She testified she bent over to pick something up that caused her back pain. She testified she did not have any issues with her back from 2013 through August 2018 and has never seen an orthopedic surgeon or neurosurgeon prior to 8/26/18.

Following her accident on 8/26/18, Petitioner sought treatment with her primary care physician who ordered physical therapy and an MRI. She was placed on work restrictions of no bending, lifting, and to alternate standing and sitting, which Respondent accommodated. Petitioner testified her symptoms did not improve with physical therapy and she was referred to Dr. Gornet at the recommendation of her co-workers. Dr. Gornet prescribed two medications and ordered Petitioner to take Vitamin D, calcium pills, and lose weight. Dr. Gornet placed Petitioner on a 10-pound lifting restriction.

Petitioner testified she was evaluated by Dr. Robson at Respondent's request. She saw Dr. Robson twice and he returned her to work. Petitioner returned to full duty work on 5/3/19 when she sustained a second injury to her low back. She worked the evening shift from 3:00 p.m. to 11:00 p.m. and alleged her injury occurred at 3:45 p.m. on 5/3/19. Petitioner testified she was assisting a one-on-one patient with a gait belt when the patient slipped and she reached out to grab him. She felt pain shoot across her low back and down her legs. She immediately reported the accident to the Charge Therapy Aide. She filled out an accident report and was ordered to report to Respondent's medical clinic. Petitioner testified she was in significant pain and she was sent to the emergency room for evaluation. Petitioner testified she stopped working light duty on 12/3/19 when she exhausted the 180 days allowed by Respondent. Petitioner testified she has not worked full duty since 5/3/19. She worked light duty on 4/5/20 and 4/6/20 for which she received full pay. Petitioner has not returned to full duty work and she desires to undergo a lumbar fusion as recommended by Dr. Gornet.

Petitioner testified she does not have a life right now and depends on her 17-year old child to do things she normally did. She has undergone extensive physical therapy that has not improved her symptoms. Petitioner testified she has not suffered any additional injuries since her second accident on 5/3/19 that is the subject of this claim, and no additional incidents between her initial injury on 8/26/18 and 5/3/19.

Respondent called Tamara Linders, Respondent's workers' compensation case coordinator, to testify at trial. Ms. Linders testified she was aware Petitioner was injured on 5/3/19, which was her first day back to full duty since the 8/26/18 injury. She testified that she procured the video footage recorded at the time of the incident at the request of TriStar and reviewed same before she forwarded it to their office. Respondent played the video at Arbitration, which was admitted into evidence over Petitioner's objection. The Arbitrator notes that the video shows Petitioner walking with a patient and holding on to the patient with a gait belt. Petitioner is viewed on the video approximately two minutes later again walking with the patient using the gait belt and Petitioner was holding a clipboard. Petitioner testified she held the clipboard the entire time she assisted the patient. Petitioner walked to the nurse's station and then down the hall.

Ms. Linders testified there is a 180-day light duty limit at Chester Mental Health, after which the employee has to rely on temporary total disability or extended benefits or use their own personal time if they cannot return to full duty work. On cross-examination, Ms. Linders acknowledged that the location where Petitioner alleged the accident occurred was not depicted in the video. The accident occurred in the bathroom where there are no cameras. Ms. Linders likewise acknowledged that Petitioner promptly reported the incident on the day it occurred. Ms. Linders testified she was aware of Dr. Gornet's light duty work restrictions, including a restriction of no lifting more than 10 pounds. She admitted that if Respondent were to accommodate an employee with said restrictions, the employee would not be placed in a position where they were assisting patients. However, she testified Petitioner had returned to full duty work on 5/3/19 from her prior claim pursuant to Section 12 examiner, Dr. Robson's, orders. Ms. Linders admitted that the work activity Petitioner was engaged in at the time of her injury on 5/3/19 was outside of the restrictions of her treating physician, but not those of Dr. Robson. Ms. Linders acknowledged that Petitioner made a good faith effort to return to her job activities and she had no firsthand information that Petitioner was not injured during the second incident.

MEDICAL HISTORY

Petitioner sought treatment at the office of Dr. Elvira Salarda at Quality Healthcare Clinic on 8/28/18. The attending nurse practitioner noted a consistent history of the injury, that Petitioner had an abdominal hernia repair in July 2017, and noted Petitioner expressed concern over pain also present in her mid-abdomen. Physical examination demonstrated spasm of the peri-lumbar musculature, positive bilateral leg raise, pain with bending, and pain with palpation of peri-lumbar musculature. Petitioner was prescribed a Medrol dose Pak and Flexeril, instructed to use ice or heat, and was taken off work. On 9/4/18, Petitioner continued to report low back and groin pain, and daily spasms from her mid to low back that radiated up her spine. Nurse Murphy recommended x-rays, physical therapy, and additional time off work. X-rays showed moderate osteoarthritis but were otherwise normal.

Petitioner participated in physical therapy that was disrupted by spasms. Petitioner's physician encouraged her to continue physical therapy and return to light duty work. Petitioner's condition did not improve and a physical examination by Dr. Elvira Salarda revealed positive straight leg raising with radiculopathy in her bilateral legs, tenderness over the SI joint bilaterally, and tense lumbar muscles. Dr. Salarda ordered an MRI, advised Petitioner to take Naprosyn and Flexeril, and if needed to hold off on Naprosyn and use Toradol. The lumbar MRI was performed on 10/18/18 and showed bulging of the L5-S1 disc causing central canal neural foraminal narrowing bilaterally and bulging of the L3-4 and L4-5 discs.

Petitioner began aquatic therapy and also tried traction that caused increased back pain and spasms that travelled down both legs into her calves. Petitioner also reported difficulty using pain medication at work due to sleepiness, which left her in increased pain. Petitioner was examined by Dr. Matthew Gornet on 11/6/18 who took a consistent history of the accident and noted Petitioner's worsening bilateral back pain with radiculopathy, particularly with prolonged sitting, standing, bending, or lifting. Dr. Gornet noted Petitioner's history of prior back problems for which she had chiropractic care. Physical examination revealed pain in Petitioner's low back into both buttocks, both hips, and intermittently inter her legs. Straight leg raise was positive and

reproduced her low back pain bilaterally at 60 degrees. Dr. Gornet reviewed the MRI dated 10/18/18 and found it of moderate to poor quality. Dr. Gornet found strong suggestion of central disc injury and pathology at L5-S1 and perhaps an annular tear at L4-5. He recommended a new high-resolution MRI and, depending on the findings, considered steroid injections. Dr. Gornet believed Petitioner's current symptoms were causally connected to her described injury.

The high-resolution MRI was performed on 11/6/18 and revealed a central annular tear at L5-S1, along with a protrusion on the left at L4-5. The findings at L5-S1 were omitted by the radiologist, who only noted disc bulges at L3-4 and L4-5 with a probable left foraminal annular tear or fissure at L4-5. Dr. Gornet recommended an L5-S1 steroid injection and tentative discogram depending on Petitioner's response to the injection. He also placed Petitioner on light duty with a 10-pound lifting limit, with no repetitive bending or lifting, and instructions to alternate between sitting and standing as needed. Petitioner underwent an epidural steroid injection 11/20/18 which provided temporary relief. Petitioner returned to Dr. Gornet on 1/10/19 and reported continued low back pain into her bilateral hips and lower extremities, which he noted to be classic of discogenic pain. Dr. Gornet reviewed the MRI that was performed on 11/16/12 and compared same to her present scan, noting that the pathology present on Petitioner's current scan was not present on the 2012 MRI. Dr. Gornet recommended Petitioner lose weight before undergoing a CT discogram at L4-5 and L5-S1. In the meantime, Dr. Gornet managed Petitioner's condition with medication and ordered an MRI Spectroscopy. He also noted that although Petitioner was on light duty, she had "timed out" and was therefore off work.

On 4/9/19, Petitioner was examined by Dr. David Robson pursuant to Section 12 of the Act. Dr. Robson noted Petitioner's history of injury and course of medical care. Dr. Robson indicated Petitioner's prior back pain resolved with chiropractic treatment and she had no interval treatment. Dr. Robson also noted that Petitioner's description of the accident was consistent with the injury report and the job description he reviewed. Though physical examination was relatively normal compared with that of Petitioner's treating physicians, Dr. Robson felt the 8/26/18 incident caused the condition in Petitioner's lumbar spine and he believed her treatment to date had been reasonable. However, Dr. Robson did not believe Petitioner was a surgical candidate, and given that Petitioner had exhaustive conservative care, he believed no further treatment would alter her condition. Dr. Robson opined Petitioner had reached maximum medical improvement.

Based upon the opinion of Dr. Robson, Petitioner returned to full duty work on May 3, 2019 and allegedly sustained another low back injury. Petitioner reported to the emergency room immediately following her accident and complained of severe lumbar spine pain radiating into her right and left thighs. The attending clinician noted that the quality of Petitioner's pain was similar to prior episodes. Petitioner was again placed under restrictions of no lifting greater than 15 pounds, bending, or stooping until released and was advised to rest at home for two days.

Petitioner followed up with her family physician who assessed lumbosacral pain, bilateral hip pain, and exacerbation of her previous back injury. Petitioner was continued on Valium and Flexeril and advised to follow up with Dr. Gornet and complete her discogram. Petitioner returned to Dr. Gornet on 5/11/19 who noted Petitioner successfully lost some weight. He noted Petitioner's symptoms were similar in nature and location but were now more severe. Dr. Gornet

believed Petitioner had an aggravation of her underlying condition and recommended moving forward with his initial plan of treatment, including an MRI spectroscopy and CT discogram. Dr. Gornet placed Petitioner back on light duty restrictions of no lifting greater than 10 pounds, no repetitive bending or lifting, and alternating between sitting and standing.

The CT discogram was performed on 5/29/19 that showed a provocative disc at L5-S1 with a posterior annular tear and concordant pain. Petitioner was stoic throughout the procedure and showed no functional overlays. Dr. Gornet noted the MRI Spectroscopy performed on 5/11/19 had artifact and could not be read. Based on the discogram, Dr. Gornet recommended a single-level disc replacement or possible fusion at L5-S1. He kept Petitioner under restrictions and continued to relate Petitioner's condition to the first injury on 8/26/18.

Respondent requested a supplemental opinion from Dr. Robson after providing him with the CT Discogram which he interpreted to show minimal degenerative changes at L5-S1 and no herniation or extravasation of dye. Dr. Robson stated these studies reinforced his belief that Petitioner's medical care and treatment had been reasonable and necessary, but he believed Petitioner should accept her condition and not pursue further treatment.

Dr. Robson testified by way of evidence deposition. Dr. Robson is a board-certified orthopedic surgeon who treats spine injuries. He testified that his review of Petitioner's imaging studies revealed dehydration of the discs at L3-4, L4-5, and L5-S1, and a central L5-S1 protrusion which he classified as minimal. He acknowledged that Petitioner's protrusion at L5-S1 was as a result of the injury on 8/26/18. However, he did not believe that Petitioner required further treatment for same. Dr. Robson opined he would not perform surgery on anyone with a BMI greater than 35, and Petitioner's BMI was 37. He acknowledged that Dr. Gornet recommended Petitioner lose weight. When asked what he would recommend if Petitioner lost weight and was still symptomatic, he testified Petitioner should live with her condition on account of the small degree of pathology.

Dr. Gornet testified by way of evidence deposition. Dr. Gornet is a board-certified orthopedic surgeon whose practice focuses on treatment and research concerning neck and back pain. He has participated in over 45 FDA IDE clinical trials for neck and back pain and is currently involved in a national study using genetically modified stem cells to regenerate injured discs. He testified he has been performing disc replacements since 2003 and authored the largest FDA clinical trial ever run for a spinal implant, which studied randomizing disc replacement at a single level compared with fusion at a single level. He testified that on average, disc replacement saved the employer/insured $200,000 per patient over their lifetime.

Dr. Gornet testified that it had been some time since Petitioner sought treatment for her pre-existing low back complaints, and that unlike before, she has been unable to return to work with conservative care. He stated that the positive straight leg testing elicited during physical examination was a soft indicator of structural back pain. He observed that the MRI studies showed central disc pathology at L5-S1, and he causally related same to her work injury of 8/26/18. He testified that his impression was corroborated by the CT discogram, which showed dye in the center of the disk travelling straight backwards toward the tear at L5-S1. The test reflected that Petitioner was provocative at that level, demonstrating her pain was concordant

with all of the objective findings on her diagnostic studies. Dr. Gornet also reviewed an MRI from 2012 and testified it did not show any of the disc pathology visualized on her current scans.

Dr. Gornet testified the CT discogram showed a small tear in Petitioner's disc at L4-5, but this was non-provocative. Dr. Gornet testified the MRI Spectroscopy was now an FDA approved diagnostic technique commercially available on the market. He testified that Petitioner's spectroscopy demonstrated normal chemicals at the levels outside of L5-S1 and he recommended single-level surgery at that level. Dr. Gornet testified that after his surgical recommendation, Petitioner sustained a second accident as a result of Dr. Robson's opinion that she could return to work full duty. Dr. Gornet testified that Petitioner has a known structural problem that is seen not only on MRI scan, but objectively proven on her CT discogram. The objective lesion correlates with her back pain and was concordant with her typical back pain.

Dr. Gornet testified that this type of disc injury is by *de facto* a surgical lesion because Petitioner has failed appropriate conservative care, it has been over six months, and she has objective pathology. Dr. Gornet opined Petitioner is not at maximum medical improvement as stated by Dr. Robson. Her subjective complaints and objective pathology have not reverted back to baseline and there is appropriate potential treatment that could cure and relieve the effects of that. Dr. Gornet opined he did not believe Petitioner would improve absent surgery, particularly given the fact that performing a regular work task exacerbated her symptoms. However, Dr. Gornet testified Petitioner could return to work full duty with surgical treatment. He testified that Petitioner's second accident did not change her course of care.

Dr. Gonet opined that within a reasonable degree of medical certainty Petitioner's need for surgery was causally related to her injury on 8/26/18. The 2012 MRI did not show central disc pathology and her initial MRI following the 8/26/18 accident did show central disc pathology. The subsequent MRI scan clearly showed central disc pathology and an annular tear. The CT discogram clearly identified exactly the same pathology which correlated on the MRI. Petitioner was working full duty with no restrictions for three years up until the time of injury on 8/26/18, and since that injury she has never returned to baseline. Finally, Dr. Gornet testified Petitioner's mechanism of injury on 8/26/18 is well-known to cause a disc injury, specifically when a sudden mechanical load is placed which is usually flexion and rotation.

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, an injury must "arise out of" and "in the course of" employment. 820 ILCS 305/1(d). 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*, 117 Ill.2d 38, 509 N.E.2d 1005 (1987). In order to meet this burden, a claimant must prove that the risk of injury is peculiar to the work or that he or she is exposed to the risk of injury to a greater degree than the general public. *Id.* "In the course of employment" refers to the time, place and circumstances surrounding the injury. *Lee v. Industrial Comm'n*, 167 Ill. 2d 77, 656 N.E.2d 1084 (1995); *Scheffler Greenhouses, Inc. v. Indus. Comm'n*, 66 Ill. 2d 361, 362 N.E.2d 325 (1977). That is to

say, for an injury to be compensable, it generally must occur within the time and space boundaries of the employment. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003).

Petitioner's injury clearly falls within the definition of an accident within the meaning of the Act. She was performing a task distinctly related to her employment when she reached out to grab a falling patient. There is no dispute Petitioner immediately reported her accident and sought medical treatment the same day. Petitioner's testimony was consistent with the report of injury and medical records.

Respondent disputes that Petitioner suffered an injury based on surveillance video demonstrated at Arbitration. Respondent's workers compensation coordinator verified, however, that the incident occurred in the restroom where there are no surveillance cameras. Moreover, she testified that she had no firsthand information that Petitioner was not injured on 5/3/19 as alleged by Petitioner. She confirmed that Petitioner reported the injury the same day it occurred. The Arbitrator finds the video has no probative value and there is no basis for a dispute as to accident.

Given the absence of any evidence contrary to Petitioner's testimony of the injury and the records which consistently document the occurrence of same, the Arbitrator finds that Petitioner met her burden of proof and did sustain accidental injuries that 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?

The Arbitrator further finds that Petitioner's current condition of ill-being is not causally related to her subsequent accident that occurred on 5/3/19 but remains related to her initial accident on 8/26/18 (Case No. 18-WC-36265). The record suggests the 5/3/19 accident aggravated Petitioner's symptoms and that neither the character of her symptoms nor her recommended course of treatment was altered as a result thereof. It was noted in the emergency room on 5/3/19 that Petitioner's pain was similar to prior episodes. Similarly, Dr. Gornet noted that Petitioner's complaints were similar in nature and location and proceeded with his pre-planned course of care. While Petitioner's symptoms increased following the 5/3/19 accident, it is clear the second incident did not sever the chain of causal connection from the first incident. *Lasley Construction Co. v. Industrial Comm'n,* 274 Ill.App.3d 890, 893, 655 N.E.2d 5 (1995) (holding that "other incidents, whether work-related or not, may have aggravated the claimant's condition is irrelevant").

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?

Based on the Arbitrator's decision that Petitioner's current condition of ill-being is not causally related to her subsequent accident that occurred on 5/3/19 but remains related to her initial accident on 8/26/18, and the Arbitrator having awarded Petitioner medical expenses and

prospective medical treatment in Case No. 18-WC-36265, the Arbitrator does not award further benefits herein.

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

Based on the Arbitrator's decision that Petitioner's current condition of ill-being is not causally related to her subsequent accident that occurred on 5/3/19 but remains related to her initial accident on 8/26/18, and the Arbitrator having awarded Petitioner temporary total disability benefits in Case No. 18-WC-36265, the Arbitrator does not award further benefits herein.

Linda J. Cantrell

Linda. J. Cantrell, Arbitrator

11/25/20

DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC014568
Case Name	KANIA, WALDEMAR v. PEPBOYS AUTO
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remanded Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0008
Number of Pages of Decision	3
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Nicholas Clifford
Respondent Attorney	Monica Fernandez

DATE FILED: 1/6/2022

/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 clarification	☐ Rate Adjustment Fund (§8(g))
☒ Vacate: lack of record	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

WALDEMAR KANIA,

Petitioner,

vs. No: 11 WC 14568

PEPBOYS AUTO,

Respondent.

DECISION AND OPINION ON REVIEW

This matter comes before the Commission on Petitioner's Review of the Order of the Arbitrator granting Respondent's Motion to Dismiss Petitioner's claim. Petitioner filed his instant claim on April 14, 2011 alleging lumbar disc injuries sustained on April 1, 2011. On August 1, 2012, Petitioner amended his Application for Adjustment of Claim to change the alleged accident date to March 31, 2011.

On June 11, 2012, Respondent moved to dismiss Petitioner's instant claim based on settlement contracts in three prior claims Petitioner had against Respondent. In 10 WC 44493, the Commission approved a settlement in the amount of $2,767.50 for alleged right-hand tenosynovitis sustained on August 31, 2010, representing loss of the use of 5% of the right hand.

In 10 WC 44492, on December 9, 2011 the Commission approved a settlement in the amount of $553.50 for a laceration sustained on May 9, 2010 representing loss of the use of 1% of the left hand. In that contract, the parties agreed that "other claims under the Act may exist between the parties, and that it's the specific intent of the petitioner to fully release respondent from any and all claims to the date of approval of these contracts as the settlement is based on petitioner's present medical condition and it is the specific intent of petitioner to release respondent from any and all such accidental injuries or claims arising to date of contract approval." Interestingly, the settlement contract itself indicates that the settlement in that claim represented 1% loss of the use of the left hand and the official records of the Commission indicates that the settlement represented loss of 1% of the person-as-a-whole.

Finally, in 08 WC 22001, on February 11, 2010 the Commission approved settlement in the amount of $13,200.00 for injuries to Petitioner's back sustained on or about April 15, 2008, representing loss of the use of 8% of the person-as-a-whole. In that settlement contract, Petitioner agreed that the settlement included all injuries sustained on or about April 15, 2008, and the settlement contract includes all claims through the date of the contract.

On May 30, 2019, the Arbitrator granted Respondent's Motion to Dismiss Petitioner's claim. There is no transcript of any proceedings before the Arbitrator, and we do not have any memorialization of the bases upon which the Arbitrator granted Respondent's motion to dismiss.

Section 9020.60(c) of the Rules of the Commission provides that regarding voluntary dismissals: "a party may file a motion to dismiss his or her claim or any Petition or motion filed on his or her behalf without the signature of his or her attorney of record. The moving party must serve the motion on his or her attorney and the opposing party, in the manner set forth in Section 9020.20(a), and **set the motion for hearing** as Section 9020.70. In these cases, there shall be no disposition of the claim on its merits prior to the disposition of the motion" (emphasis added).

As noted above, there is no record of any transcript of any hearing regarding disposition of Respondent's Motion to Dismiss. While our rules allow a claimant to dismiss any pleading without the signature of his or her lawyer, the rule quoted above clearly contemplates a hearing in which an Arbitrator determines the efficacy of dismissing the claim. If that requirement is necessary in a claim voluntarily dismissed by a claimant, it certainly should be required when the motion to dismiss is presented by the employer, which is the case here. There is no record upon which the Commission can properly assess the propriety of the Arbitrator's action in granting Respondent's Motion to Dismiss, which we note was vehemently opposed by Petitioner.

Therefore, the Commission vacates the Arbitrator's dismissal of Petitioner's claim, remands the matter to the Arbitrator to conduct a formal hearing on Respondent's Motion to Dismiss, to produce a court-reporter's record of the hearing, and to enter an order on the motion memorializing the bases for his decision.

IT IS THEREFORE ORDERED BY THE COMMISSION, that the Arbitrator's order of May 30, 2019 is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION, that the matter be remanded to the Arbitrator to conduct a formal hearing on Respondent's Motion to Dismiss, to produce a court-reporter's record of the hearing, and enter an order on the motion memorializing the bases for his decision.

January 6, 2022

/s/*Deborah L. Simpson*
Deborah L. Simpson

/s/*Stephen J. Mathis*
Stephen J. Mathis

/s/*Deborah J. Baker*
Deborah J. Baker

DLS/dw
O-12/8/21
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ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC010913
Case Name	TELLEZ JR, FRANK v. GROSSINGER TOYOTA NORTH
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0009
Number of Pages of Decision	27
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Mitchell Horwitz
Respondent Attorney	JASON ALLAIN

DATE FILED: 1/6/2022

/s/Maria Portela, Commissioner

Signature

22IWCC0009

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

FRANK TELLEZ, JR.,

Petitioner,

vs. NO: 16 WC 10913

GROSSINGER TOYOTA NORTH,

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 nature and extent and penalties pursuant to Sections19(k), 19(l), and fees pursuant to Section 16, 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 as it pertains to the wage differential award. However, the Commission reverses the award of penalties pursuant to Sections 19(k) and 19(l) and attorney's fees pursuant to Section 16. The Commission further finds that all of the medical bills have been paid.

In order to qualify for wage differential benefits under Section 8(d)(1) of the Act, a Petitioner must prove: (1) a partial incapacity which prevents him from pursuing his usual and customary line of employment; and (2) an impairment of earnings. In *Smith v. Industrial Comm'n*, 308 Ill.App.3d 260, 265-66 (1999), the appellate court ruled that "[t]he object of Section 8(d)(1) is to compensate an injured claimant for his reduced earnings capacity, and if an injury does not reduce his earning capacity, he is not entitled to compensation" under that Section.

Prior to the work accident, Petitioner had an average weekly wage of $2,231.32. After the

work accident, between January 3, 2019 and July 6, 2019, Petitioner had average weekly earnings of $601.39 – a difference of $1,629.33 per week.

Petitioner has demonstrated that he has suffered a partial incapacity with prevents him from pursuing his usual and customary line of employment as an auto mechanic, AND has shown an impairment of earnings.

The Arbitrator awarded a wage differential under Section 8(d)(1) of $1,048.67 per week based on the State maximum until Petitioner turns 67 years of age or 5 years from the date this award becomes final. This award is affirmed and adopted.

Regarding the medical bills Petitioner alleges remained unpaid and therefore, subject to penalties, the Commission finds that Respondent has paid all outstanding medical bills pursuant to the fee schedule and penalties and fees are not applicable.

At the hearing, Petitioner conceded that the bills for Lincolnwood Fire Department had been paid. Additionally, the Commission finds that Rx4 corroborates that the bills of Athletic Therapeutic Institute, ATI Physical Therapy and Premier Healthcare Services have been paid. The Commission further finds that the bill for $26.72 from Presence Resurrection Medical Center is "balance billing" (as prohibited by 820 ILCS 305/8.2(e)) after the bill had already been paid. Finally, the Commission finds that all bills have been paid to RMC Cardiology as corroborated within Px25. A payment of $9.58 was received on July 12, 2016, with a contractual adjustment made by the provider in the amount of $72.42 leaving a balance of $0.00. Another payment of $9.11 was received on March 13, 2018, with a contractual adjustment made by the provider in the amount of $72.89 leaving a balance of $0.00, thereby supporting that the $160.00 alleged to be outstanding was, in fact, paid.

As all of the bills alleged to be outstanding and overdue have been paid, there is no basis pursuant to Sections 16, 19(k), or 19(l) on which to award penalties. The Commission therefore reverses the Arbitrator's award of 19(k) penalties of 50% of the unpaid medical bills, or $14,779.22, pursuant to the fee schedule, and the attorneys' fees of 20% of the unpaid medical bills pursuant to the fee schedule and the 20% of the 19(k) award on the unpaid medical bills. The Commission additionally reverses the Arbitrator's award under 19(l) of $10,000.00 for the unpaid medical bills.

Moreover, the Commission reverses the Arbitrator's award of penalties and fees pursuant to Sections 19(k), 19(l) and 16 as it pertains to the alleged non-payment of the wage differential benefits.

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.

The Commission finds that Section 19(l) penalties may be imposed only with respect to nonpayment or delays in payment of benefits pursuant to Sections 8(a) and 8(b), but do not apply to nonpayment of Section 8(d)1 wage differential benefits.

The Commission also reverses the Arbitrator's award of attorney's fees pursuant to Section 16 and penalties pursuant to Section 19(k) as they pertain to the non-payment of wage differential benefits for the period from February 26, 2019 through July 23, 2019. The Petitioner alleges that the demand for payment was made and the supporting documentation for same was provided 2 months prior to trial. Respondent had paid $200,121.45 in weekly benefits as of the time of trial. Respondent paid TTD from March 24, 2016 through March 28, 2017, and September 13, 2017 through October 22, 2018 in the amount of $154,798.04; TPD from March 29, 2017 through September 12, 2017 in the amount of $27,140.55; maintenance from October 23, 2018 through January 2, 2019 in the amount of $14,178.05. Although Respondent owed wage loss differential from January 3, 2019 through July 23, 2019 in the amount of $30,264.63, Respondent actually paid benefits through February 26, 2019, so the amount outstanding was $26,259.81. The Commission finds Respondent's argument that it did not have sufficient information/documentation regarding the weekly wage Petitioner was being paid by his new employer to be persuasive. The Commission finds Respondent's failure to pay $26,259.81 in wage differential benefits did not rise to the level of vexatious, unreasonable, or intentional conduct as required pursuant to Section 19(k) of the Workers' Compensation Act.

When an employer chooses to delay payment of compensation, it has the burden of showing that it had a reasonable belief that the delay was justified. *Roodhouse Envelope Co. v. Industrial Comm'n*, 276 Ill.App.3d 576, 579 (1995). Whether an employer acts unreasonably or vexatiously in failing to pay benefits is a question of fact to be determined by the Commission, and such findings will not be disturbed by a reviewing court unless the determination is against the manifest weight of the evidence. *Roodhouse*, 276 Ill.App.3d at 579. Based on the evidence presented at trial that the documentation supporting the actual wage differential owed was not received until May 20, 2019, Respondent had a reasonable belief that the delay was justified.

As the Commission finds there is no statutory or evidentiary basis to support an award of 19(k) or 19(l) penalties as to the alleged non-payment of the wage differential benefits, the Commission also reverses the Arbitrator's award of Section 16 fees as it pertains to the wage differential.

Section 16 states in pertinent part:

> Whenever the Commission shall find that the employer, his or her agent, service company or insurance carrier has been guilty of delay or unfairness towards an

> employee in the adjustment, settlement or payment of benefits due such employee within the purview of the provisions of paragraph (c) of Section 4 of this Act; or has been guilty of unreasonable or vexatious delay, intentional under-payment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier.

For the same reasons that Section 19(k) penalties are not warranted, the Commission reverses the Arbitrator's award of Section 16 attorneys' fees. The Commission finds that the evidence does not support that Respondent's conduct was vexatious, unreasonable or intentional.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,398.23 per week for a period of 110 5/7 weeks, from March 24, 2016 through March 28, 2017, and September 13, 2017 through October 22, 2018, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,398.23 per week for a period of 24 weeks, from March 29, 2017 through September 12, 2017, that being the period of temporary partial incapacity for work under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,398.23 per week for a period of 10 2/7 weeks, from October 23, 2018 through January 2, 2019, that being the period of maintenance for work under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner a wage differential of $1,048.67 per week, beginning January 3, 2019 and shall be paid until Petitioner reaches age 67 on October 25, 2032, or 5 years after the award becomes final, under §8(d)1 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent has paid the sum of $14,779.22 for medical expenses under §8(a) of the Act, subject to the fee schedule in §8.2 of the Act.

IT IS FUTHER ORDERED BY THE COMMISSION that the awards for penalties and fees under Sections 16, 19(k) and 19(l) are reversed for the reasons set forth 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.

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.

January 6, 2022

/s/ *Maria E. Portela*

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

MEP/dmm
O: 11/09/21
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ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

TELLEZ JR, FRANK
Employee/Petitioner

Case# **16WC010913**

GROSSINGER TOYOTA NORTH
Employer/Respondent

On 10/3/2019, 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 1.79% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0274 HORWITZ HORWITZ & ASSOC
MITCHELL W HORWITZ
25 E WASHINGTON ST SUITE 900
CHICAGO, IL 60602

5001 GAIDO & FITZEN
PETER HAVIGHORST
30 N LASALLE ST SUITE 3010
CHICAGO, IL 60602

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

Frank Tellez, Jr., **Case # 16 WC 10913**
Employee/Petitioner
v.
Grossinger Toyota North,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Robert M. Harris**, Arbitrator of the Commission, in the city of **Chicago** on **July 23, 2019**. 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. ☒ 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 24, 2016, Respondent ***was*** operating under and subject to the provisions of the Act.

On March 24, 2016, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On March 24, 2016, 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 ***$116,028.86***; the average weekly wage was ***$2,231.32.***

On the date of accident, Petitioner was ***51*** years old, ***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 $172,980.90 for TTD, $27,140.55 for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of $200,121.45.

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

ORDER

Temporary Total Disability Benefits, Temporary Partial Disability Benefits, Maintenance Benefits

Respondent to pay Petitioner TTD benefits for the period 3/24/16 through 3/28/17, and 9/13/17 through 10/22/18 representing 110-5/7 weeks x $1,398.23, for a total amount of $154,798.04.

Respondent to pay Petitioner TPD benefits for the period from 3/29/17 through 9/12/17, representing 24 weeks, for a total of amount of $27,140.55.

Respondent to pay Petitioner Maintenance benefits for the period(s): 10/23/18 through 1/2/19, representing 10-2/7 weeks x $1,398.23 for a total amount of $14,178.05.

Medical Awarded

Respondent shall pay reasonable and necessary medical services of $14,779.22, as provided in Sections 8(a) and 8.2 of the Act.

Wage differential Award Under Section 8(d)1 of the Illinois Workers' Compensation Act

Respondent shall pay Petitioner benefits, commencing January 3, 2019, of $1,048.67/week because Petitioner has suffered a wage loss of $1,629.33 per week as provided in Section 8(d)(1) of the Act. This award shall be paid until Petitioner reaches age 67 on October 25, 2032, or 5 years after the award becomes final, whichever is later.

The total accrued weekly benefits owed to Petitioner as of July 23, 2019 including, TTD, TPD, Maintenance and Wage Loss is $226,381.26. Respondent has paid a total of $200,121.45 in weekly benefits. The unpaid accrued wage loss benefit is therefore $26,259.81 as of July 23, 2019.

Penalties and Fees Award Pursuant to Section 16 and 19 of the Illinois Workers' Compensation Act

Pursuant to Section 19(l) Respondent shall pay $10,000.00 to Petitioner for non-payment of medical expenses and wage loss.

Pursuant to Section 19(k) Respondent shall pay $13,129.91 for non-payment of wage loss to Petitioner.

Pursuant to Section 19(k) Respondent shall pay to Petitioner 50% of the unpaid medical bills, **after** these medical bills are subject to any fee schedule reductions, if any, pursuant to Section 8.2.

Pursuant to Section 16 Respondent shall pay $7,877.95 in attorneys' fees for non-payment of wage loss benefits to Petitioner.

Pursuant to Section 16 Respondent shall pay attorneys' fees of 20% of the unpaid medical bills pursuant to the fee schedule, and 20% of the 19(k) award on the unpaid medical bills.

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

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

Robert M. Harris

Signature of Arbitrator Robert M. Harris

October 2, 2019
Date

OCT 3 - 2019

MEMORANDUM OF DECISION OF ARBITRATOR

STATEMENT OF FACTS

Direct Examination of Petitioner, Frank Tellez, Jr.

Petitioner, Frank Tellez, testified he was injured on March 24, 2016, while working for Respondent, Grossinger Toyota North (Transcript on Arbitration, hereinafter "T" @ 18). Respondent is an automotive dealership and Petitioner was employed by Respondent as an automotive technician (T @ 18). Petitioner's job involved working on vehicles (T @ 18). Petitioner would fix the vehicles, diagnose them, repair them, brakes, tune-ups, transmissions (T @ 18). Petitioner had been performing that job for 32 years, which were not all with Respondent (T @ 18). Petitioner began this line of work while he was in his 20's (T @ 18).

When asked about his educational background, Petitioner graduated high school and attended automotive school (T @ 19). Before entering the automotive industry, Petitioner worked at restaurants (T @ 19).

Petitioner would have to lift transmissions onto a transmission jack (T @ 19). A transmission can weight up to 700 pounds per vehicle but can weigh over 1,200 pounds if the vehicle is a truck (T @ 20). Four or five men lift the transmission (T @ 20).

Other heavy items which would have to be lifted were engine blocks, which would be lifted and placed on an engine stand. (T @ 20). A cherry picker engine lift would assist in the mounting of the engine block onto the engine stand (T @ 20).

Petitioner would squat and knee all the time, every day, pretty much 8 hours a day (T @ 20). Petitioner would also have to crawl and bend (T @ 21).

March 24, 2016 Incident

While working on a vehicle, Petitioner was called by the dispatcher and asked to see another vehicle (T @ 21). After Petitioner obtained keys he walked outside (T @ 21). After speaking to a service advisor, Petitioner walked outside toward the vehicle he needed to inspect, when he was struck by another vehicle that was moving in reverse (T @ 21).

Petitioner was struck by an SUV, a RAV4 vehicle on the left side of his body, which included his head, waist, and left knee (T @ 21). Petitioner estimated that the SUV was traveling over 10 miles per hour (T @ 22). The SUV which struck Petitioner was being driven by a co-worker, who was Respondent's head porter (T @ 22).

Medical Treatment

Petitioner was taken by ambulance to St. Francis Hospital in Evanston, Illinois (T @ 22). . Petitioner underwent a left knee x-ray and a left elbow x-ray (T @ 22). Petitioner complained of neck pain and was given crutches (T @ 22). In addition to crutches, Petitioner was given a knee brace (T @ 23).

Petitioner went to Physicians Immediate Care initially, which kept Petitioner off work (T @ 23)

Petitioner next sought treatment with his primary physician, Dr. D'Souza (T @ 23). Dr. D'Souza ordered an MRI of Petitioner's left knee and an MRI of Petitioner's lower back (T @ 23).

An MRI of Petitioner's left knee revealed a medial meniscus tear, edema in the lateral femoral condyle and tibial plateau from presumed bony contusions and narrowing and arthritis lateral compartment from minimal DJD/OA (PX 1).

In April of 2016, Dr. D'Souza referred Petitioner to seek treatment from Dr. Kevin Tu, who Petitioner visited on April 27, 2016. Dr. Tu placed Petitioner on a 10-pound lifting restriction, with no prolonged standing, walking, kneeling, squatting, stooping, or climbing (T @ 24).

Following the accident, Petitioner's left knee hurt a lot, could not bend, and was hard to walk on (T @ 24).

First Left Knee Operation

Petitioner underwent surgery on his left knee at Resurrection Medical Center on June 3, 2016 (T @ 25). Dr. Kevin Tu was the surgeon, who performed a left knee arthroscopic partial medical meniscectomy and a left knee arthroscopic extensive synovectomy (PX 1). The preoperative diagnosis was left knee medial meniscus tear, with the postoperative diagnosis being left knee complex posterior horn tear medial meniscus and left knee synovial impingement (PX 1).

Following surgery, Petitioner performed physical therapy (T @ 25). While attending physical therapy approximately 10 days after surgery, Petitioner was asked by a physical therapist to leg press 100 pounds 30 times, and while performing this activity, Petitioner had pain

in his left knee with increased swelling (T @ 25, 26).

Petitioner underwent an MRI on July 8, 2016 of his left knee (T @ 26).

Dr. Tu then changed the physical therapy provider and Petitioner was sent to Presence Saint Joseph's for physical therapy (T @ 26). Dr. Tu gave Petitioner a cortisone injection in his left knee but it did not help (T @ 26). On August 17, 2016, Dr. Tu discussed with Petitioner the possibility of a second left knee surgery (T @ 27). Dr. Tu planned a diagnostic arthroscopy with possible partial meniscectomy, possible synovectomy, possible chondroplasty (T @ 27). On December 7, 2016, Petitioner's left knee gave way, but Petitioner did not fall (T @ 27).

Dr. Cole Section 12 Exam - October 10, 2016

Dr. Brian Cole examined Petitioner at Respondent's request pursuant to Section 12 on October 10, 2016 (RX 1). Dr. Cole opined Petitioner had subjective left knee pain status post arthroscopy, meniscectomy, June 3, 2016 (RX 1). Dr. Cole opined Petitioner's treatment to date had been reasonable, necessary, and related to his injury date, but did not believe Petitioner needed to undergo a repeat arthroscopy at that time (RX 1). Instead, Dr. Cole suggested conservative measures in the interim, consisting of a cortisone injection, platelet-rich plasm injection, and oral nonsteroidal anti-inflammatories before resorting to surgery (RX 1). Dr. Cole set return to work restrictions of a sedentary-based job with limited squatting, kneeling, climbing throughout (RX 1).

Petitioner's Return to Light Duty Work for Respondent

Respondent took Petitioner back to work in a light-duty job position on or about March 29, 2017 (T @ 28). Petitioner performed the job duties of a dispatcher (T @ 29). As a dispatcher, Petitioner would receive work orders from the service writers, and then Petitioner would check to see which technician was available, and then Petitioner would physically grab the order and walk to the technician to see if he was able to work on the vehicle (T @ 29). As a dispatcher, Petitioner was on his feet all day (T @29). Being on his feet all day at work, Petitioner's left knee hurt a lot, and he would return home and ice it every night after work (T @ 30).

While on light duty, Petitioner's income was supplemented with temporary partial benefits (T @ 30). Petitioner worked as a dispatcher from March 29, 2017 through September 12, 2017 (T @ 30).

At one point, Petitioner's left knee became numb and he was examined for a possible blood clot (T @ 32). An ultrasound was performed at First Community Medical Center on April 27, 2017, and no blood clot was discovered (T@ 32).

Dr. Cole Independent Medical Examination – June 19, 2017

Petitioner again returned to see Dr. Brian Cole on June 19, 2017 at Respondent's request (T @ 32, RX 2). Dr. Cole opined that a second look left knee arthroscopy, to be performed by Dr. Kevin Tu, would be reasonable to go forward to address all pain generators (RX 2).

Petitioner's Second Left Knee Surgery

Petitioner underwent surgery on September 15, 2017 by Dr. Kevin Tu at Resurrection Medical Center (T @ 33). The operation consisted of a left knee arthroscopic partial medical meniscectomy and left knee arthroscopic extensive synovectomy (PX 1). The preoperative diagnosis was left knee pain, with the postoperative diagnosis being left knee medial meniscus fraying and left knee synovitis and medial plica with abrasion over the medial femoral condyle (PX 1).

Petitioner completed physical therapy following surgery (T @ 33).

On December 5, 2017, Petitioner completed a Functional Capacity Assessment (T @ 34).

Petitioner was sent to Dr. Brian Cole a third time by his employer, on March 5, 2018 (T @ 34, RX 3). Dr. Cole opined that Petitioner's medical treatment was related to his surgery performed on September 15, 2017, which relates to his original injury and is work related (RX 3). With regard to work restrictions, Dr. Cole wrote that he would restrict Petitioner's activity to what Petitioner put forth on the functional capacity evaluation (RX 3).

Following his visit to Dr. Cole, Petitioner performed further physical therapy (T @ 34).

Functional Capacity Evaluation

Petitioner completed a second FCE at ATI, which provided restrictions subsequent to the FCE (T @ 36, PX 13). The FCE indicated Petitioner could sit up for an hour, but with 5 to 6 hours at a time (T @ 36, PX 13). The FCE noted Petitioner could stand for up to an hour at a time for 4 to 5 hours and could walk occasional short distances (T @ 37, PX 13). Petitioner could frequently lift desk to chair 28 pounds, chair to floor 32 pounds (T @ 37, PX 13). The FCE

indicated Petitioner could bend and stoop occasionally up to one-third of a day, and could climb stairs up to a third of a day, and no crawling (T @ 37, PX 13). Petitioner was found to be able to crouch and squat occasionally, but was unable to kneel (T @ 38, PX 13).

Petitioner's last visit to Dr. Kevin Tu was on September 10, 2018 (T @ 38). Dr. Tu adopted the restrictions from the FCE as permanent restrictions for Petitioner (T @ 38).

Self-Directed and Assisted Vocational Rehabilitation

Petitioner started performing a self-directed job search from January through October 2018 (T @ 39, PX 18).

Petitioner then began searching for a job with the assistance of Kathy Mueller of Independent Rehab Services, Inc., meeting her for the first time on October 23, 2018 (T @ 39, PX 19). Mueller recommended a new resume and instructed Petitioner on how to look for jobs, apply for jobs, and how to interview (T @ 40). In Mueller's initial vocational assessment report, dated October 23, 2018, Mueller opined Petitioner was a candidate for vocational rehabilitation services (PX 19).

Petitioner obtained a job offer in December of 2018 (T @ 40). The position was a Parts Counter or Counter Person at Napa IBS, American Airlines O'Hare (T @ 41, 45). Napa IBS has a contract with American Airlines and services parts for belt loaders and Ford pickups (vehicles that haul the suitcases around) (T @ 41). Mueller recommended that Petitioner accept the job (T @ 44). Ms. Mueller's January 31, 2019 Vocational Progress Report #3 noted Petitioner was extended an offer to work for Napa Auto Parts as a Counter Sales Representative, with starting pay of $14.05 per hour, and job requirements which fell within the Medium physical demand level (PX 22). Petitioner returned back to full time gainful employment as of January 3, 2019 at his new employer, Napa Auto Parts (PX 22). Mueller wrote in her January 31, 2019 Vocational Progress Report #3 that Petitioner's wage with Napa Auto Parts was within his current earning capacity and within Petitioner's physical capabilities and restrictions as provided by Dr. Kevin Tu (PX 22).

As part of his job duties, Petitioner does a lot of walking, but not too much standing (T @ 42). Petitioner mainly sits at the counter and waits for technicians to come up and drop off a work order (T @ 42). Petitioner has to lift small parts, while any heavy parts are lifted by technicians and obtained by a forklift (T @ 43). The heaviest item Petitioner would lift would be

15 pounds, which is a water pump (T @ 45). Petitioner's current job fits within the physical limitations Dr. Tu imposed (T @ 43).

Petitioner works 7:00 a.m. to 3:30 p.m. Sunday through Thursday (T @ 45).

Petitioner's skills he previously obtained while in the automotive business are also helpful in his current job, as Petitioner knows what item a technician was looking for (T @ 43).

Petitioner's initial pay for NAPA was $14.05 an hour, but Petitioner currently earns $15.85 an hour (T @ 44). While Petitioner was working for Respondent, Petitioner was earning $2,231.32 a week, based upon a 40-hour work week (T @ 44-45). Petitioner's current job pays benefits, and he plans on staying there (T @ 46). It was the best job Petitioner could find in the period he looked for a job (T @ 46). Petitioner had attempted to get a job within his physical restrictions from Respondent, but other than the approximately six months of light duty work, Respondent has not offered Petitioner another position (T @ 46). Following Petitioner's second surgery, Respondent did not offer light duty (T @ 46). Had Petitioner remained employed by Respondent, he would be currently earning at least $2,231.32 per week or more (T @ 45).

If one calculates Petitioner's current average weekly wage and includes overtime hours at the overtime rate, which would be calculation most advantageous to Respondent, Petitioner's current average weekly wage is $601.39 (PX 14, PX 15).

Petitioner's Current Condition of Ill-Being

Currently, Petitioner complains that he cannot kneel on his left leg, and his left leg is in pain every day (T @ 47). Every day, Petitioner uses a blanket of ice to control knee swelling (T @ 48). Petitioner walks with a limp but does not use a cane (T @ 47). Petitioner can only bend his knee 90 degrees (T @ 47). Petitioner currently engages in activity within the FCE restrictions (T @ 48).

Petitioner can no longer ride his bike along the lakefront (T @ 49). Petitioner can no longer play paintball, run, or snowboard (T @ 49).

The last time Petitioner received any form of income or disability benefits from Respondent was on February 26, 2019 (T @ 51).

On May 3, 2019, Petitioner requested Respondent provide an answer as to Respondent's failure to pay wage loss benefits to Petitioner (PX 16). Petitioner included in the correspondence to Respondent, copies of his earnings with his new employer (PX 16). Respondent failed to

reply. On May 20, 2109, Petitioner sent correspondence to Respondent showing Petitioner's wage loss analysis (PX 17). On June 25, 2019 Petitioner filed a petition for penalties and attorneys' fees for non-payment of wage loss and non-payment of medical bills. (PX 24)

Cross-Examination of Petitioner

Petitioner worked for Respondent for about 5 years, from 2012 to 2016, but originally had worked with the company for about 15 years, when the company was known as Skokie Toyota (T @ 52). Petitioner had started out as a mechanic (T @ 52).

Petitioner is able to climb stairs to a second floor to obtain products (T @ 54). Otherwise, Petitioner is at a computer at the front desk (T @ 54). Petitioner would like to one day move up to a managerial position with his current employer (T @ 56). There are currently 11 to 12 employees at his present work location (T @ 56). Petitioner has had the opportunity to work overtime at his current employment, which is asked of him to do sometimes twice a month (T @ 57).

Prior to his first knee surgery with Dr. Kevin Tu, Petitioner never received surgery to his left knee (T @ 55).

Re-Direct Examination of the Petitioner, Frank Tellez, Jr.

An auto mechanic and auto technician are the same position (T @ 58).

CONCLUSIONS OF LAW

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

The Arbitrator finds and concludes that Petitioner has proven by a preponderance of the credible evidence that all the medical treatment provided to him has been both reasonable and necessary. The Arbitrator further finds and concludes Respondent is responsible for all of the bills contained in Petitioner's Exhibit 25, for a total of $14,779.22 to be paid pursuant to Section 8(a) and 8.2 of the Act. The Arbitrator notes Respondent did not object to the admission of the medical bills. The Arbitrator emphasizes that Respondent's own Section 12 expert examining physician, Dr. Brian Cole, **in all three of his reports**, clearly opined that the medical care to

Petitioner had been reasonable, necessary, and related to Petitioner's March 24, 2016 work injury (RX 1, RX 2, RX 3). This was unrebutted. **No further evidence is needed to prove this issue.**

The Arbitrator therefore finds and concludes Respondent is responsible for payment of the following bills totaling $14,779.22, as listed in Petitioner's Exhibit 25, pursuant to Section 8(a) and 8.2 of the Act:

1. Athletic Therapeutic Institute for $2,295.00;
2. ATI Physical Therapy for $8,267.10;
3. Lincolnwood Fire Department for $921.40;
4. Premier Healthcare Services for $3,105.00;
5. Presence Resurrection Medical Center for $26.42;
6. RMC Cardiology for $164.00.

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

The Arbitrator finds and concludes Petitioner has proven by a preponderance of the credible evidence he is entitled to a Wage Differential award pursuant to Section 8(d)1 commencing January 3, 2019.

The Supreme Court has expressed a preference for compensation based on earnings loss, rather than scheduled awards. *General Electric Co. v. Industrial Comm'n*, 89 Ill.2d 432, 437-38 (1982). Specifically, the Court held, "If [the injured worker] can prove an actual loss of earnings greater than the schedule presumes, there is no reason why he should not recover that loss. In theory, ***the basis of the workers' compensation system should be earnings loss***, not the schedule." *Id.* at 438 (emphasis added).

The Appellate Court continued to follow the Supreme Court's lead. Petitioner must prove two elements in order to qualify for a wage differential award under § 8(d)(1) of the Act: 1) partial incapacity which prevents him from pursuing his "usual and customary line of employment," and, 2) an impairment of earnings. *See, e.g. Gallianetti*, 315 Ill.App.3d. at 730. **The Arbitrator finds and concludes Petitioner has proven by a preponderance of the credible evidence he has satisfied both burdens of proof necessary to support an award pursuant to 8(d)1.**

In *Gallianetti*, the Court held: "It is axiomatic that words used in a statute are to be given their plain and commonly understood meaning and where the language of a statute is clear and unambiguous, the courts are obligated to enforce the law as enacted by the legislature. We

conclude that **the plain language of §8(d) prohibits the Commission from awarding a percentage-of-the-person-as-a-whole award where the claimant has presented sufficient evidence to show a loss of earning capacity**." *Id.* at 728 (emphasis added). "Where a claimant proves that he is entitled to a wage-differential award, the **Commission is without discretion** to award a §8(d)(2) award in its stead." *Id.* at 729 (emphasis added). **That is the scenario this case presents.**

Section 8(d)1 of the Act provides that:

> 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. For accidental injuries that occur on or after September 1, 2011, an award for wage differential under this subsection shall be effective only until the employee reaches the age of 67 or 5 years from the date the award becomes final, whichever is later.

In this case Petitioner was struck by a motor vehicle at work. He had a long career as an automobile service technician, which was his job on the date of injury for Respondent. This accident resulted in a left knee injury, two surgeries, extensive physical therapy and the **imposition of permanent physical restrictions** by Dr. Kevin Tu (PX 1) and Dr. Brian Cole (RX 3). Due to the imposition of physical restrictions to his knee he is unable to perform the full duties of an auto service technician. Kathy Mueller, CRC opined on October 23, 2018, "It is this consultant's opinion as a Certified Rehabilitation Consultant and with a reasonable degree of Vocational Certainty that Mr. Tellez has suffered a Loss of Trade and loss access to his usual and customary line of employment as a Service Technician." Mueller identified other jobs Petitioner could perform in her report, the highest paying was at $13.16 per hour as a dispatcher in an automotive repair shop. (PX 19, @ pages 8-9).

With Mueller's assistance, Petitioner ultimately found a job starting at $14.05 per hour working in the parts department of Napa Auto Parts at O'Hare Airport. Petitioner's first day of work was January 3, 2019. Mueller concluded on January 31, 2019, "Based on the Illinois

Department Employment of Security Wage Data for the Chicago, IL area, average hourly wages for a Counter and Rental Clerk position at the Experienced level would be $13.98 per hour. Therefore, it is this consultant's opinion that Mr. Tellez's current wage of $14.05 per hour is within his current earning capacity. The position is also within his physical capabilities and restrictions as provided by Dr. Kevin Tu of G&T Orthopedics." (PX 1, 13, 22) **The Arbitrator finds and concludes the expert vocational opinions of Kathy Mueller, CRC are very credible, are supported by the record as a whole, stand unrebutted and are consistent with the medical records and Petitioner's testimony.** The Arbitrator accordingly adopts Mueller's opinions. (PX 20, 21, 22). **The Arbitrator notes with great significance that Respondent did not offer a rebuttal vocational opinion into evidence.**

The Arbitrator therefore finds and concludes Petitioner has clearly met his burden of proof by a preponderance of the credible evidence under *Galienetti*. The evidence is unrebutted and is clear. This is shown as follows:

First, Petitioner has permanent physical restrictions imposed on his left knee that partially incapacitates him from performing his usual and customary line of employment as an automobile service technician;

Second, Petitioner clearly has suffered an impairment of earnings. Petitioner is no longer able to earn $2,231.22 per week, his wage as an auto service technician. After a job search and the assistance of a vocational rehabilitation counselor he found a job starting at $14.05 per hour working for Napa Auto Parts at O'Hare Airport.

Petitioner would currently earn at least $2,231.21 per week in the full performance of his duties as an auto service technician for respondent. In reviewing Petitioner's post injury wages he earned a total of $15,888.71 from January 3, 2019 through July 6, 2019, a period of 26 3/7 weeks. Applying Section 8(d)(1) "the average amount which he is earning or is able to earn in some suitable employment" is $601.39 per week. (PX 15)

The current average earnings are calculated in a means most advantageous to Respondent, including all overtime at the overtime rate. Section 10 of the Act would exclude overtime. When taking what Petitioner would currently earn in the full performance of his duties for Respondent, $2,231.32 and subtracting $601.39 a week from it, his weekly wage loss under Section 8(d)(1) is therefore $1,629.33 per week. Taking 66-2/3 of $1,629.93, we are left with a PPD rate of $1,086.22. This PPD rate is in excess of the maximum rate for wage loss on the

date of this accident. **The maximum weekly wage differential is capped at the State Average Weekly Wage for Petitioner's date of injury, which is $1,048.67.**

The Arbitrator accordingly finds and concludes Petitioner is entitled to wage differential award benefits pursuant to Section 8(d)1 of the Act, commencing January 3, 2019. Petitioner has suffered a weekly wage loss of $1,629.33. The Arbitrator finds and concludes Respondent shall pay Petitioner wage loss benefits of $1,048.67 per week until Petitioner turns 67 years of age on October 25, 2032, or five years from the date this award become final, whichever is later.

M. Should penalties or fees be imposed upon Respondent?

The Arbitrator finds and concludes, based on a review of the totality of the evidence in record, that Respondent is liable for penalties and fess pursuant to Sections 19(k), 19(l) and 16.

Petitioner filed a Petition for Penalties and Attorney Fees Pursuant to Section 19(k) and Section 16 on June 25, 2019 (PX 24).

Section 19(k) of the Illinois Workers' Compensation Act states:

> "In case where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award. Failure to pay compensation in accordance with the provisions of Section 8, paragraph (b) of this Act, shall be considered unreasonable delay.
>
> When determining whether this subsection (k) shall apply, the Commission shall consider whether an Arbitrator has determined that the claim is not compensable or whether the employer has made payments under Section 8(j)."

Section 19(l) of the Illinois Workers' Compensation Act states:

> "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."

Section 16 of the Illinois Workers' Compensation Act states:

"Whenever the Commission shall find that the employer, his or her agent, service company or insurance carrier has been guilty of delay or unfairness towards an employee in the adjustment, settlement or payment of benefits due such employee within the purview of the provisions of paragraph (c) of Section 4 of this Act; or has been guilty of unreasonable or vexatious delay, intentional under-payment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier."

Penalties and Fees Based on Respondent's Failure to Pay Medical Bills

At trial, Petitioner submitted bills totaling $14,779.22 in medical charges that remain unpaid (PX 25). Respondent posed no objection to these medical bills at the hearing. Respondent has failed to present any evidence to show why these charges have remained unpaid as of the time of trial. Respondent has clearly failed to pay for Petitioner's medical care in a timely manner. Non-payment of medical bills without a reasonable basis is subject to penalties and attorney's fees. Under Section 19(k), the penalty is to be 50% of the entire type of benefit awarded that has accrued. Assessment of $10 per day penalty under §19(1) is mandatory "if the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay. *McMahan v. Industrial Comm'n,* 183 111.2d 499, 702 N.E.2d 545 (1998).

At trial, Respondent entered into evidence its Exhibit 4, which is a printout of Respondent's indemnity payments (TTD and TPD) and medical payments (RX 4). The exhibit, however, clearly fails to explain why some $14,779.22 continues to remain unpaid (PX 25). One of the outstanding bills, of which the provider was Premier Healthcare Services, has an outstanding bill of $3,105.00 for a date of service as far back as July 8, 2016, which is over 1,095 days prior to the date of trial. Again, this non-payment is inexplicable.

The Arbitrator emphasizes that Respondent's own Section 12 expert examining physician, Dr. Brian J. Cole, in all three of his reports, opined that medical care to Petitioner had been reasonable, necessary, and related to Petitioner's March 24, 2016 work

injury (RX 1, RX 2, RX 3). Dr. Cole's opinions were never challenged, let alone impeached. Therefore, it is clear Respondent should have paid the remaining unpaid bills in Petitioner's Exhibit No. 25 and by failing to do so, without good reason or just cause or any valid defense, acted in an unreasonable and vexatious manner.

The Arbitrator awards penalties and attorney's fees under Sections 19(k), 19(l) and Section 16. The total bills of $14,779,22 have not been reduced to the fee schedule yet. The Arbitrator awards 50% of the unpaid medical bills at the fee schedule rate under 19(k). The Arbitrator awards attorney fees of 20% of the total bills at the fee schedule rate, and 20% of the 19(k) when calculated. Under Section 19(l), the Arbitrator awards Petitioner $10,000.00, which is $30 per day at the maximum penalty of $10,000.

Non-Payment of Wage Differential Benefits

Case law holds the non-payment of wage differential benefits can give rise to award of 19(k) penalties. See, *e.g. Peterson v. Mickinsey &Co.,* 99 IWCC 1176. Respondent has failed to pay wage loss or maintenance benefits without any valid legal or factual basis. In denying compensation, Respondent has not reasonably relied in good faith on a medical opinion and has not met the burden of demonstrating a reasonable belief that its denial of liability was justified under the circumstances, as required by *Continental Distrib. Co. v. Indus. Comm'n,* 98 I11.2d 847 (1993), *Bd. Of Educ. V. Indus. Comm'n,* 93 I11.2d 1, 442 N.E.2d 883 (1982) ("*Tully*" case).

In *Tully,* the Illinois Supreme Court held that where a delay has occurred in payment of worker's compensation benefits, the employer bears the burden of justifying the delay and the standard we hold him to is one of objective reasonableness in his belief. Thus,it is not good enough to merely assert honest believe that the employee's claim is invalid or that his award is not supported by the evidence; the employer's belief is "honest" only if the facts which a reasonable person in the employer's position would have, 42 N.E.2d at 865. The Court added in *Norwood* that the question whether an employer's conduct justifies the imposition of penalties is a factual question for the Commission. The employer's conduct is considered in terms of reasonableness. 42 N.E. 2d at 885. It was further held that a Respondent's reliance on its own physician's opinion does not establish, by itself, that its challenge to liability was made in good faith. The test is not whether there is some conflict in medical opinion. Rather, it is whether the employer's contract in relying on the medical opinion to contest liability is reasonable under all

the circumstances presented. 56 N.E.2d at 851. Moreover, the Appellate Court has noted that the burden of proof of the reasonableness of its conduct is upon the employer. *Consol. Freightways, Inc. v. Indus. Comm'n,* 136 I11.App.3d 630, 483 N.E.2d 652, 654 (1985); accord, *Ford Motor Co. v. Indus. Comm'n,* 140 I11.App.3d, 488 N.E.2d 1296 (1986).

The last time Petitioner received any form of income or disability benefits from Respondent was on February 26, 2019 (T @ 51, RX 4).

Petitioner suffered a career ending injury resulting in significant loss of income. It appears Respondent has paid all TTD, TPD and maintenance owed to Petitioner, totaling $200,1212.55. However, Respondent has, without good and just cause, failed, neglected, refused, and unreasonably delayed payment of wage loss payments due to Petitioner during his period of disability. There is no real controversy in this matter and Respondent's actions were merely frivolous and used for the purpose of delay. Respondent has further without good and just cause failed to comply with the Rules Governing Practice before the Workers' Compensation Commission, 50 Ill. Admin. Code Ch. II, Section 9110.10.

Petitioner began working for his new employer, Napa Auto Parts on January 3, 2019 (PX 22). On May 3, 2019, Petitioner requested Respondent provide an answer as to Respondent's failure to pay wage loss benefits to Petitioner (PX 16). Petitioner included in the correspondence to Respondent, copies of Petitioner's earnings with his new employer (PX 16). On May 20, 2109, Petitioner sent correspondence to Respondent showing Petitioner's wage loss analysis (PX 17). On June 25, 2019 Petitioner filed a Petition for attorneys' fees and penalties for non-payment of wage loss. The Arbitrator emphasizes Respondent has provided no explanation to this Arbitrator whatsoever for its refusal to pay the wage loss.

Petitioner began his employment with Napa Auto Parts on January 3, 2019. Between January 3, 2019 and the trial date of July 23, 2019, there are 28-6/7 (28.86) weeks in which Respondent should have paid to Petitioner a $1,048.67 weekly wage differential, totaling $30,264.62 in benefits.

The total accrued benefits to date are as follows, using the Request for Hearing form to assist, Arb. Exh. 1: TTD 3/24/16 through 3/28/17, and 9/13/17 through 10/22/18 representing 110-5/7 weeks x $1,398.23 = $154,798.04.

TPD: 3/29/17 through 9/12/17 representing 24 weeks. Total agreed owed and paid: $27,140.55 = $27,140.55.

Maintenance period(s): 10/23/18 through 1/2/19 representing 10-2/7 weeks x $1398.23 = $14,178.05.

Wage loss: 1/3/19 through 7/23/19 representing 28-6/7 weeks x $1048. 67 = $30,264.63.

Therefore, the total accrued weekly benefits owed to Petitioner as of July 23, 2019 including, TTD, TPD, Maintenance and Wage Loss is $226,381.26. Respondent has paid a total of $200,121.45 in weekly benefits. The unpaid accrued wage loss benefits is therefore $26,259.81 as of July 23, 2019.

The Arbitrator finds Respondent's failure to pay wage differential benefits to Petitioner, following Petitioner's employment with Napa Auto Parts was unreasonable and vexatious and accordingly awards penalties as follows:

Under Section 19(k), the Arbitrator awards Petitioner penalties of 50% of the $26,259.81 in unpaid wage differential benefits, or $13,129.91. Under Section 16 of the Act, the Arbitrator awards attorney's fees of $5,251.97 (20% of $26,259.81) and $2,625.98 (20% of the 19(k), $13,129.91) for a total amount of attorney's fees of $7,877.95. In total, Respondent is ordered to pay $13,129.91 under Section 19(k) and $7,877.95 in attorney's fees under Section 16 as a result of non-payment wage differential benefits under Section 8(d)1 of the Act.

The Arbitrator awards 19(l) penalties of $30 per day of withholding the wage loss, as part of the $10,000 awarded for non-payment of bills. The total 19(l) is capped at the maximum of $10,000 for non-payment of medical bills and wage loss.

CONCLUSION

The Arbitrator finds Petitioner sustained injuries which have caused him to suffer a loss of trade and resulting impairment in earnings. Therefore, the Arbitrator awards Petitioner wage differential benefits pursuant to 8(d)1 of the Illinois Workers' Compensation Act of $1,048.67 a week commencing on January 3, 2019 until the date of his 67th birthday, which is October 25, 2032, or five years from the date this award becomes final, whichever is later.

Petitioner has suffered a wage loss of $1,629.33 per week yielding a 8(d)1 weekly rate of $1,048.67. Medical bills pursuant to Section 8(a) and 8.2 are awarded totaling $14,779.22.

The Arbitrator finds and concludes Respondent's failure to pay medical bills under Section 8(a) was unreasonable and vexatious and awards Petitioner 19(l) compensation of $10,000. The remaining awards under 19(k) and Section 16 penalties for non-payment of medical bills will be calculated after the bills are reduced to the Illinois Fee Schedule pursuant to Section 8(a) and 8.2 of the Act.

Due to Respondent's failure to pay wage differential benefits following Petitioner's new employment, the Arbitrator finds that such failure was unreasonable and vexatious and awards Petitioner a total of $13,129.91 under section 19(k) and $7,877.95 under section 16 of the Act. 19(l) is also awarded for non-payment of wage loss, and as part of the non-payment of medical, totaling $10,000.

Robert M. Harris

Robert M. Harris, Arbitrator Dated: October 2, 2019

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC011688
Case Name	KENNY, MICHAEL v. CITY OF CHICAGO
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0010
Number of Pages of Decision	12
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Rocco Motto
Respondent Attorney	Devin Mapes

DATE FILED: 1/6/2022

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL KENNY,

Petitioner,

vs. NO: 18 WC 011688

CITY OF CHICAGO,

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 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 October 5, 2020, 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.

Based upon the named Respondent herein, no bond is set by the Commission. *820 ILCS 305/19(f)(2)*. 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. Or *820 ILCS 305/19(f)(1)*

January 6, 2022

KAD/bsd
O110921
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/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Thomas J. Tyrrell*
Thomas J. Tyrrell

/s/*Maria E. Portela*
Maria E. Portela

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

22IWCC0010

KENNY, MICHAEL
Employee/Petitioner

Case# **18WC011688**

CITY OF CHICAGO
Employer/Respondent

On 10/5/2020, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

2208 CAPRON & AVGERINOS PC
ROCCO G MOTTO
55 W MONROE ST SUITE 900
CHICAGO, IL 60603

0010 CITY OF CHICAGO CORP COUNSEL
MATTHEW LOCKE
30 N LASALLE ST SUITE 800
CHICAGO, IL 60602

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MICHAEL KENNY
Employee/Petitioner

v.

CITY OF CHICAGO
Employer/Respondent

Case # **18** WC **11688**

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 **DOUGLAS S. STEFFENSON**, Arbitrator of the Commission, in the city of **CHICAGO**, on **AUGUST 28, 2020**. After reviewing all 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 29, 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 $**101,697.96**; the average weekly wage was $**1,956.00**.

On the date of accident, Petitioner was **59** years of age, ***married*** with **1** dependent children.

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

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

Respondent shall be given a credit of $**16,763.40** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**16,763.40**. (*See* RX 2).

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

ORDER

As detailed in the attached memorandum discussing the *Findings of Fact and Conclusions of Law*:

- The Arbitrator finds the Respondent liable for those unpaid medical bills pursuant to the discussion under **Issue J** of the attached.; and,

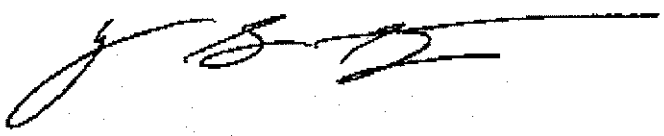
- The Respondent shall pay the Petitioner **22 4/7 weeks** of TTD benefits. The Respondent also shall be given a credit of **$16,763.40** for previously paid TTD benefits.; and,

- The Respondent shall pay Petitioner the sum of **$790.64** per week for a further period of **20 weeks**, as provided in **Section 8(d)2** of the Act, because the injury to the Petitioner caused a **4% loss of use of the person-as-a-whole (PAW)**.; and,

- The Respondent shall pay those benefits that have accrued in a lump sum, and shall pay the remainder, 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

OCTOBER 5, 2020
Date

OCT 5 - 2020

MICHAEL KENNY v. CITY OF CHICAGO

18 WC 11688

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

This matter was tried in person before Arbitrator Steffenson on August 28, 2020.[1] The issues in dispute were causal connection, medical bills, Temporary Total Disability (TTD) benefits, and the nature and extent of the injury, if any. (Arbitrator's Exhibit 1). The parties requested a written decision, including findings of fact and conclusions of law, pursuant to Section 19(b) of the Act, and agreed to receipt of this Arbitration Decision via e-mail. (Arbitrator's Exhibit (*hereinafter*, AX) 1 and Transcript at 5-6).

FINDINGS OF FACT

The Petitioner has been an operating engineer for the Respondent for 30 years. (Transcript (*hereinafter*, T.) at 14). On March 29, 2018, the Petitioner was tightening nuts on a chilled water pump. (Petitioner's Exhibit 1 at 3). As the Petitioner used a pulling method to loosen a nut on the water pump, he felt sudden pain in the right upper quadrant of his abdomen. (Petitioner's Exhibit (*hereinafter*, PX) 1 at 3). After notifying his supervisor, the Petitioner was directed to U.S. Healthworks for medical treatment.

Shortly after the injury, the Petitioner presented to U.S. HealthWorks with pain in his abdomen. (PX 1). Following an examination, he was diagnosed with right upper quadrant abdominal pain and was ordered to see his primary care physician, Dr. Stanley Polit. (PX 1 at 11). Additionally, the Petitioner was taken off work. (PX 5 at 1).

That same day, the Petitioner presented to Dr. Polit's office where Dr. Polit diagnosed the Petitioner with a hernia and referred him to see a surgeon, Dr. Farhad Vossoughi. (PX 2 at 2). The Petitioner then returned to Dr. Polit's office on April 30, 2018, following his initial appointment with Dr. Vossoughi, and informed Dr. Polit that while his hernia repair surgery had been scheduled, it was cancelled. (PX 2 at 4). Thereafter, on May 10, 2018, Dr. Polit continued the Petitioner's off work status. (PX 2 at 5 and PX 5 at 2).

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[1] This matter moved to trial under the Illinois Workers' Compensation Commission (IWCC) "Special Circumstance Arbitration Procedures" that were implemented due to the 2020 COVID-19 pandemic.

The Petitioner initially saw Dr. Vossoughi on April 2, 2018 where, following an examination, Dr. Vossoughi diagnosed him with an incisional ventral hernia. (PX 3 at 3). The Petitioner eventually underwent hernia repair surgery on July 5, 2018. (PX 4 at 105). Dr. Vossoughi inserted surgical mesh to repair the hernia and ordered the Petitioner off work from July 6, 2018 through September 3, 2018. (PX 4 at 105 and PX 5 at 3-6). He then returned to full duty work for the Respondent on September 4, 2018. (T. at 23).

The Petitioner received TTD benefits from March 30, 2018 through April 27, 2018, and then from July 5, 2018 through September 3, 2018. (Respondent's Exhibit 2). However, the Petitioner testified he received no TTD benefits from April 30, 2018 through July 4, 2018. (T. at 26).

The Petitioner reported he wears a brace to provide additional support for his abdomen when at work and performing household chores such a shoveling snow and mowing the lawn. (T. at 25-25).

CONCLUSIONS OF LAW

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

Issue F: *Causal connection*

The parties stipulated the Petitioner injured his abdomen as a result of a compensable accident on March 29, 2018. (AX 1). Prior to that date, the Petitioner worked for the Respondent with no restrictions. (T. at 15). Furthermore, the Petitioner testified, aside from a diagnosed hernia at birth, he has never been diagnosed with another hernia prior to March 29, 2018. (T. at 16).

Prior to this incident, the Petitioner had his gallbladder removed in November of 2017. (T. at 16). Due to an infection and complications resulting from that procedure, he was readmitted to the hospital for nearly two weeks. (PX 1 at 3). Shortly thereafter, he did return to full duty work.

On March 29, 2018, the Petitioner was working on a water pump and was pulling a bar tightly when he felt sudden pain in his right upper quadrant. He presented to U.S. HealthWorks for medical treatment and provided a history of the mechanism of injury. The Petitioner's medical records identify the accident of March 29, 2018 as the inciting event for his abdomen

injury. The Petitioner then was referred to his primary care doctor, Dr. Polit, who examined the Petitioner and opined his injury was a result of the work accident. (PX 2 at 2). Dr. Polit then referred the Petitioner to Dr. Vossoughi for surgery that was took place on July 5, 2018. Thereafter, the Petitioner was released to full duty work on September 4, 2018.

Based on the foregoing, the Arbitrator finds the Petitioner's current condition of ill-being is causally connected to the accident of March 29, 2018. Furthermore, there is no history or evidence of the Petitioner having sustained an intervening or subsequent accident involving his abdomen that would have been responsible for the condition and the need for the medical care. Accordingly, the Arbitrator finds a causal connection between the current condition of the Petitioner's abdomen and the accident of March 29, 2018.

Issue J: *Medical bills*

The Petitioner offered into evidence documentation demonstrating an unpaid balance remains with Midwest Anesthesia Providers. (PX 6 at 1 and AX 1). Midwest Anesthesia provided the anesthesia for Petitioner's hernia repair surgery that was authorized by the Respondent. The payment of this bill is not found on the Respondent's Medical Payment Ledger. (Respondent's Exhibit (*hereinafter*, RX) 1).

Accordingly, the Arbitrator finds the medical services provided to Petitioner were reasonable, necessary and related to his March 29, 2018 work accident. The Arbitrator further finds the Respondent is liable for those unpaid medical bills documented by Petitioner's Exhibit 6 pursuant to the Illinois Workers' Compensation Commission Fee Schedule.

Issue K: *TTD*

The parties noted the issue of payment of TTD benefits to the Petitioner is disputed. (AX 1). They agreed the Petitioner was off work and entitled to benefits from March 30 to April 27 of 2018, and then from July 5 to September 3 of 2018. (AX 1). However, the Respondent took issue with the Petitioner's entitlement to TTD benefits for the period from April 28 to July 4 of 2018. (*Id.*).

The Petitioner testified his treating physicians held him off work from March 30 through his return to work on September 4, 2018. (T. at 22-23). His medical records also provide evidence of his off-work status during this entire time period. (PX 5 at 1-6). However, the Respondent neither offered any evidence nor or elicited any testimony supporting a denial of TTD benefits for the period from April 28 to July 4 of 2018. The parties did stipulate to the

Respondent's payment of TTD benefits totaling $16,763.40 for the preceding and following periods and its entitlement to a credit for these payments. (AX 1, RX 2, and T. at 5-7).

Accordingly, the Arbitrator finds the Petitioner is entitled to have and receive from Respondent the sum of $1,304.00 per week from March 30, 2018 through September 3, 2018, that being the period of temporary total disability from work. Furthermore, the Respondent shall have a credit of $16,763.40 for previously paid benefits.

Issue L: *Nature and extent of injury*

Pursuant to Section 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:

(a) A physician licensed to practice medicine in all its branches preparing a permanent partial disability impairment report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment.

(b) Also, the Commission shall base its determination on the following factors:

(i) The reported level of impairment from (a) above;

(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 medical records.

(See 820 ILCS 305/8.1b)

With regards to factor (i) of Section 8.1b of the Act:

i. The Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence by either party. As such, the Arbitrator gives ***no weight*** to this factor.

With regards to factor (ii) of Section 8.1b of the Act:

ii. The Arbitrator finds the Petitioner was employed by the Respondent as an operating engineer at the time of the injury and he eventually was able to return to work in his prior capacity after said injury. The Arbitrator therefore gives ***some weight*** to this factor.

With regards to factor (iii) of Section 8.1b of the Act:

iii. The Arbitrator notes the Petitioner was 59 years old at the time of the accident. (AX 1). The Arbitrator therefore gives ***some weight*** to this factor.

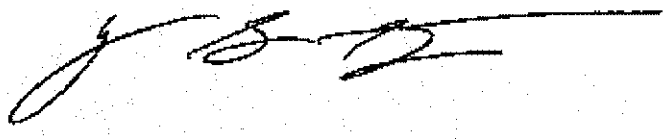
With regards to factor (iv) of Section 8.1b of the Act:

iv. The Arbitrator notes the Petitioner admitted his current wages are higher than his wages from September of 2018. (T. at 28). As such, the Arbitrator therefore gives ***some weight*** to this factor.

With regards to factor (v) of Section 8.1b of the Act:

v. Evidence of disability corroborated by the treating medical records finds that the Petitioner received a diagnosis of an incisional ventral hernia and underwent surgical intervention to repair this injury. Following a period of surgical recovery, the Petitioner then returned to full duty work for the Respondent Due to the Petitioner's medically documented injuries and all the testimony within the record, the Arbitrator therefore gives ***significant 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 **a 4% loss of use of the person-as-a-whole (PAW)** pursuant to Section 8(d)2 and Section 8.1b of the Act.



Signature of Arbitrator

OCTOBER 5, 2020
Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC039341
Case Name	TOSTADO, HORACIO CONTRERAS v. C&D RAIL SERVICES INC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0011
Number of Pages of Decision	16
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Tanya Fajardo
Respondent Attorney	Alyssa Silvestri

DATE FILED: 1/5/2022

/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 Medical Expenses	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

HORACIO CONTRERAS TOSTADO,

Petitioner,

vs. NO: 15 WC 39341

C & D RAIL SERVICES, 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 Respondent Injured Workers' Benefit Fund and notice given to all parties, the Commission, after considering the issues of whether sufficient efforts were made to provide notice of the trial date to Respondent C & D Rail Services, Petitioner's entitlement to incurred medical expenses, and the nature and extent of Petitioner's permanent 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.

I. Medical Expenses

Petitioner offered into evidence exhibits detailing the charges incurred for his emergency room treatment at LaPorte Hospital as well as his follow-up care through Cook County Health and Hospitals System. Petitioner's Exhibit 7 includes bills totaling $3,503.40 for treatment rendered at LaPorte Hospital on November 3, 2015: hospital services were billed at $2,425.40 and physician services were billed at $1,078.00. Both bills are stamped "Paid" and Petitioner confirmed his employer had made payments to those providers. T. 61-62.

Petitioner's Exhibit 2 includes bills for multiple dates of service at Cook County Health and Hospitals System:

Date of Service	Charges
November 4, 2015	$5,013.31
November 5, 2015	$107.88
December 1, 2015	$243.00
December 15, 2015	$243.00
January 7, 2016	$302.02
January 26, 2016	$467.00
January 27, 2016	$146.00
February 22, 2016	$166.00
March 15, 2016	$83.02
Total:	$6,771.23

The Commission finds that Petitioner incurred medical expenses totaling $10,274.63 ($3,503.40 + $6,771.23 = $10,274.63). The Commission finds these expenses were reasonable, necessary, and causally related to the work accident. As such, the Commission finds Respondent is liable for incurred medical expenses of $10,274.63, subject to a credit of $3,503.40 for amounts previously paid by Respondent C & D Rail Services.

II. Permanent Disability

The Commission strikes the seventh sentence in the factor (v) analysis ("Additionally, there was never an off work note at any point of his treatment.") and substitutes the following:

> The medical records evidence Petitioner was authorized off work for approximately two months following the accident: a December 1, 2015 work status report from Cook County Health & Hospitals System reflects Petitioner was "unable to work from 11/4/2015 through 12/15/15" and a subsequent note authored on December 15, 2015 states Petitioner "may return to work on 12/29/15." Pet.'s Ex. 2.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 2, 2020, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay $10,274.63, subject to a credit of $3,503.40, for medical expenses, as provided in §8(a), subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $360.00 per week for a period of 10.25 weeks, as provided in §8(e)9 of the Act, for the reason that the injuries sustained caused the 5% loss of use of the right hand.

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 hereby is 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. The Respondent-Employer's obligation to reimburse the Injured Workers' Benefit Fund, as set forth above, in no way limits or modifies its independent and separate liability for fines and penalties set forth in the Act for its failure to be properly insured.

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 $10,600.00. 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.

January 5, 2022

/s/ *Deborah J. Baker*

DJB/mck

O: 11/17/21

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

22IWCC0011

TOSTADO, HORACIO CONTRERAS Case# **15WC039341**
Employee/Petitioner

C&D RAIL SERVICES INC
Employer/Respondent

On 3/2/2020, 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 1.44% 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:

5191 FAJARDO LAW GROUP LLC
TANYA FAJARDO
77 W WASHINGTON ST SUITE 1313
CHICAGO, IL 60602

0000 C&D RAIL SERVICES INC
1124 GAEL
JOLIET, IL 60435

6153 ASSISTANT ATTORNEY GENERAL
ALYSSA SILVESTRI
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

HORACIO CONTRERAS TOSTADO
Employee/Petitioner

v.

C & D RAIL SERVICES, INC.
Employer/Respondent

Case # **15** WC **39341**

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 Cellini**, Arbitrator of the Commission, in the city of **Chicago**, on **July 18, 2019**. 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: **Notice to Respondent Employer and NCCI**

Tostado v. C&D Rail Services, Inc., 15 WC 39341

FINDINGS

On **November 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 $**31,200.00**; the average weekly wage was $**600.00**.

On the date of accident, Petitioner was **30** years of age, ***married*** with **1** dependent child.

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

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

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

ORDER

The Arbitrator finds that the Respondent was subject to the Illinois Workers' Compensation Act on November 3, 2015 pursuant to Section 3 of the Act.

The Arbitrator finds that sufficient notice of hearing was provided to Respondent. The Arbitrator further finds that the Petitioner submitted sufficient evidence that the Respondent C & D Rail Services, Inc., did not have workers' compensation insurance coverage in place for the business on November 3, 2015.

The Arbitrator finds that the Petitioner and Respondent had an employer/employee relationship pursuant to Section 1 of the Act.

The Arbitrator finds that the Petitioner sustained accidental injuries which arose out of and in the course of his employment with Respondent on November 3, 2015.

The Arbitrator finds that the Petitioner provided timely notice of the accident to Respondent pursuant to Section 6(c) of the Act.

The Arbitrator finds that the Petitioner's right hand injury is causally related to the November 3, 2015 accident.

The Arbitrator finds that the Petitioner was thirty (30) years old, married and had one dependent child under the age of 18 on November 3, 2015.

Respondent shall pay reasonable and necessary medical services of $8,953.63, as provided in Sections 8(a) and 8.2 of the Act.

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

Respondent shall pay Petitioner permanent partial disability benefits of $360.00/week for 10.25 weeks, because the injuries sustained caused the loss of use of 5% of the right hand, as provided in Section 8(e) of the Act.

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 Petitioner pursuant to Sections 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 Worker's 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.

Signature of Arbitrator

February 28, 2020
Date

MAR 2 - 2020

STATEMENT OF FACTS

Arbitrator's Exhibit 2 is an Amended Application for Adjustment of Claim that adds the Illinois Injured Workers' Benefit Fund as a party Respondent. Arbitrator's Exhibit 1 indicates that Respondent Illinois Injured Workers' Benefit Fund disputes all issues raised by Petitioner.

Petitioner's counsel indicated she initially had contact with Respondent on August 2016 through a secretary, Crystal Muniz, via email regarding the accident and date of accident. She never had direct contact with Respondent owner Cesar Ramirez. After initial discussions through Muniz, Mr. Ramirez ultimately hired a private attorney to negotiate, but they were unable to resolve the matter amicably. That attorney withdrew in 2017 while this matter was in the caseload of Arbitrator Thompson-Smith, who has since retired. Since that time, Petitioner's counsel indicated she has been unsuccessful in making further contact with Respondent. Counsel indicated that multiple certified mailings were sent to Respondent and owner Cesar Ramirez at the following addresses with no acceptance:

1124 Gael Drive, Joliet, Illinois 60435
350 Houbolt Rd, Joliet, Suite 205, Illinois 60435

A review of the Commission mainframe database indicates that Respondent's counsel withdrew on 10/25/17, and that the Petitioner's Amended Application was filed on 8/1/18, which matches the file stamp on Arbx2.

Petitioner's counsel also hired a third-party process server, who made three unsuccessful attempts to serve Respondent at both addresses. Petitioner's Exhibit 4 contains evidence that notification of the 7/18/19 hearing date was sent to Respondent and Ramirez by certified mail to the Houbolt Road address, which counsel indicated was Ramirez' home address, and by special process server at the Gael Drive address, which is the business address for Respondent contained in the Application for Adjustment. The certified mail was returned and service could not be made.

On 9/10/18, NCCI indicated their records showed there was proof of policy information reported regarding Respondent, C&D Rail Services, Inc., effective 3/31/15, but that a cancellation was reported to NCCI on 6/17/15 with an effective date of 7/1/15 for the nonpayment of premiums. (Px3). Counsel for Petitioner indicated that Robert Siegel of NCCI indicated on 6/24/19 that they were only able to certify that there was a cancelation of Respondent's policy as of 7/1/15 and cannot certify anything more.

Illinois Secretary of State documentation for C&D Rail Services Incorporated was submitted into evidence indicating that as of 2019, the corporation was not in good standing. The documentation indicates the corporation was incorporated on 1/19/11, referencing a street address of 1124 Gael Drive, Joliet, Illinois 60435 and a President's name and address as Cesar E Ramirez, 350 Houbolt Road, Suite 205, Joliet, Illinois 60435. It also indicates Mr. Ramirez as company Secretary and registered agent. (Rx1).

Respondent objected to the NCCI Certification of Noninsurance, as well as notice to the Respondent given that none of the notice correspondence was actually proven to have been received by Respondent. The Arbitrator overruled the objections.

Petitioner testified via interpreter Carina Julian. Petitioner testified he is currently 34 years old. At the time of the 11/3/15 accident he was married and had one minor child, who currently is 6 years old. He currently resides at the address listed on his amended Application for Adjustment (see Arbx2). Petitioner testified he has been working for the past two years in a seasonal position for Rose Paving, working 10 to 12 hours per day and earning $15 per hour.

He testified he began working for Respondent as a laborer in September 2014, and that the company was located in Joliet. He testified he was hired by Cesar Ramirez, Respondent's owner. He worked between 40 and 60 hours per week. Some of this was overtime, which he acknowledged was voluntary. He testified he earned approximately $600 per week, depending on the hours worked. As a laborer, he testified his duties involved "basically everything" – he worked with machines that made railroad track spikes, and would utilize air hammers to remove railroad spikes, rails and ties working outdoors on site. He testified that there were times they would not work due to cold weather. Petitioner testified that the Respondent paid for his tools and some of his clothing which contained the company logo/insignia. He drove trucks with the Respondent's logo on them. His paychecks were written from an account in the Respondent's name. An earnings statement from Respondent (indicating the Gael Driver address) to Petitioner indicates he was paid $600.00 for 40 hours work between 7/20 and 7/26/15, and includes deductions for federal income taxes, Social Security, Medicare and Illinois state income taxes. (Px8).

A number of check stubs were submitted by Petitioner into evidence as Px5. The Arbitrator notes three of these checks (dated 11/21, 12/4, 12/11 and 12/18/15) appear to be payments to Petitioner for time off after his injury. The checks are for $640 each and are on a Chase account in the name of C & D Rail Services, Inc., 1124 Gael Drive, Joliet, Illinois 60435. A separate stub of some sort, which is not written from the business account, is

noted to be for $725.00 in Petitioner's name and appears to note something about "work" and "compensation" in the memo section. (Px5).

Petitioner testified he was injured while working for Respondent in the morning on 11/3/15. He was working outdoors in Indiana using a spike machine with a co-worker when one of the spikes got stuck. When he went to release it, the machine activated and the spike went through his right hand between the index and middle finger areas. He testified that co-workers Juan, Albino and Marcos, the crew supervisor, were also onsite, and he reported the incident to Marcos, who contacted owner Ramirez by phone. He testified that he asked to be taken to the hospital and Juan drove him there. Petitioner testified he is right hand dominant and had no prior right hand injuries.

Petitioner testified he had numbness in his fingers and couldn't make a fist. The 11/3/15 report from La Porte Hospital notes Petitioner reported he worked for a railroad company and his right hand was impaled with a railroad spike that he then pulled out, presenting with a "through and through" puncture wound of the right hand in the interspace between the index and middle fingers with jagged lacerations on the palm (2.5 cm) and dorsal hand (1.5 cm). X-ray showed radiopaque debris at the skin surface, possibly in the soft tissue, but no fractures were seen. He had full range of motion and sensation. The wound was noted to be grossly contaminated with rust from the spike. It was cleaned and sterilized, Petitioner was given a tetanus shot and prescribed Norco and Keflex. He was discharged the same day with a splint and sling. A high risk of infection was noted even with antibiotics. He was advised to follow up with occupational health and/or a hand specialist. (Px1). He was initially kept at the hospital for observation due to infection concerns, but Petitioner testified he did not develop an infection.

On 12/1/15, Petitioner treated at Cook County Health and Hospital System (CCHHS). On 12/15/15 he was released by CCHHS to return to work as of 12/29/15. Petitioner was initially evaluated for occupational therapy at CCHHS on 1/7/16. At that time, he complained of numbness to the dorsal aspect of the proximal phalanx of the right index and middle fingers and pain with right gripping, causing difficulty with gripping activities. The fingers would swell at night and he would be unable to make a fist. He had limited finger abduction. The 1/27/16 report from therapy notes Petitioner indicated he returned to working and reported weakness with grip and lifting. He continued to have pain with movement and to palpation. On 2/22/16, he reported he felt the same but could close his hand more. He reported ongoing middle finger numbness and a feeling of weakness in the index finger. His grip strength measurement was improved. On 3/15/16, he was discharged. (Px2). The records from therapy in evidence are limited. Petitioner testified he went once a week for 10 to 12 weeks at Cook County Hospital, mainly for range of motion, and this did help him. He also performed home exercise every day for about 4 hours a day for about 2 weeks.

Petitioner testified he contacted Mr. Ramirez after leaving the hospital and told him he had been referred to a hand specialist. They did not discuss whether work was available to him. He saw the hand specialist at Cook County Hospital. He testified he tried to call Mr. Ramirez on several occasions after that but he would not call him back. He did not leave messages. He did speak to Juan after the accident to see if he knew anything about Ramirez because he wasn't responding, and Juan said he didn't know. Petitioner could not say the date this occurred.

Petitioner testified he had no further contact with Respondent or Mr. Ramirez directly after the accident date. He had been held off work by his doctor and remained off work for a period of time, testifying Respondent did pay him for some of the weeks he was off work. Petitioner received a letter from Respondent on 12/29/15 indicating he was laid off due to current weather conditions. The Arbitrator notes the letter indicates the layoff is temporary and that work would resume in spring 2016, at which time the company would contact Petitioner to return. The Arbitrator notes the letterhead contains a logo for Respondent, indicates its services involve the

various processes of railroad design, engineering, planning and maintenance. The listed address is 350 Houbolt Road, Suite 209, Joliet, Illinois 60435. It is signed by Cristal Muniz, Secretary. (Px6). He had no further contact from Respondent after receiving the letter. He testified that he knows Respondent has continued to operate the business because his co-workers continued working there and he remained in contact with them. On cross examination, Petitioner agreed the 12/29/15 layoff letter indicated the layoff would end in Spring 2016 and he never attempted to contact Respondent at that time.

Despite the fact he was having difficulty with activities like tying his shoes and handwriting, as well as even pulling his zipper up, Petitioner testified that he returned to work for a different employer after he was discharged from therapy. He indicated he had no income and no money, so he had to find work.

As to his right hand, Petitioner testified his fingers index and middle fingers remain somewhat numb. He testified he has a little ongoing pain but is able to work. As to the medical bills he has incurred, he testified he has paid some of them, and that Mr. Ramirez also paid some of the bills. He has sought no further treatment since March 2016.

On cross-examination, Petitioner testified he would start work at 5 or 6 a.m. and would work until the job was done – there was no specific scheduled shift end. Marcos was Petitioner's supervisor. He would report to the yard in Joliet for work and Marcos would tell him where to work that day. He testified Respondent had a yard where the materials and equipment were kept and an office in a separate location. He could not recall the address of the yard. Petitioner testified he had no "contract" of employment with Respondent. Some of his clothing identified the Respondent company.

Petitioner testified he was paid by check by Respondent, he believed biweekly but didn't recall for sure, and received pay stubs. He could not recall exactly what he earned in the year before the accident and did not receive a W2 form but testified taxes were deducted from his pay.

On further cross, Petitioner testified he would contact Mr. Ramirez after the accident date but he would never answer the calls, which is why he filed his workers' compensation claim. He believed he sent documentation to Mr. Ramirez, but he didn't recall exactly what he sent. He was being held off work by his doctor. He acknowledged he currently has no problems tying his shoes or buttoning his shirt today.

CONCLUSIONS OF LAW

WITH RESPECT TO ISSUE (A), WAS THE RESPONDENT OPERATING UNDER AND SUBJECT TO THE ILLINOIS WORKERS' COMPENSATION OR OCCUPATIONAL DISEASES ACT, THE ARBITRATOR FINDS AS FOLLOWS:

Pursuant to Section 3(1) of the Act, an employer is subject to the Illinois Workers' Compensation Act if their business involves "the erection, maintaining, removing, remodeling, altering or demolishing of any structure." Petitioner's job with Respondent, pursuant to his unrebutted testimony, is that his work involved the maintenance and remodeling or railroad structures at outdoor sites. Section 3(15) of the Act states that an employer is subject to the Act if their business involves "any business or enterprise in which electric, gasoline or other power-driven equipment is used in the operation thereof." Petitioner testified his job involved the use of a mechanical spike machine, which also happens to be the machine that drove a spike through his right hand. The Arbitrator finds that the evidence strongly supports a finding that the Respondent was subject to the Act at the time of the 11/3/15 injury to Petitioner.

WITH RESPECT TO ISSUE (B), WAS THERE AN EMPLOYEE-EMPLOYER RELATIONSHIP, THE ARBITRATOR FINDS AS FOLLOWS:

On November 3, 2015, the Petitioner and Respondent were acting under an employee and employer relationship. Petitioner testified that he was hired by Cesar Ramirez, Respondent's owner, and worked for Respondent from September 2014 through November 2015 as a laborer. He reported to a yard located in Joliet, IL or to locations assigned to him by Respondent to perform services for the Respondent. He would report to his supervisor Marcos at the yard early in the morning and would work until the job was completed that day. On the date of accident, the Petitioner was using a metal spike machine provided to him by the Respondent and performing work under the direction of the Respondent. Furthermore, the injury occurred during work hours, which was reported and well documented in the ER medical record.

Pursuant to Illinois law, multiple factors are to be considered in determining whether an employer/employee relationship exists. This includes the right to control the manner in which the work is done, the nature of the business, the method of payment, the right to discharge, and the furnishing of tools, materials or equipment. The right to control the manner in which the work is done is the most important factor in determining the relationship, and more recently our courts have indicated that the nature of the business is also a significant factor.

Petitioner testified that he would always report to the Respondent's yard for work, and work clothing and tools were all provided by Respondent. Petitioner also testified that he worked with machines provided by the Respondent. Petitioner confirmed that his work uniform displayed the employer's logo, and that a work truck that he used to drive to assigned work locations also displayed the same logo. Petitioner testified he worked for a crew and that Marcos was the Respondent supervisor who would control the work. The nature of the Respondent's business was rail work. The nature of the Petitioner's job was rail work. The nature of the business and job are completely related.

Petitioner testified his hours would vary but he would receive a regular wage amount and was regularly paid for his services by check referencing the employer's company name and was never paid in cash. In addition, Petitioner was provided with earnings statements, such as the one marked as Px8, wherein the Respondent employer C & D's company name is listed at the top. Most importantly, the Petitioner's gross pay is listed, and statutory deductions are made from his gross pay. Therefore, Respondent was paying into Petitioner's federal and state taxes, social security, and Medicare.

The initial ER report states that Petitioner reported "he works at a railroad company and was working with a railroad spike and something slipped and it impaled his hand and went through and through." (Px1).

Evidence that is also significantly indicative of an employee-employer relationship between Petitioner and Respondent was the series of checks from the Respondent made payable to the Petitioner between 11/13/15 and 12/18/15 (Px5) which purport to be payments to Petitioner for his time off work due to injury. The memo line of each check specifically referenced work hours compensation, disability pay, or compensation. The Arbitrator finds that this pretty clearly indicates Respondent C & D was compensating the Petitioner for being out of work due to the work accident. The Respondent not only compensated the Petitioner for his time off work, but per his testimony also paid some of the medical bills related to his work accident. The Respondent provided Petitioner's counsel copies of bills paid to La Porte Hospital in the amount of $2,425.40 and a bill for the 11/3/15 ER visit in the amount of $1,078.00. (Px7).

These aforementioned facts strongly indicate that an employee-employer relationship existed at the time of the accident, and Petitioner was in fact injured while working within the scope of his employment. The Arbitrator

finds that there was an employer/employee relationship that existed within the meaning of the Act on 11/3/15 between Petitioner and Respondent C & D.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner sustained accidental injury to his right hand on 11/3/15 that arose out of and in the course of his employment. He testified that he was performing work for Respondent C & D when the accident happened. The preponderance of the evidence supports that he was in fact working for Respondent C & D and was in the course of his employment on 11/3/15 when he was injured. The injury also arose out of the employment. Part if his job involved the use of an obviously dangerous spike machine. This clearly increased his risk of injury, and this injury was risk that is clearly related to the employment.

WITH RESPECT TO ISSUE (D), WHAT WAS THE DATE OF THE ACCIDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Petitioner's testimony, the contemporaneous medical records and the Application for Adjustment all support the Arbitrator's finding that the date on which Petitioner was injured while working for Respondent was 11/3/15.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Pursuant to Section 6(c) of the Act, notice must be provided by the employee to the employer within 45 days of the accidental injury. Petitioner testified that on the date of accident, he immediately notified his supervisor, Marcos of his injury and need to seek medical attention. Petitioner testified that the supervisor, Marcos then notified owner Cesar Ramirez of said accident and a co-worker was then directed to drive Petitioner to the hospital. The medical record also confirms that Petitioner was taken to an ER that same day for medical treatment due to a work-related injury. Therefore, the Arbitrator does find that sufficient notice was provided to the Respondent on the date of accident.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

In support of the Arbitrator's finding on the issue of causal connection, there is sufficient evidence in the record to support that Petitioner injured his right hand at work on 11/3/15 when a nail spike went through his right hand. The emergency room records from LaPorte Hospital on the date of accident document that Petitioner suffered a puncture wound to the right hand. The Petitioner testified he had no prior right hand injuries and had been working his regular job before the 11/3/15 accident. The ER records state: "There is a through and through puncture wound/laceration of the right hand in the second interspace in between the MCP's of the middle finder and index", as well as that "The wound is grossly contaminated with rust from spike." These narratives do corroborate Petitioner's account accurately as to how exactly he was injured, where he was injured, and with what mechanism he was injured, on 11/3/15. Based on the unrebutted evidence, including Petitioner's testimony and the contemporaneous medical records, the right hand puncture injury was obviously related to the accident of 11/3/15.

WITH RESPECT TO ISSUE (G), WHAT WERE THE PETITIONER'S EARNINGS, THE ARBITRATOR FINDS AS FOLLOWS:

The Petitioner testified that he worked varied hours but generally earned approximately $600.00 per week while working for Respondent. Respondent C & D Rail did not appear and did not provide any evidence in rebuttal. The one paystub the Petitioner did provide (Px8) indicates Petitioner received a gross wage of $600.00 for 40 hours of work. Petitioner testified that the times he did not work for Respondent during his employment there would have been weather-related. Based on the evidence presented, the Arbitrator finds that the Petitioner's average weekly wage was $600.00.

WITH RESPECT TO ISSUE (H), WHAT WAS THE PETITIONER'S AGE AT THE TIME OF THE ACCIDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner testified he was 30 years old at the time of the accident. This is supported by the Application for Adjustment (Arbx2). The arbitrator finds that the Petitioner was 30 years on 11/3/15.

WITH RESPECT TO ISSUE (I), WHAT WAS THE PETITIONER'S MARITAL STATUS AT THE TIME OF THE ACCIDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator relies on Petitioner's unrebutted testimony in finding that he was married with one dependent child on 11/3/15.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that Petitioner presented sufficient, credible evidence that as a result of the injuries sustained on 11/3/15, he incurred medical expenses related to the reasonable and necessary treatment for his injuries which remain unpaid. Petitioner submitted his alleged unpaid medical expenses from CCHHS as Px2 for treatment rendered between 11/3/15 and 3/15/16, which total $6,528.23. The Arbitrator also notes that Respondent C & D has made payments regarding the charges for same. (Px7). Submitted as Px7 is documentation regarding the medical bill from LaPorte Hospital totaling $2,425.40. Petitioner testified the portion evidencing payment came from Cristal Muniz.

The Arbitrator finds that the Respondent is liable for causally related medical expenses totaling $8,953.63 pursuant to Section 8(a) of the Act and limited to the Medical Fee Schedule in Section 8.2 of the Act. Respondent is entitled to credit for any portion of these expenses which were paid by Respondent prior to the hearing date. It appears that, per Px7, Respondent C & D paid $3,503.40. (Px. 7).

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 for accidental injuries occurring on or after September 1, 2011:

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

edition of the American Medical Association's (AMA) "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.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that neither party has presented an AMA permanent partial impairment rating or report into evidence. Therefore, this factor carries no weight in the permanency determination.

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 laborer for a railroad repairer at the time of the accident and was released to unrestricted work duties. The Arbitrator notes that the Petitioner is right hand dominant, and that physical labor with the use of the hands and arms is obviously significantly involved in the laboring position. However, he also testified he has returned to work for Rose Paving and agreed that he never sought to return to work with Respondent, though he cannot be blamed for this given the Respondent C & D's failure to properly compensate him for a work related injury. This factor carries some weight in the permanency determination.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 30 years old at the time of the accident. Neither party has submitted evidence which would tend to show the impact of the Petitioner's age on any permanent disability he may have sustained as a result of the 11/3/15 accident. This factor carries no weight in the permanency determination.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that the Petitioner has not presented any evidence which would tend to show that his future earning capacity has been impacted in any significant way by the accidental injury to the right hand. This factor carries minimal weight in the permanency determination.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes the Petitioner sustained a significant injury to the right hand due to a through and through puncture wound from a railroad spike/nail. He received minimal treatment. He testified that when he arrived at the hospital on the date of accident his wound was healed. His wound was cleaned and he was given a shot for precautionary measures for infection. He attended a total of three therapy sessions. He returned full duty and he is currently not treating. Additionally, there was never an off work note at any point of his treatment. On 2/22/16, he reported to CCHHS that he had ongoing middle finger numbness and a feeling of weakness in the index finger, but his grip strength was improved, and he was discharged on 3/15/16. Petitioner testified his fingers index and middle fingers remain somewhat numb, and that he has a little ongoing pain but is able to work.

Based on the above factors, the record taken as a whole and a review of prior Commission awards with similar injuries similar outcomes, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of the loss of use of 5% of the right hand pursuant to §8(e) of the Act.

WITH RESPECT TO ISSUE (O), NOTICE TO RESPONDENT EMPLOYER AND NCCI, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that this case was specially set for hearing on 7/18/19. This specially set date was agreed upon by the Petitioner's counsel and counsel for IWBF. Respondent-Employer C & D was not present when the case was specially set.

Petitioner's counsel made a statement on the record prior to proceeding indicating that after the date of filing in 2016 she had contact via email with the Respondent-Employer C & D through the office manager, Cristal Muniz. It does not appear that Petitioner's counsel had direct contact with the owner, Mr. Ramirez, but she further indicated that Mr. Ramirez had private counsel at one point but that he withdrew in July 2017. As noted above, this is confirmed by the Commission database.

This Arbitrator notes that according to the Secretary of State Corporation/LLC search the Registered Agent is Cesar E. Ramirez and the address listed is 1124 Gael Drive Joliet, IL 60435. (Rx1). Also, there is a second address listed 350 Houbolt Rd Ste 205 Joliet, IL 60435. (Rx1). The Arbitrator also notes that according to the Secretary of State Corporation/LLC search the corporation dissolved on Friday June 14, 2019. (Rx. 1).

Petitioner's counsel then sent the Respondent a letter via regular mail and certified mail on 6/21/19 with regard to the scheduled 7/18/19 hearing date. (Px4). The certified mail letter was returned "unable to forward."

Petitioner's counsel noted for the record that several letters had been previously sent via both regular mail and certified mail to the Respondent prior to the hearing being scheduled. Petitioner's counsel even hired a third-party process server in an attempt to serve the Respondent prior to trial. (Px4). The third-party process server was unable to serve this party at both his business address and personal residence and provided signed affidavit of the attempted service. (Px4).

The Arbitrator finds that Petitioner's counsel has done her due diligence to serve the Respondent. The Arbitrator would significantly add that, as noted, Respondent-Employer C & D had retained counsel in this matter, and thus appeared in the case, and once the attorney withdrew, Respondent-Employer C & D was a pro se litigant. As a pro se litigant, the Respondent-Employer had an obligation to follow the case just as an attorney would have, and its failure to do so was its own responsibility. Based on all of the above, the Respondent-Employer C & D had sufficient due process in terms of notice of the 7/18/19 hearing date.

The second preliminary issue was whether the National Council on Compensation Insurance (NCCI) certification was sufficient to determine that the Respondent did not have insurance coverage effective on the date of accident, 11/3/15. The certification stated that a cancellation was reported to NCCI on 6/17/15 with a cancellation effective date of 7/1/15. (Px3). Petitioner's counsel noted on the record that on 6/24/19 she contacted NCCI directly and spoke with Robert Siegel, NCCI counsel. Mr. Siegel informed Petitioner's counsel that the certification provided is the only information that NCCI could provide and certify regarding Respondent's insurance coverage. The Arbitrator finds the NCCI certification entered as Px4 was sufficient regarding whether Respondent had effective insurance coverage on the date of accident.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC028497
Case Name	SOTELO, OLGA v. CAT-1 GLASS
Consolidated Cases	
Proceeding Type	Petition for Review Remanded Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0012
Number of Pages of Decision	37
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Matthew Abrams
Respondent Attorney	Daniel Swanson

DATE FILED: 1/5/2022

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

OLGA SOTELO,

Petitioner,

vs. NO: 17 WC 28497

CAT-I GLASS,

Respondent.

DECISION AND OPINION ON REVIEW

This matter comes before the Commission pursuant to Petitioner's timely filed Petition for Review of the Decision of the Arbitrator. Therein, the Arbitrator denied Petitioner's claim on the threshold issues of accident and causal connection. Notice having been given to all parties, the Commission, after considering the issues of whether Petitioner sustained repetitive trauma injuries to her right wrist manifesting on November 4, 2014, whether her current condition of ill-being is causally related to her work activities, entitlement to temporary partial disability benefits, and entitlement to incurred medical expenses as well as prospective medical care, and being advised of the facts and law, reverses the Decision of the Arbitrator. The Commission finds Petitioner proved her right wrist condition developed as consequence of her repetitive work activities. 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).

REDACTION

The Commission has redacted Respondent's Exhibit 6 to bring it into compliance with Supreme Court Rule 138.

FINDINGS OF FACT

Petitioner is a Spanish-speaking individual. She testified through an interpreter. T. 9. Petitioner has worked for Respondent since 2004. T. 10. Her usual shift is 7:00 a.m. to 3:30 p.m., Monday through Friday. T. 11-12. She testified that prior to November 2014, she regularly worked eight hours of overtime. T. 12.

Petitioner is an inspector at Respondent's facility; she inspects rectangular- and square-shaped panels of glass. T. 11. Petitioner testified the "blue light" machine feeds out single pieces of glass, and she picks up each piece, lifts it up high and inspects it, then places it in a stack; when there are 20 pieces stacked, she bundles the pieces, grabs the bundle from the sides, and carries it to a cart. T. 14-16. Petitioner explained the pieces of glass vary in size; the smallest is two inches square and the size increases up to the largest piece, which is 29 inches by 2.3 inches. T. 16-17. Petitioner did not know what the glass pieces weighed. T. 18. The pieces come off the blue light machine at a constant rate of 325 per hour; Petitioner could not control the machine's speed. T. 18. Each hour of her eight-hour workday, she would stack and move 15 to 20 glass bundles. T. 19.

Petitioner testified that in 2014 she began to experience pain in her right wrist while working. T. 21. She explained the pain "started when I was grabbing the bundles of glass and the same thing when I would pick them up. That's when I would feel the pain, you know, mostly in my hand because I didn't feel the pain like that." T. 22. Petitioner reported her wrist injury to Ruby, the person in charge of her department, and was told she had to finish her shift before being sent to the doctor. T. 25-27. Petitioner first testified this occurred on November 4, 2014, then agreed her initial evaluation took place on October 27, 2014. T. 23.

The record reflects Petitioner presented to Presence St. Joseph Occupational Health Services on October 27, 2014, where she was evaluated by Dr. Maria Vlahos. Petitioner gave a history of developing pain in the ulnar aspect of her right wrist and right thumb approximately four days prior: "She states she works in assembly, and thinks that she has over-used her wrist and thumb. She does repetitive gripping and pushing and pressing of parts using her thumb, her fingers, along with wide gripping throughout her work shift, and she feels that this has caused her symptoms." Pet.'s Ex. 2. On examination, Dr. Vlahos observed mild swelling along the ulnar wrist extending into the distal forearm, thenar eminence and thumb, as well as pain along the ulnar wrist with Finkelstein testing. Dr. Vlahos diagnosed acute strain/tendinitis of the right wrist as well as acute strain/tendinitis of the right thumb, and noted both diagnoses "are related to the job duties on 10/27/2014." Pet.'s Ex. 2. Dr. Vlahos provided a wrist immobilizer, prescribed Ibuprofen, directed Petitioner to ice and elevate her wrist, and imposed modified duty restrictions of no lifting greater than five pounds, no repetitive or tight gripping, grasping, or twisting, and wear immobilizer while working. Dr. Vlahos memorialized that she "left a voice message for Jennifer Ruffolo at the company." Pet.'s Ex. 2.

Petitioner followed up with Dr. Vlahos on November 3, 2014 and advised her symptoms were mildly improved, but she continued to complain of pain in the wrist and at the base of the thumb, particularly with twisting motions with her wrist. Petitioner stated she was icing her wrist, taking Ibuprofen, and wearing the wrist splint as directed, but she still had 4/10 pain. Dr. Vlahos directed Petitioner to continue using ice and Ibuprofen and maintained Petitioner on modified duty.

Pet.'s Ex. 1.

At the November 13, 2014 re-evaluation, Petitioner reported continued symptoms with only mild improvement. Noting Petitioner's wrist remained swollen and tender, Dr. Vlahos again restricted Petitioner to modified duty and ordered occupational therapy. Pet.'s Ex. 1. The recommended therapy began at Presence St. Joseph Hospital on November 19.

Dr. Vlahos' December 4, 2014 office note reflects Petitioner's symptoms were not improving as expected. Dr. Vlahos memorialized Petitioner "was off work for [four] days for the Thanksgiving holiday and symptoms seemed to improve. However, when she returned to work on 12/01/2014, she noted increased swelling and increased pain with use at work." Pet.'s Ex. 1. Petitioner complained of persistent pain particularly along the ulnar aspect of her wrist and limited grip strength due to the pain. Examination revealed mild swelling over ulnar wrist, mild tenderness over ulnar and radial wrist, 4/5 strength with flexion and extension, and 4+/5 wide grip and pinch grip strength. Dr. Vlahos ordered further therapy and directed Petitioner to remain on modified duty, though the doctor eased the weight restriction to 10 pounds. Pet.'s Ex. 1.

Therapy continued through December 19. Petitioner testified that when she was discharged from therapy, she still had pain in her wrist. T. 27. On December 22, 2014, Petitioner returned to see Dr. Vlahos and reported increased wrist pain since therapy ended; Petitioner indicated she had increased pain along the ulnar wrist when she twisted her wrist at work. Given Petitioner's persistent symptoms and examination findings, Dr. Vlahos ordered an MRI of the right wrist; in the meantime, Petitioner was to continue on modified duty, with the doctor returning her to a five-pound weight restriction. Pet.'s Ex. 1.

As of the December 29, 2014 follow-up visit, the MRI had not been approved. Dr. Vlahos noted they would pursue approval for the MRI and pending the further workup, Petitioner remained under the same modified duty restrictions. Pet.'s Ex. 1.

On January 6, 2015, Jennifer Ruffolo prepared a Form 45. The document reflects Petitioner suffered a strain of the right wrist on October 27, 2014. Ruffolo noted Petitioner's injury was recurring. Resp.'s Ex. 6.

The MRI was ultimately performed on January 13, 2015 (Pet.'s Ex. 2) and Petitioner followed up with Dr. Vlahos on January 15, 2015. Upon reviewing the MRI, Dr. Vlahos diagnosed a probable triangular fibrocartilage complex tear and directed Petitioner to consult with an orthopedist for further evaluation and treatment; in the interim, the doctor maintained Petitioner's modified duty restrictions. Pet.'s Ex. 1.

Pursuant to the orthopedic referral, Petitioner presented to Fox Valley Orthopaedic Institute on February 6, 2015; the initial evaluation was conducted by Emily Owens, PA-C. Petitioner gave a history of progressive right wrist pain dating back to October. PA Owens memorialized that Petitioner "uses her right hand repetitively in the same manner all day for an 8-hour shift. This rapid repetitive use in the same position causes worsening pain." Pet.'s Ex. 2. Upon examination and review of the MRI, PA Owens ordered an MR arthrogram to evaluate the triangular fibrocartilage complex; PA Owens noted she was hopeful that symptomatic relief could be

obtained with conservative treatment but warned that if a tear was present, surgical management would be considered. Petitioner was to continue immobilization, remain on restricted duty, and return for re-evaluation with Dr. Craig Torosian after the arthrogram. Pet.'s Ex. 2.

The MR arthrogram was done on February 25, and on March 9, Petitioner presented to Dr. Torosian. On review of the imaging, Dr. Torosian observed the TFC was intact though there were signs in the lunate consistent with ulnar positive ulnar abutment. Dr. Torosian directed Petitioner to remain on modified duty restrictions and ordered an EMG to evaluate for possible carpal tunnel syndrome. The doctor also documented he discussed the possibility of Petitioner requiring an ulnar shortening osteotomy. Pet.'s Ex. 2. The EMG was thereafter performed and the results were normal. Pet.'s Ex. 2.

On April 17, 2015, Petitioner was re-evaluated by Dr. Torosian. Noting Petitioner's symptoms were unchanged and she had persistent pain at 4/10, Dr. Torosian concluded, "based on the severity of her discomfort, she would be a candidate for arthroscopy with an ulnar-shortening osteotomy." Pet.'s Ex. 2. Petitioner wished to hold off on surgery, so Dr. Torosian continued her work restrictions. Pet.'s Ex. 2.

Over the next several months, Petitioner worked restricted duty and followed up with Dr. Torosian. T. 29. The doctor's records indicate Petitioner's symptoms gradually improved. The September 4, 2015 office note reflects Petitioner's pain was 80% improved, though she had persistent pain, swelling, weakness and discomfort about the ulnar aspect of the wrist. Examination revealed diffuse residual tenderness about the distal radioulnar joint and 10% loss of flexion, extension, and rotation in her forearm and wrist. Dr. Torosian placed Petitioner at maximum medical improvement with a permanent 10 pound restriction. Dr. Torosian warned Petitioner that further treatment may be necessary to address her ongoing difficulties: "The residual effects of the injury include pain, swelling, tenderness and changes in weather may irritate her arm as well as weakness…She may require treatment in the future including occupational therapy, ulnar shortening osteotomy and wrist arthroscopy; possibility of which was raised." Pet.'s Ex. 2.

Petitioner returned to her normal job as a glass inspector for the next year and a half. T. 32. She testified that as she performed her work duties, her wrist pain increased. T. 32. Eventually, when the pain "got to be stronger and more often," she returned to Dr. Torosian. T. 33. On October 16, 2017, Petitioner was re-evaluated by Dr. Torosian. Dr. Torosian memorialized Petitioner reported she had "same pain as previously" which had increased over the prior two months. On examination, Dr. Torosian noted limited range of motion, tenderness at the distal aspect of the ulna, and positive provocative testing of the TFC. Diagnosing a possible TFCC tear, Dr. Torosian ordered an MR arthrogram. Pet.'s Ex. 2.

Petitioner elected to obtain a second opinion about her hand pain, so on November 1, 2017, she was evaluated by Dr. Joshua Alpert at Midwest Bone & Joint Institute. T. 33-34. Petitioner complained of right wrist pain associated with an injury while working; Dr. Alpert noted Petitioner works as a glass inspector and "was carrying a heavy pan while at work and inspecting glass with her hand open all day and that is when she first noticed pain." Pet.'s Ex. 3. At trial, Petitioner testified Dr. Alpert asked her what she did in her job and how she did the job, but she did not mention the sizes and weights of the glass. T. 62-63. The Commission observes that it is at this

evaluation that the date of injury is newly identified as November 4, 2014 instead of October 27, 2014. Dr. Alpert further noted Petitioner's prior treatment included a brief course of therapy three years prior, and since then, her pain progressively worsened and she was reporting decreased grip strength. After an examination, Dr. Alpert's impression was right wrist work-related injury consistent with ulnar-sided wrist pain, possible triangular fibrocartilage complex injury. Dr. Alpert echoed Dr. Torosian's recommendation for repeat imaging:

> Given all of her pain over the ulnar aspect of her wrist and her ongoing complaints of pain from repetitive overuse for her work-related injury, I recommend that we get an MRI arthrogram of the right wrist. She also has an EMG from 1/16/13 that shows some mild carpal tunnel syndrome. Her symptoms in her hand of numbness and tingling are not really her main issue of complaint. Her main issue is over the ulnar aspect of her wrist where her TFCC ligament is. Pet.'s Ex. 3.

Dr. Alpert opined Petitioner should remain on modified duty restrictions pending the arthrogram. Pet.'s Ex. 3.

The MR arthrogram was done on November 3, 2017, and when Petitioner returned to Dr. Alpert on November 8 to discuss the results, the doctor informed her the arthrogram revealed a large TFCC tear. Dr. Alpert recommended proceeding with a conservative approach; the doctor administered a cortisone injection to Petitioner's right wrist, provided a new splint, and continued her work restrictions. Pet.'s Ex. 3.

At the November 29, 2017 follow-up visit, Petitioner reported her pain was dramatically improved after the injection, though examination revealed some persistent pain over the TFCC. Noting Petitioner had gotten significant symptomatic relief with the cortisone injection, Dr. Alpert recommended repeating the injection in three months; in the interim, Petitioner would continue working restricted duty, no lifting greater than 10 pounds with her right upper extremity. Dr. Alpert warned that Petitioner "may need these restrictions permanently for the rest of her life and may have long-term pain." Pet.'s Ex. 3.

When Petitioner saw Dr. Alpert on April 20, 2018, she complained of significant pain over the ulnar aspect of her wrist. Diagnosing right wrist pain stemming from a work-related injury four years prior with clinical and MRI findings consistent with TFCC tear, Dr. Alpert explained Petitioner's treatment options:

> I had a long discussion with her in the presence of her family regarding treatment options. This has been going on for four years. She has had cortisone injection, she tried therapy and she is not getting better. Either her options are to get a permanent restriction with no lifting more than 10 pounds of the right upper extremity, and work four days a week, or consider more aggressive treatment options, including repeat physical therapy, repeat cortisone injection, and potentially even surgical intervention to do a TFCC arthroscopic debridement or repair type procedure. Pet.'s Ex. 3.

Noting Petitioner wished to proceed conservatively, Dr. Alpert imposed permanent restrictions of no lifting greater than 10 pounds, four-day workweek, and directed Petitioner to return as needed.

Pet.'s Ex. 3.

On June 25, 2018, Dr. Michael Vender performed a §12 examination and record review at Respondent's request. Dr. Vender's report reflects a professional translator was not present, and instead Petitioner's daughter acted as an interpreter when needed. At arbitration, Petitioner testified Dr. Vender asked questions about her job: "He asked me how it is I worked the glass, how I grip it and, you know, how we use it." T. 70. The history of injury Dr. Vender memorialized in his report is as follows: "Ms. Sotelo states she developed symptoms in her right upper extremity in 2014. There is no history of a specific injury. She described activities of picking up a tray full of glasses. When performing her normal work activities, she developed pain in her wrist." Resp.'s Ex. 1, Dep. Ex. 2. Petitioner indicated her pain was in the ulnar aspect of her wrist and related that her current symptoms were similar to those dating back to 2014. On examination, Dr. Vender noted visible swelling across the dorsal aspect of the wrist, decreased and painful range of motion, and tenderness to palpation; X-rays demonstrated significant ulnar-positive variance and change in the proximal ulnar lunate. Dr. Vender's impression was ulnar impaction syndrome of the right wrist. The doctor then responded to a series of questions. Asked to address the nature of the reported repetitive work injury on or around October 27, 2014, Dr. Vender responded as follows:

> Ms. Sotelo did not have a history of a specific injury. Instead, she described handling trays full of glass. It was during the performance of this normal activity that she states she noticed pain in the wrist. Ms. Sotelo has a degenerative condition in the wrist known as ulnar impaction. The work activities she performed did not aggravate or accelerate the underlying degenerative condition. Resp.'s Ex. 1, Dep. Ex. 2.

Dr. Vender further explained Petitioner has a developmental condition known as ulnar-positive variance, meaning the ulna grows longer than the radius at the level of the wrist, and this condition leads to increased pressure on the ulnar aspect of the wrist and, over time, degeneration of the tissues on the ulnar side of the wrist, which manifests with tears of the triangular fibrocartilage complex and also changes in the lunate bone. Dr. Vender opined Petitioner's job duties did not contribute to the condition, nor did they aggravate her pre-existing ulnar impaction syndrome. Dr. Vender confirmed that Petitioner would benefit from surgical intervention in the form of arthroscopy and distal ulnar shortening, but he did not believe the need for treatment was caused by a work-related injury. Resp.'s Ex. 1, Dep. Ex. 2.

In late summer 2018, Petitioner advised Dr. Alpert that she wished to pursue surgery, so Dr. Alpert referred her to the practice's wrist specialist, Dr. James Seeds, for the procedure. T. 48. Dr. Seeds evaluated Petitioner on September 10, 2018 and recommended proceeding with arthroscopic evaluation of the TFCC for potential debridement versus repair. Pet.'s Ex. 3.

On September 17, 2018, Dr. Alpert authored a narrative report at Petitioner's Counsel's request. Therein, Dr. Alpert noted he had diagnosed Petitioner with right wrist large TFCC tear with ulnar impaction syndrome which he concluded was causally related to her work activities:

> In my opinion, her repetitive work activities and the injury from October 27, 2014, have irritated her right ulnar wrist impaction syndrome and certainly caused the

> TFCC tear. She has had a competent mechanism of injury with a competent mechanism of injury [*sic*] for repetitive work activities. She never complained of any wrist pain in her life prior to repetitive work-related injuries. I do not see how there could be any other cause for her TFCC tear or complaints of the ulnar impaction syndrome that certainly was aggravated and irritated from the repetitive work injuries. Pet.'s Ex. 4, Dep. Ex. 1.

Dr. Alpert further explained Petitioner's work duties involve repetitive use of her wrist, and those repetitive work activities "certainly aggravated her pre-existing condition and caused the TFCC tear for reasons previously outlined." Pet.'s Ex. 4, Dep. Ex. 1. Dr. Alpert then responded to Dr. Vender's opinions. Dr. Alpert first disagreed that Petitioner suffered from a solely degenerative condition:

> Certainly, Ms. Sotelo has ulnar impaction syndrome, but she was completely asymptomatic until repetitive work activities permanently aggravated her pre-existing condition of ulnar-impaction [*sic*] syndrome and permanently caused a TFCC tear that did not get better despite cortisone and therapy. I completely disagree with Dr. Vender's opinion that this is just an idiopathic ulnar impaction syndrome. She has a competent mechanism of injury and competent work-type activities that would irritate her ulnar impaction syndrome and cause a TFCC tear… I do not agree with Dr. Vender that this is solely a degenerative condition. I do agree she has a degenerative condition of ulnar positive variance, but not all patients with ulnar positive variance need surgical intervention. Her need for surgical intervention is due to her repetitive work-related activities along with her ulnar positive variance and TFCC tear. This is clearly a work-related aggravation of her pre-existing degenerative condition that was previously asymptomatic until her work activities aggravated this beyond a temporary level. Pet.'s Ex. 4, Dep. Ex. 1.

Dr. Alpert then explained he "completely disagree[s]" with Dr. Vender's opinion that Petitioner's job duties did not contribute to her condition: "More likely than not, this is a pre-existing degenerative condition that was aggravated by her work-related activities and the TFCC tear particularly occurred due to the work-related activities for repetitive use of her right upper extremity." Pet.'s Ex. 4, Dep. Ex. 1.

During the hearing, Respondent played a job video of the Unloader-Loader/Inspector positions filmed on February 25, 2019. Resp.'s Ex. 2. The video is two minutes and 34 seconds in length. From 00:12 to 1:11, an employee performs the loader position and places pieces of glass onto a conveyor belt; from 1:16 to 2:28, an employee performs the inspector position. Resp.'s Ex. 2. Petitioner is not the individual inspecting on the video. T. 72. Directed to the portion of the video wherein the person picked up the stack from the top, Petitioner testified that is not how she does it; she grabs the stack from the sides. T. 71. The Commission has analyzed the video and we observe the inspecting position involves ulnar and radial deviation movements of the wrist for each piece of glass handled.

A Physical Demands Analysis for the Unloaded-Loader/Inspector position was admitted as Respondent's Exhibit 3. The analysis was prepared by Mary McMillin of Genex on February

20, 2019. The Physical Demand Summary reflects Lifting/Force of up to five pounds "Constantly - Grabbing glass to/from cart, placing/grabbing glass from conveyor belt." Resp.'s Ex. 3. Upper Extremity demands include Horizontal Reaching "Constantly – Grabbing glass from smaller cart to place on conveyor, grabbing glass from conveyor to inspect, inspecting glass pieces"; Simple Grasping "Constantly – Bilateral, handling glassing pieces"; and bilateral Flexion/Extension/Deviation "Constantly – Grabbing glass from smaller cart to place on conveyor, grabbing glass from conveyor to inspect, inspecting glass pieces." Resp.'s Ex. 3. Presented with the job demands analysis, Petitioner agreed it includes the unloader job which she has not done. T. 67. Directed to the "essential functions" section which reflects the job includes rotating between the unloader and inspector stations every two hours, Petitioner testified that is not accurate. T. 68. Petitioner explained the unloader job is usually done by new employees or employees not trained as inspectors. T. 67. Petitioner performs inspecting only: "I inspect eight hours that I'm there." T. 68. Directed to the lifting/carrying section which notes weights up to five pounds, Petitioner agreed the bundles consist of 20 half-pound pieces, which is 10 pounds. T. 68-69. Directed to the photo section and the statement the largest glass piece is 3 x 15 inches, Petitioner testified that is not correct; she lifts larger pieces of glass than 3 x 15. T. 69-70.

Grecia Nava testified on Respondent's behalf. Ms. Nava is Respondent's HR coordinator; she has worked for Respondent since September 2018. T. 78, 90. Ms. Nava testified Jennifer Ruffolo still works for Respondent and is the HR/general manager. T. 92.

Ms. Nava testified Petitioner's position is general labor in the wash machine area. T. 78-79. Ms. Nava stated the line has a loader, seamer, and inspector, and Petitioner works the inspecting portion of the gray line. T. 79. Ms. Nava is familiar with each portion of the gray line and has explained the job to employees. T. 82. Ms. Nava testified Petitioner is under a 10-pound lifting restriction, and her normal job is within that restriction. T. 84.

Ms. Nava testified that when an injury is reported to a supervisor, there is a form filled out and the employee is asked if they want treatment. T. 85. If the employee wants to be seen, they are given a sheet to go to the company clinic. T. 85. Directed to the Form 45 prepared by Ruffolo on January 6, 2015, Ms. Nava testified she has no personal knowledge as to why the report was prepared at that time. T. 92. Ms. Nava agreed Ruffolo is the person to explain what prompted her actions. T. 92.

The November 6, 2018 evidence deposition of Dr. Joshua Alpert was admitted as Petitioner's Exhibit 4. Dr. Alpert is board certified in orthopedic surgery with a subspeciality in sports medicine, meaning his practice concentrates on arthroscopic treatment of joints. Pet.'s Ex. 4, p. 4-5. The doctor testified thirty to forty percent of his practice is shoulder, thirty to forty percent is knee, and twenty percent is elbow and wrist with some foot and ankle. Pet.'s Ex. 4, p. 5-6, 56. Dr. Alpert sees between 100 to 200 wrist TFCC tears a year. Pet.'s Ex. 4, p. 7.

Dr. Alpert first saw Petitioner on November 1, 2017. Pet.'s Ex. 4, p. 8. The doctor stated he believed he reviewed Petitioner's prior records from Fox Valley Orthopedics, and at the time of the initial evaluation he was aware she had been treating for some time for a longstanding right wrist injury. Pet.'s Ex. 4, p. 9. Petitioner brought the January 6, 2013 EMG for him to review. Pet.'s Ex. 4, p. 10. Dr. Alpert testified Petitioner gave a history of a November 4, 2014 injury while

working as a glass inspector: "She has pain when opening her hand completely. She cannot squeeze her hand too hard without pain. She was carrying a heavy pan while at work and inspecting glass with her hand open all day and that is when she first noticed the pain." Pet.'s Ex. 4, p. 10. Dr. Alpert could not recall the weight of the glass Petitioner lifted, but he testified that is something he would typically ask. Pet.'s Ex. 4, p. 10-11. On examination, Dr. Alpert noted ulnar-sided wrist pain. Pet.'s Ex. 4, p. 11. Dr. Alpert explained he was concerned there was cartilage damage in Petitioner's TFCC so he ordered an MR arthrogram to evaluate for possible tear of the TFCC ligament. Pet.'s Ex. 4, p. 12.

Dr. Alpert testified he next saw Petitioner on November 8, 2017; she had undergone the MR arthrogram and he reviewed the findings with her. Pet.'s Ex. 4, p. 14. The doctor explained the arthrogram revealed a large TFCC tear, which correlated with Petitioner's subjective complaints and physical exam findings. Pet.'s Ex. 4, p. 14. Dr. Alpert testified his notes do not reflect whether he reviewed the images or the report, but his normal practice is to require the patient to bring a copy of the CD so he can analyze the images himself. Pet.'s Ex. 4, p. 15. The doctor diagnosed a right wrist work-related injury with a TFCC tear. Pet.'s Ex. 4, p. 15. He administered a cortisone injection, provided a wrist splint, and maintained her longstanding work restrictions. Pet.'s Ex. 4, p. 15-16.

Dr. Alpert testified that when he next saw Petitioner, on November 29, her pain had dramatically improved, which he attributed to the injection and the brace. Pet.'s Ex. 4, p. 17-18. Dr. Alpert's plan was to have Petitioner continue with restricted duty and repeat the injection in three months, and he memorialized Petitioner may have permanent restrictions and long-term pain. Pet.'s Ex. 4, p. 18. Dr. Alpert explained as follows:

> …At this point it's been going on for three years - - over three years. She has a tear of the cartilage in her wrist. She got better with cortisone, but still was having pain. And people who have TFCC tears have a really hard time repetitively gripping and lifting objects. So given how long it's been going on, the tear in the wrist and the pain, I thought potentially she would have permanent restrictions if she got no further treatment from this. Pet.'s Ex. 4, p. 18.

Dr. Alpert testified he saw Petitioner again in January and April 2018. As of April 20, 2018, Petitioner had significant pain and pain with doing heavy lifting activities; Dr. Alpert testified he had a long discussion with Petitioner and advised she had two options, either permanent restrictions with possible further PT, or surgical intervention. Pet.'s Ex. 4, p. 22. Petitioner wished to contemplate her options, so Dr. Alpert maintained her 10-pound restriction and also imposed an additional four-day workweek limitation: "Just to limit the amount of stress and irritation on her TFCC tear and wrist pain and to eliminate and alleviate as much wrist pain as possible." Pet.'s Ex. 4, p. 23. Dr. Alpert confirmed Petitioner later indicated she wished to consider surgery, and he referred her to his partner, Dr. James Seeds, who regularly performs wrist arthroscopy. Pet.'s Ex. 4, p. 24. Dr. Alpert explained he does "a fair amount" of hand surgery, but within the practice group, Dr. Seeds does more wrist arthroscopies than he does and is better at it. Pet.'s Ex. 4, p. 39.

Turning to causation, Dr. Alpert opined Petitioner "has ulnar-sided wrist pain on the right

consistent with a TFCC tear that occurred from a work-related injury." Pet.'s Ex. 4, p. 27. The doctor provided the basis of his opinion: "Based on the history, the medical records, and her competent mechanism of injury, her complaints subjectively that are confirmed with her objective findings, and my years of training." Pet.'s Ex. 4, p. 27. Dr. Alpert explained what he means by competent mechanism of injury:

> Well, she's 47. She's relatively young. When I first saw her, she was having three years of wrist pain. She describes her job of being at work and inspecting glass and carrying heavy pans. Those kind of activities certainly predispose patients to getting ulnar-sided wrist pain and getting - - and having TFCC tears. Pet.'s Ex. 4, p. 27-28.

Dr. Alpert confirmed he concluded Petitioner's TFCC tear was caused by her work activities, explaining that "any kind of repetitive gripping, using the hand and lifting heavy objects increases the stress in the wrist joint particularly at the TFCC area of the wrist." Pet.'s Ex. 4, p. 28, 31. The doctor further explained why the ulnar side was impacted:

> Well, the ulnar side is one of the main components of the wrist. It helps with grip strength and certainly lifting and then also when you ulnarly deviate your wrist which means moving your wrist towards the pinkie side with kind of gripping and holding objects and carrying objects, certainly increases the stress in that part of the wrist joint. Pet.'s Ex. 4, p. 31-32.

Turning to Dr. Vender's opinions, Dr. Alpert testified Dr. Vender felt Petitioner's injury was simply a degenerative condition due to ulnar impaction syndrome. Pet.'s Ex. 4, p. 32. Dr. Alpert agreed that Petitioner has ulnar impaction syndrome but disagreed that condition was the sole cause of her TFCC tear:

> Ulnar impaction syndrome is when the ulna which is the bone in the wrist closest to the pinkie is higher up or closer to the pinkie than it normally is. And when that happens, when the ulnar bone is higher up or closer to the pinkie, the ulna can rub on the carpal phones or the wrist bones. And when that happens, the TFCC can tear. And re-reviewing Dr. Vender's IME and looking at the X-rays and the MRI, certainly there is a component in Ms. Sotelo of ulnar impaction syndrome. But not everybody with ulnar impaction syndrome has a TFCC tear and not everybody with ulnar impaction syndrome has wrist pain. So, although, I agree with Dr. Vender that the patient has ulnar impaction syndrome, given her work activities, her complaints, the TFCC tear objectively on the MRI, certainly the repetitive work activities at a minimum permanently aggravated the preexisting condition of ulnar impaction syndrome and permanently caused a TFCC tear that did not get better despite cortisone and therapy. Pet.'s Ex. 4, p. 32-33.

Dr. Alpert explained the significance of Petitioner being essentially asymptomatic until Fall 2014:

> I mean, the importance of that is that she never - - she had no pre-existing issue with the right wrist as far as I know. She never saw a doctor for the right wrist prior to this as far as I know. She never had these complaints prior to her work activities

> prior to - - as far as I know. So in those cases, you have someone who may have a - - this ulnar impaction syndrome, but if she's asymptomatic and having no issues and has a job where she's repetitively lifting and gripping and carrying and complains of ulnar-sided wrist pain and gets treatment for three years, you know, I don't see how you can say this is anything else but due to her work-related activities. Pet.'s Ex. 4, p. 33-34.

Dr. Alpert disagreed with Dr. Vender's conclusion that Petitioner's TFCC tear would have occurred whether or not Petitioner had been working, and opined that he had no idea how this could be true "if you look at the mechanism of injury, her complaints, her history, and her treatment." Pet.'s Ex. 4, p. 34.

On cross-examination, Dr. Alpert testified he was not given a written job description and did not review a job video. Pet.'s Ex. 4, p. 38. Asked what weights Petitioner indicated she lifted, Dr. Alpert stated, "She said she was carrying a heavy pan while at work and inspecting glass with her hand open all day. I didn't get an exact weight." Pet.'s Ex. 4, p. 45. Dr. Alpert did not know what the pan weighed, how many pieces of glass it contained, or if Petitioner carried it with one or two hands. Pet.'s Ex. 4, p. 45-46. Dr. Alpert testified Petitioner did not tell him how many times per day she lifted pieces of glass or describe how she inspects glass, and she did not tell him how long she has worked for Respondent. Pet.'s Ex. 4, p. 46-47.

Dr. Alpert agreed he did not diagnose ulnar impaction syndrome when he first saw Petitioner, but denied he has changed his opinion:

> I mean, my opinion is that she has a TFCC tear…Certainly on the X-ray and the MRI, those are radiographic findings that are consistent with ulnar impaction syndrome, but I still believe she - - from my opinion, she had a work-related TFCC tear and the ulnar impaction syndrome is a radiographic and MRI finding. I don't disagree with that from the records and the reports on the MRI or from Dr. Vender, but I don't think that's her work-related diagnosis. Pet.'s Ex. 4, p. 50.

Dr. Alpert agreed Petitioner told him she carried a pan and worked with an open hand as a glass inspector. Pet.'s Ex. 4, p. 51. Petitioner did not give any specific weights or shapes of the glass pieces, did not discuss the positions she held the glass or the pan, and did not discuss the frequency of her movements. Pet.'s Ex. 4, p. 52. Dr. Alpert denied that his opinion was speculative stating that based on the history provided by Petitioner, the physical exam findings, the diagnostic imaging, Petitioner's age, her job which "appears to be heavy," her frequent hand use, and her complaints of ulnar-sided wrist pain, "I think it's very clear that it's work related… I think I was given enough information to have an opinion." Pet.'s Ex. 4, p. 52-53. Dr. Alpert agreed that knowing specific weights and frequency would be more information but did not believe it would change his opinion. Pet.'s Ex. 4, p. 53.

The December 7, 2018 evidence deposition of Dr. Michael Vender was admitted as Respondent's Exhibit 1. Dr. Vender is board certified in orthopedic surgery and has an added qualification in surgery of the hand. Resp.'s Ex. 1, p. 7. His practice is limited to the upper extremity and hand. Resp.'s Ex. 1, p. 6. Dr. Vender examined Petitioner at Respondent's request

on June 25, 2018. Resp.'s Ex. 1, p. 8-9. Dr. Vender testified consistent with his report.

Dr. Vender testified he was given two different dates – October 27, 2014 and November 3, 2014 – but he was not sure what the significance of those are, "I'm not sure I really tied the dates back to anything." Resp.'s Ex. 1, p. 11-12. Asked if Petitioner's condition is related to an accident on either of those dates, Dr. Vender responded as follows:

> Well, the question is what do I think about the injury but there really wasn't an injury. An injury has a certain meaning to that term. This was a noted - - noticing onset of symptoms which is not the same thing as having an actual injury. She did not have an injury. She didn't slip and fall, something didn't fall onto her. There was nothing unusual that would be defined as an actual injury. Instead, it appears that she reports these symptoms related to her normal activities… And my feeling was performance of those activities did not cause or contribute to her condition. Resp.'s Ex. 1, p. 12-13.

Dr. Vender testified that Petitioner had a pre-existing developmental condition known as ulnar impaction syndrome, and he did not believe that condition was not aggravated by Petitioner's work activities: "For there to be an aggravation of a pre-existing condition you have to have something that would be considered an injury of substance that would materially change the pathologic process and there's no indications that she sustained that type of injury." Resp.'s Ex. 1, p. 15-16. Directed to Dr. Alpert's conclusion that Petitioner had a competent mechanism of injury, Dr. Vender responded as follows:

> Well, there's a couple of things to look at. One, there is no injury; therefore, if there's no injury, there's no mechanism of injury. Two, I have no idea what the term competent means so…Again, you know, I think we can all agree that when someone has a degenerative wrist, arthritis in the wrist, which is what this would be considered, a form of degenerative change…that there's a certain level of symptoms associated with that and there's going to be a progression of that and, yes, someone slips on the ice and falls with their body weight on it, then afterwards they have a whole new swollen wrist…that is what I call a mechanism of injury. Resp.'s Ex. 1, p. 16-17.

Dr. Vender confirmed that both he and Dr. Alpert agree Petitioner has a TFCC tear that needs to be repaired; the area of disagreement is causation. Resp.'s Ex. 1, p. 23. Dr. Vender confirmed he believes the tear is solely the result of a degenerative condition. Resp.'s Ex. 1, p. 23.

As to his understanding of Petitioner's work activities, Dr. Vender agreed his report references Petitioner picking up a tray full of glasses, and he testified, "That was the activity she ascribed it to actually." Resp.'s Ex. 1, p. 24. Dr. Vender stated he "do[es]n't have any details" of what kind of glasses Petitioner was picking up, and had no information on the sizes, weights, or frequency of her activities. Resp.'s Ex. 1, p. 24-25. Dr. Vender confirmed that his knowledge of Petitioner's work activities was limited to Petitioner picking up a tray of glasses at a job she started in June 2004. Resp.'s Ex. 1, p. 25. Dr. Vender did not discuss with Petitioner how she performs her job; he does not know how Petitioner picked up the individual pieces, how much the pieces

weighed, or how often she did that motion per day. Resp.'s Ex. 1, p. 25-26. Dr. Vender believes Petitioner performed varied work tasks: "I mean she grinds edges of glasses, she handles glasses, she's probably lifting trays. I don't think there's any one activity she does." Resp.'s Ex. 1, p. 29. Directed to his review of a document describing some of Petitioner's work activities, Dr. Vender agreed that document indicates Petitioner lifts up to 20 pounds and repetitive motion with both hands is part of her job. Resp.'s Ex. 1, p. 26. The doctor further agreed the document does not specify what repetitive means, but it does indicate it is a fast-paced work environment. Resp.'s Ex. 1, p. 26. Dr. Vender denied that repetitively gripping and lifting pieces of glass that weigh up to 20 pounds multiple times a day for a dozen years would have any effect on a person's wrist:

> No. It would be speculation to say it does. I mean that's - - you're talking about normal use. You're talking about repetitive use. First of all, we don't know whether it was repetitive but that is what we do with our bodies. Lifting things up to 20 pounds, that is something we do on a regular basis. That's what we're supposed to do with our bodies. We know that the opposite's a problem in that if we put an arm in a cast and tell them not to use it repetitively and tell them not to lift anything with it, they get osteoporosis and disuse. So the fact that she's using and doing things, nothing we've talked about sounds overly stressful or unusual. I don't consider that a problem. Resp.'s Ex. 1, p. 27-28.

Dr. Vender conceded repetitively pinching and lifting up to 20 pounds adds stress to a person's wrist joint, and the doctor further agreed it would add stress to the TFCC area, stating "Well, sure. That's why there's an ulnar positive variance and that's why it's worn down." Resp.'s Ex. 1., p. 30.

Dr. Vender testified a person with an ulnar positive variance does not automatically get a TFCC tear ("Probably not necessarily"), nor do they automatically have wrist pain. Resp.'s Ex. 1, p. 31. Dr. Vender conceded having a longer ulna does not equate to automatic causation for a TFCC tear or wrist pain, and confirmed individuals with ulnar positive variances can be asymptomatic for their entire lives. Resp.'s Ex. 1, p. 31. Dr. Vender claimed Petitioner would have a TFCC tear whether or not she did her job at Respondent, and the fact she developed a tear is completely unaffected by her work. Resp.'s Ex. 1, p. 32.

Dr. Vender agreed repetitive work activities that engage the wrist and TFCC area can cause a TFCC tear in a person without ulnar impaction syndrome. Resp.'s Ex. 1, p. 35. It can similarly cause wrist pain. Resp.'s Ex. 1, p. 35. The following exchange occurred:

> Q. So if someone who doesn't have that condition can get TFCC tears because of repetitive work, why wouldn't someone who's doing repetitive work with that condition not be more readily going to have that TFCC tear as a result of the repetitive work?
>
> A. But the repetitive - - you're using the term repetitive work like it is the injury that we're talking about. I'm talking about that this is what we do with our hands so if you're going to take that argument, then there should be no worker's [*sic*] compensation because everybody who works will have all their natural conditions

> covered because they're working and that's not fair to the other half of the population that doesn't work that has the same conditions. They're using their hands, just not at work, so it doesn't make sense to me. Resp.'s Ex. 1, p. 35-36.

Dr. Vender confirmed that of his medicolegal work, "Pretty much just about all of them" are on behalf of respondents. Resp.'s Ex. 1, p. 37. Asked if the cases sent to him involve disputed repetitive type injuries, Dr. Vender responded, "Well, first of all, I do have a problem with the term repetitive but just to keep things moving, yes, I do see these types of cases." Resp.'s Ex. 1, p. 37. Dr. Vender denied that he always finds that the repetitive work is not a cause of the work-related injury: "I have lots of cases where I think something is work-related…in fairness it's a minority and I don't think a routine use in a repetitive way is harmful for various conditions." Resp.'s Ex. 1, p. 37-38. Asked how he can render a causation opinion given that he does not know much about what Petitioner's job involves, Dr. Vender testified as follows:

> Because there's nothing inherent that you would think about. It would be like saying when I'm asked an opinion on a factory worker, okay, it has to be very specific things. Sometimes I can't figure it out very well, you know, and I really need more details so sometimes you ask in more detail. But if someone says, you know, do you think that being a gas station attendant causes carpal tunnel syndrome, well, you know, I don't have all the details of what a gas station attendant does but I don't think you really need a lot of details to know that, depending on how much he sells cigarettes versus how many times he pumps gas or how many times he cleans the bathroom, the details really don't make a difference. There's nothing inherent that would be in that job that would cause carpal tunnel syndrome, so I look at this case this way. This person has an end stage degenerative condition performing a normal inspection job, not manufacturing, nothing that there's a lot of question marks and I felt comfortable giving my opinions based on that. Resp.'s Ex. 1, p. 38-39.

Dr. Vender agreed lifting and to some degree gripping is a load-bearing activity for the wrist. Resp.'s Ex. 1, p. 49. Asked if load-bearing activities have been shown to increase the progression of TFCC degeneration, Dr. Vender responded, "You know, it's like asking me does living longer increase our chances of death." The following exchange occurred:

> Q. So the answer to my question is yes.
> A. We wear away, so whether you work or don't work that's my whole point here. She's doing what can be considered normal activities. The only thing you're trying to distinguish is she doing these normal activities at work versus at home, therefore, the person who's doing them at work should be covered but the person who's doing it at home shouldn't be covered.
>
> Q. Well, is a person at home doing this at all?
> A. Sure. People don't sit with their arms in the air when they're at home. They're doing something. Sometimes people are more abusive with their arms not at work than they are at work.

> Q. If it wasn't being done at work it wouldn't be compensable but if it's being done at work it is compensable.
> A. That's right, and that doesn't make sense because you're doing normal things. There's nothing special about the work that puts the person at risk versus a normal population.
>
> Q. I don't know how you can say that when you don't know what she does at work.
> A. Well, I'm making some assumptions that it's just not that part of her work, you're right. Resp.'s Ex. 1, p. 40-41.

Dr. Vender reiterated Petitioner's ulnar positive variance is a pre-existing condition which makes her more likely to suffer a TFCC tear. Resp.'s Ex. 1, p. 41. Asked if performing repetitive work which stresses the wrist would make her further likely to suffer a TFCC tear and exacerbate the pre-existing condition, Dr. Vender stated, "Again, we're going in circles a little bit here. I don't look at it as just repetitive work. I look at this is this person at any more risk than someone who's not doing this job as a normal person and that's supposed to be the definition of a causation. Is this person - - whether it's from exposure to chemicals or inactivity, is this person more at risk than someone in the general population and my feeling is no." Resp.'s Ex. 1, p. 41-42. Dr. Vender opined "all this is speculation" and stated there is no medical evidence that a naturally occurring degenerative condition is somehow aggravated. Resp.'s Ex. 1, p. 45.

CONCLUSIONS OF LAW

I. Repetitive Trauma Injury Related to Work Activities

An employee who alleges injury based on repetitive trauma must meet the same standard of proof as other claimants alleging an accidental injury: "There must be a showing that the injury is work related and not the result of a normal degenerative aging process." *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill. 2d 524, 530, 505 N.E.2d 1026, 1028 (1987). "There is no requirement that a certain percentage of time be spent on a task in order for the [claimant's work] duties to meet a legal definition of 'repetitive.'" *Edward Hines Precision Components v. Industrial Commission*, 356 Ill. App. 3d 186, 194, 825 N.E.2d 773, 780 (1987). The question whether a claimant's work activities are sufficiently repetitive to establish a compensable accident under a repetitive trauma theory must be decided on a case by case basis upon the particular facts presented in each case; in making that determination, the Commission considers evidence of the repetitive "manner and method" of a claimant's job duties. *Williams v. Industrial Commission*, 244 Ill. App. 3d 204, 210-211, 614 N.E.2d 177, 181 (1st Dist. 1993).

The Commission finds the evidence establishes that Petitioner performed repetitive work activities. We note the Physical Demands Analysis submitted by Respondent reflects the job's upper extremity demands include Horizontal Reaching "Constantly – Grabbing glass from smaller cart to place on conveyor, grabbing glass from conveyor to inspect, inspecting glass pieces"; Simple Grasping "Constantly – Handling glassing pieces"; as well as bilateral Flexion/Extension/Deviation "Constantly – Grabbing glass from smaller cart to place on conveyor, grabbing glass from conveyor to inspect, inspecting glass pieces." Resp.'s Ex. 3. While the Analysis suggests the unloader-loader and inspector positions are rotated every two hours,

Petitioner disputed that and testified she solely performed inspecting: "I inspect eight hours that I am there." T. 68. The Commission finds Petitioner's testimony is credible. The Commission further observes Petitioner's unrebutted testimony is that, as an inspector, she handles 325 pieces of glass per hour, and grips and carries 16 bundles to the cart every hour. T. 18. The Commission has reviewed the job analysis video (Resp.'s Ex. 2) and we find it corroborates Petitioner's description of the production rate and associated inspection pace. Petitioner is not the individual on the video, and she testified she handles the stacks differently. T. 71. Focusing our study on the mechanics of retrieving the glass from the conveyor, raising it to eye level for inspection, placing the piece onto a stack, reaching to the right to grasp a dividing sheet, then placing a dividing sheet on top, the Commission finds the manner and method for inspecting each piece of glass requires gripping with both hands as well as bilateral ulnar and radial deviation of the wrists.

Having concluded Petitioner's job duties were repetitive, the next step in our analysis is to determine what effect, if any, the repetitive work activities had on Petitioner's congenital ulnar positive variance A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 672-73 (2003). Thus, even if the claimant had a pre-existing degenerative condition which made her more vulnerable to injury, recovery for an accidental injury will not be denied as long as she can show her employment played a role in aggravating or accelerating the pre-existing condition. *Id* at 204-205. There are two conflicting causation opinions: Dr. Alpert concluded Petitioner's work activities aggravated her pre-existing condition and caused the TFC tear, whereas Dr. Vender concluded Petitioner's work activities in no way affected the underlying ulnar impaction syndrome.

At the outset, the Commission finds it necessary to acknowledge that Dr. Vender made his disbelief and skepticism for the concept of repetitive trauma work injuries clear throughout his deposition. Dr. Vender testified he has "a problem" with the term repetitive (Resp.'s Ex. 1, p. 37), and consistently opined that repetitive work activities are indistinguishable from "normal use" (Resp.'s Ex. 1, p. 27), how individuals use their hands at home (Resp.'s Ex. 1, p. 35-36), and "normal activities" (Resp.'s Ex. 1, p. 40). It is with this understanding of Dr. Vender's views that we consider his testimony.

The Commission observes that neither physician had a clear grasp of Petitioner's job duties. Dr. Alpert's understanding of Petitioner's job was that she carried a pan and worked with an open hand as a glass inspector; Dr. Alpert confirmed Petitioner did not give any specific weights or shapes of the glass pieces, did not discuss the positions she held the glass or the pan, and did not discuss the frequency of her movements. Pet.'s Ex. 4, p. 51-52. Similarly, Dr. Vender, who believed Petitioner's work duties were varied and involved picking up a tray of glasses, conceded he "do[es]n't have any details" of what kind of glasses Petitioner was picking up, and had no information on the sizes, weights, or frequency of her activities. Resp.'s Ex. 1, p. 29, 24-25. Dr. Vender did not discuss with Petitioner how she performs her job; he does not know how Petitioner picked up the individual pieces, how much the pieces weighed, or how often she did that motion per day. Resp.'s Ex. 1, p. 25-26.

While neither physician could speak with specificity about the body mechanics involved, the Commission observes that the doctors concurred that certain activities stress the TFCC. Dr.

Alpert explained that "any kind of repetitive gripping, using the hand and lifting heavy objects increases the stress in the wrist joint particularly at the TFCC area of the wrist." Pet.'s Ex. 4, p. 31. The doctor further explained why the ulnar side was impacted:

> Well, the ulnar side is one of the main components of the wrist. It helps with grip strength and certainly lifting and then also when you ulnarly deviate your wrist which means moving your wrist towards the pinkie side with kind of gripping and holding objects and carrying objects, certainly increases the stress in that part of the wrist joint. Pet.'s Ex. 4, p. 31-32.

Dr. Vender, in turn, agreed repetitively pinching and lifting up to 20 pounds adds stress to the wrist joint and in particular the TFCC area. Resp.'s Ex. 1, p. 29-30. Dr. Vender also agreed repetitive work activities that engage the wrist and TFCC area can cause a TFCC tear, even in an individual without ulnar impaction syndrome. Resp.'s Ex. 1, p. 35.

The Commission finds the preponderance of the evidence establishes Petitioner's work activities aggravated her underlying ulnar impaction syndrome. Petitioner worked as an inspector for several years; the unrebutted evidence is the production rate was 325 pieces per hour, and Petitioner worked eight hours per day and regularly worked overtime. The Commission disagrees with Dr. Vender's assertion that Petitioner performing the same physical motions 325 times per hour is normal use, and we are not persuaded by his opinions. Moreover, Respondent's job video demonstrates the inspector performs repetitive ulnar deviation with each glass piece, a motion which stresses the TFCC area. See *Krantz v. Industrial Commission*, 289 Ill. App. 3d 447, 450-51, 681 N.E.2d 1100 (1997) (The Commission is an administrative tribunal that hears only workers' compensation cases and deals extensively with medical issues) and *Long v. Industrial Commission*, 76 Ill. 2d 561, 566, 394 N.E.2d 1192 (1979) (The Commission possesses inherent expertise regarding medical issues). The Commission notes the diagnostic imaging reflects Petitioner's TFC was intact in 2015 (Pet.'s Ex. 2), but by 2017, she had developed a large tear. Pet.'s Ex. 3. The Commission concludes that Petitioner's work activities were a causal factor in the aggravation of her pre-existing ulnar impaction syndrome.

While the Commission finds Petitioner sustained repetitive trauma injuries, we do not believe the alleged manifestation date comports with the evidence. The manifestation date "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, 531, 505 N.E.2d 1026 (1987). It is well-settled the date of manifestation of a repetitive trauma injury is subject to a "flexible standard" that "ensures a fair result for both the faithful employee and the employer's insurance carrier." *Three 'D' Discount Store v. Industrial Commission*, 198 Ill. App. 3d 43, 49, 556 N.E.2d 261 (1989). The test of when an injury manifests itself is an objective one, determined from the facts and circumstances of each case. *Id* at 47. In deciding the manifestation date of a repetitive-trauma injury, courts consider various factors, including the dates on which (1) the claimant first sought medical attention for the condition, (2) the claimant was first informed by a physician that the condition is work-related, (3) the claimant was first unable to work as a result of the condition, (4) the symptoms became more acute at work, and (5) the claimant first noticed the symptoms of the condition. *See Durand v Industrial Commission*, 224 Ill. 2d 53, 68-70, 862

N.E.2d 918, 926 (2006) (citing *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 531, 505 N.E.2d 1026, 1029, 106 Ill. Dec. 235 (1987); *Three "D" Discount Store*, 198 Ill. App. 3d at 47-48, 556 N.E.2d at 266-65; and *Oscar Mayer & Co. v. Industrial Comm'n*, 176 Ill. App. 3d 607, 611-12, 531 N.E.2d 174, 176-77, 126 Ill. Dec. 41 (1988)). The Commission finds November 4, 2014 does not meet any of the above criteria.

Instead, the Commission finds October 27, 2014 is the date Petitioner's condition manifested itself. The Commission observes October 27, 2014 is the date Petitioner first sought medical care for her right wrist complaints. Upon obtaining the requisite permission to be seen at Respondent's company clinic, Petitioner presented to Presence St. Joseph Occupational Health where she was evaluated by Dr. Maria Vlahos. Dr. Vlahos memorialized Petitioner gave a history of an onset of pain in the ulnar aspect of her right wrist and right thumb approximately four days prior; Dr. Vlahos memorialized Petitioner associated her complaints with her job duties: "She states she works in assembly, and thinks that she has over-used her wrist and thumb. She does repetitive gripping and pushing and pressing of parts using her thumb, her fingers, along with wide gripping throughout her work shift, and she feels that this has caused her symptoms." Pet.'s Ex. 2. After an examination, Dr. Vlahos diagnosed acute strains and tendinitis of Petitioner's right wrist and right thumb, documenting the diagnoses "are related to the job duties on 10/27/2014." Pet.'s Ex. 2. An October 27, 2014 manifestation date is documented thereafter in the medical records, the Form 45 (Resp.'s Ex. 6), and Dr. Vender's June 25, 2018 §12 report. For unknown reasons, however, the Application for Adjustment of Claim filed in September 2017 alleges a November 4, 2014 date of accident, and when Petitioner transferred her care to Dr. Alpert, she begins referencing November 4, 2014 as the accident date.

As such, the Commission *sua sponte* amends Petitioner's Application for Adjustment of Claim to reflect an October 27, 2014 manifestation date. *Caterpillar Tractor Co. v. Industrial Commission*, 215 Ill. App. 3d 229, 238, 574 N.E.2d 1198 (1991) (An amendment of an application for adjustment of claim is allowed where the amendment was to conform the pleadings to proof presented in the record.)

II. Notice

Respondent disputed that timely notice was provided, claiming that Petitioner did not report her injury until January 6, 2015. Respondent argues this is proven by the fact that January 6, 2015 is the date Jennifer Ruffolo prepared the Form 45. The Commission disagrees.

The Commission observes Respondent's HR coordinator, Ms. Nava, testified that when an injury is reported, the employee is asked if s/he wants treatment and if s/he does, permission paperwork is provided for her/him to be seen at the company clinic. T. 85. We further note the October 27, 2014 record from St. Joseph's Occupational Health identifies Jennifer Ruffolo as the contact person, and Dr. Vlahos' "Plan" includes the following: "I left a voice message for Jennifer Ruffolo at the company, and work status will be faxed." Pet.'s Ex. 2. The Occupational Health records demonstrate that Ruffolo was contacted after each follow-up visit and personally gave approval for the recommended treatments through December 30, 2014, after which she submitted the claim to Respondent's carrier. Pet.'s Ex. 1. The evidence establishes Respondent received notice of Petitioner's injury on the date she first sought treatment, October 27, 2014, but Ruffolo

failed to complete the Form 45 until prompted by the carrier. The Commission finds Petitioner provided timely notice to Respondent.

III. Temporary Disability

Petitioner alleges entitlement to temporary partial disability benefits from May 14, 2018 through May 30, 2019. The Commission finds this corresponds to the period Dr. Alpert restricted Petitioner to a four-day workweek. Pet.'s Ex. 3.

The parties stipulated Petitioner's average weekly wage is $487.00. Arb.'s Ex. 1. This equates to earnings of $97.40 per day for a five-day workweek. T. 12. As Petitioner is limited to a four-day workweek, she is currently earning $97.40 less per week than what she would be earning in full performance of her job. This yields a temporary partial disability benefit of $64.93 per week ($97.40 / 3 x 2 = $64.93). The Commission finds Petitioner is entitled to temporary partial disability benefits of $64.93 per week for a period of 54 4/7 weeks, representing May 14, 2018 through May 30, 2019.

IV. Incurred Medical Expenses and Prospective Treatment

Petitioner offered into evidence medical bills for charges incurred at Fox Valley Orthopaedic Institute (Pet.'s Ex. 2) and Midwest Bone & Joint Institute (Pet.'s Ex. 3). The Commission finds these charges were incurred for treatment that was reasonable, necessary, and related to the October 27, 2014 work accident, and Respondent is liable for same. Further, as Dr. Alpert, Dr. Seeds, and Dr. Vender all concur that Petitioner requires surgery to address her TFCC tear, the Commission orders Respondent to provide and pay for the surgery with Dr. Seeds.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 28, 2020, is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner sustained repetitive trauma injuries to her right wrist manifesting on October 27, 2014, and her current condition of ill-being is causally related to her work activities.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner temporary partial disability benefits in the sum of $64.93 per week for a period of 54 4/7 weeks, representing May 14, 2018 through May 30, 2019, as provided in §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the reasonable, necessary and causally related medical expenses detailed in Petitioner's Exhibit 2 and Petitioner's Exhibit 3, as provided in §8(a), subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Resonent shall provide and pay for the treatment recommended by Dr. Seeds and Dr. Alpert as provided in §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of 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 $8,800.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

January 5, 2022

/s/ *Deborah J. Baker*

DJB/mck

O: 11/10/21

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION 22IWCC0012
NOTICE OF ARBITRATOR DECISION
8(A)

SOTELO, OLGA
Employee/Petitioner

Case# **17WC028497**

CAT-1 GLASS
Employer/Respondent

On 4/28/2020, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.15% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

4128 RUBENS KRESS & MULHOLLAND
MATTHEW K ABRAMS
134 N LASALLE ST SUITE 444
CHICAGO, IL 60602

2097 KRAKAR FANNING & OLSEN
DANIEL SWANSON
300 S RIVERSIDE PLZ SUITE 2050
CHICAGO, IL 60606

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
8(A)

Olga Sotelo,
Employee/Petitioner

v.

Cat-I Glass,
Employer/Respondent

Case # **17** WC **28497**

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 **Arbitrator Watts**, Arbitrator of the Commission, in the city of **Wheaton**, on **May 30, 2019**. 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, **November 4, 2014**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident ***was not*** given to Respondent.

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

In the year preceding the injury, Petitioner earned $**25,324.00**; the average weekly wage was $**487.00**.

On the date of accident, Petitioner was **44** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**0** for TTD (**No lost time**), $**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

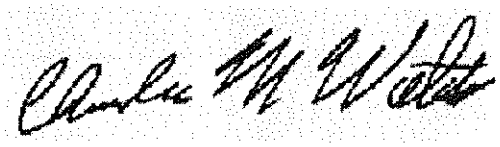
Denial of benefits

Because Petitioner failed to prove that an accident occurred that arose out of and in the course of Petitioner's employment by Respondent, all benefits are denied.

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

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

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



Signature of Arbitrator

April 20, 2020
Date

APR 28 2020

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

OLGA SOTELO,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	IWCC No.: 17 WC 28497
CAT-I GLASS,	)	
	)	
Respondent.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

STATEMENT OF FACTS

Petitioner testified she worked for Cat-I Glass as a glass inspector for 15 years, since 2004. She testified that she has done the same job, working as a glass inspector for the entire term of her employment with Cat-I Glass. Petitioner testified that on November 4, 2014, while she was working as a glass inspector, she noticed pain in her right hand. She described her job as a glass inspector as such, "I would pick up pieces of glass. I would bundle the pieces and then I would put them away as they were coming off a machine." (Transcript at Page 14) Petitioner referred to the machine that she worked on as the blue light machine. Petitioner indicated that after inspecting 20 pieces of glass, she would put them in a stack and move them onto a cart next to the machine.

Petitioner testified that she worked Monday through Friday from 7:00 a.m. through 3:30 in the afternoon, approximately 8 hours a day. Petitioner testified that the smallest pieces of glass that she inspected were 2 x 2 inches. She testified that she occasionally inspected pieces of glass that were 29 inches x 2.3 inches. (Transcript at page 17) and various pieces of glass in between those two sizes. Petitioner testified that she would be stacking and moving

approximately 16 stacks every hour as she testified, that she would move approximately 325 pieces of glass per hour in stacks of 20. (Transcript at pages 17 & 18)

Additionally, Petitioner watched the job analysis video, which was admitted into evidence. (Respondent's Exhibit No. 2) Petitioner acknowledged that she was depicted on the video performing her job as a glass inspector. She admitted that when she inspects the panes of glass, each pane weighs less than half a pound if you pick them up individually. (Transcript at page 54) Also admitted into evidence was Respondent's Exhibit No. 3, the Cat-I Glass physical demands analysis report performed by Genex, in conjunction with the job analysis video made on February 20, 2019. According to the report, the lifting force required "grabbing glass to/from cart, placing/grabbing glass from the conveyor belt" fell within the 0 to 5-pound category constantly. Also, the report indicated that the lifting performed by the glass inspector never exceeded 5 pounds. (Respondent's Exhibit No. 3)

Petitioner testified that she started having right wrist pain on November 4, 2014 and that the pain began suddenly while she was grabbing bundles of glass. (Transcript at page 22) Petitioner testified that "it was November 4th when I was working, I loaded a tray and that is when the pain started." Petitioner also admitted that she first sought treatment at Saint Joseph Hospital on October 27, 2014 regarding right wrist pain. (Transcript at page 23) The October 27, 2014 Presence Saint Joseph Hospital record from Dr. Maria Vlahos indicates that "four days ago on, October 23, 2014, the Petitioner developed a right pain at the ulnar aspect of the right wrist and right thumb and was diagnosed with an acute strain/tendinitis of the right wrist and right thumb." Dr. Vlahos prescribed ice, compression, ibuprofen and a return to work. Petitioner was given a return to work with a 5-pound lifting restriction for the right hand with a restriction to avoid repetitive tight gripping, grasping, twisting with the right hand/wrist. Additionally, she

was prescribed a right wrist immobilizer while working. Petitioner testified that the restrictions were accommodated and she returned to her normal job as a glass inspector.

Petitioner testified that she gave notice of the right wrist injury on November 4, 2014 to Ruby, who was the head of the washing machine department. Petitioner also testified that she finished the day at work and went to a doctor the same afternoon. The Saint Joseph Hospital Occupational Health records show the Petitioner had a visit on November 3, 2014 and indicated to Dr. Vlahos that she was feeling a little better wearing the immobilizer, which was helpful. Petitioner was diagnosed with acute strain of the right wrist, tendinitis and acute strain tendinitis of the right thumb. Petitioner testified that November 4, 2014 was the first day that she went to Saint Joseph Hospital. (Transcript at page 27) Petitioner also testified that she spoke to Jennifer Ruffolo, the Cat-I Glass Director of Human Resources, on November 4, 2014 by her work area. The Petitioner denied that she first gave notice of the injury to Jennifer Ruffolo at work on January 6, 2015. The records of St. Joseph Hospital indicate that Ms. Ruffolo approved occupational therapy on November 13, 2014. Jennifer Ruffolo was the Director of Human Resources at Cat-I Glass. Petitioner was shown the First Report of Injury, which was filled out by Jennifer Ruffolo of Cat-I Glass, indicating that the date of accident reported was October 27, 2014. (Respondent's Exhibit No. 6)

Petitioner testified that she underwent 12 sessions of physical therapy and was discharged on December 22, 2014. Petitioner continued to work under her normal job with a 5-pound restriction through the time of her discharge from therapy at Saint Joseph Hospital Occupational Health. The diagnosis remained subacute strain/tendinitis of the right wrist. Petitioner testified that she continued to work as a glass inspector for Cat-I Glass, performing within her restrictions. On December 29, 2014, Dr. Vlahos prescribed an MRI for the right wrist.

Petitioner underwent an MRI on January 13, 2015 on the right wrist, which revealed a ganglion cyst at her volar aspect of the radial styloid process, bone marrow edema and underlying radius and was suspicious for tearing of the TFCC, probably degenerative in etiology and a degenerative cyst at the ulnar aspect of the lunate bone. Dr. Vlahos reviewed the MRI results and discharged the Petitioner on January 15, 2015.

Thereafter, Petitioner sought treatment with Dr. Craig Torosian on February 6, 2015. According to that record, Petitioner indicated that her pain began in the right wrist in October of 2014 and that is when her treatment began. Dr. Torosian recommended that Petitioner wear a splint and maintain weight restrictions at work, as there were numerous areas of degenerative changes throughout the wrist. Dr. Torosian indicated that the conservative treatment would be the only treatment she needs. Petitioner underwent another MRI on February 25, 2015 on the right wrist, which showed lunate cyst and edema from presumed arthritis with possible superimposed bony contusion of evolving osteonecrosis. Petitioner testified that she continued to treat with Dr. Torosian over the next five or six months and she continued with her same 5-pound work restrictions (Transcript at page 29) Petitioner testified the last time she saw Dr. Torosian was September 4, 2015 and he discharged her at that time. Petitioner continued to work at Cat-I Glass as an inspector in her normal job, which fell within the 5-pound restriction for the next year and a half. (Transcript at page 31) Petitioner further testified that after Dr. Torosian released her on September 4 2015, she sought no medical treatment for the right wrist for over two years before she went to see Dr. Torosian on October 16, 2017. (Transcript at page 39) Dr. Torosian sent the Petitioner back to work with a 10-pound lifting restriction on a permanent basis and opined that the Petitioner reached the condition of maximum medical improvement. She was able to work at medium level demand consistent with the findings of her

Functional Capacity Evaluation, which was performed on October 12, 2015. Further, he indicated that she may require in the future, an OT ulnar shortening osteotomy and wrist arthroscopy, but no need for any further medical surgical care at this time.

On cross-examination, the Petitioner testified that she hired an attorney before she went to see Dr. Torosian on October 16, 2017 and that she had not received any medical treatment for over two years. Petitioner admitted on cross-examination that she was referred to see Dr. Joshua Alpert by her attorney. (Transcript at page 47) On April 20, 2018, Dr. Alpert added an additional restriction and reduced the Petitioner from five to four days at work. Cat-I Glass accommodated the four-day work restriction as of April 20, 2018. Petitioner testified that she still worked 8 hours per day in the same normal job as a glass inspector, which she had been performing for the last 15 years. Petitioner testified that Dr. Alpert discussed the surgical option with her on her right wrist.

Petitioner testified that Dr. Alpert was going to refer her to see one of his partners, who had more expertise in hand surgery, Dr. Seeds. Petitioner also testified that she went to see Dr. Vender for an Independent Medical Examination on January 26, 2018.

Petitioner testified that Dr. Alpert discussed with her the fact that she had a congenital developmental problem with her wrist at his last visit on April 20, 2018 and that was why she was experiencing pain in her hand. (Transcript at page 60) Petitioner admitted that the first time that she saw Dr. Alpert after the referral from her attorney on November 1, 2017, she gave him a history that she was "inspecting glass", but she did not tell him the weights or the sizes of the glass or get into specifics. (Transcript at page 62)

On re-cross-examination, Petitioner testified that Dr. Vender specifically asked her about her inspector job and how she worked and griped the glass. The Petitioner admitted that Dr.

Vender asked her more about the work that she did as a glass inspector than Dr. Alpert. (Transcript at page 76)

TESTIMONY OF GRECIA NAVA

Grecia Nava testified on behalf of Respondent, that she was employed by Cat-I Glass for nine months as a Human Resources Coordinator. Grecia Nava testified that when an employee reports an injury at Cat-I Glass, there is a procedure for documenting work injuries. All reported injuries are documented by a supervisor or director by filling out a First Report of Injury, immediately after the incident, no matter how minor. Gercia Nava identified the Respondent's Exhibit No. 6 as the employer's First Report of Injury, which was prepared by the Director of Human Resources, Jennifer Ruffolo, on January 6, 2015, reflecting an accident date of October 27, 2014. The First Report of Injury is kept in the employee's file at Cat-I Glass and prepared contemporaneous with the accident, and the record was kept in the regular and ordinary course of business. (Respondent's Exhibit No. 6)

TESTIMONY OF DR. MICHAEL VENDER

Dr. Michael Vender testified, via evidence deposition, on December 7, 2018. He testified that he is board certified in orthopedic surgery and is certified with added qualifications in hand surgery. Dr. Vender examined the Petitioner on June 26, 2018 and took a history in which Petitioner indicated that she developed symptoms in her right hand extremity in 2014, with no history of a specific injury. Petitioner described to Dr. Vender the activities of picking up trays full of glasses, which caused wrist pain. Dr. Vender diagnosed ulnar impaction syndrome, which is a degenerative condition of the right wrist. Dr. Vender opined that her work activities did not accelerate her underlying degenerative condition, as it is a developmental condition where the ulna grows longer than the radius at the wrist level. Ulnar impaction syndrome leads to

increased pressure on the ulnar aspect of the wrist. The ulnar impact syndrome was manifested with tears of the triangular fibrocartilage complex and changes in the lunate bone. Dr. Vender testified that these findings are present on the previous diagnostic studies.

Moreover, Dr. Vender's opinion is that Petitioner's condition is not related to the October 27, 2014 incident, nor would Petitioner's job duties accelerate or aggravate the underlying condition. Further, Dr. Vender testified that there is no indication that she suffered from a single injury, representing an aggravation of a pre-existing condition. Dr. Vender further testified that the treatment, up until that point, was reasonable. However, he does not believe the need for the treatment is based on the work-related injury or work condition. Dr. Vender further opined that Petitioner has not reached maximum medical improvement and would benefit from an arthroscopic wrist distal ulnar shortening and then Petitioner would reach maximum medical improvement, four months thereafter, for the non-work related injury to her right wrist. (Respondent's Exhibit No.1)

TESTIMONY OF DR. JOSHUA ALPERT

Dr. Joshua Alpert testified, via evidence deposition, on November 6, 2018. Dr. Alpert testified that he is board certified in orthopedic surgery and has no specialty in hand surgery, although he does perform some hand procedures. (Petitioner's Exhibit No. 4 at page 39) Dr. Alpert currently works at Midwest Bone and Joint. Dr. Alpert testified that he is a general orthopedic surgeon with a subspecialty in sports medicine. Dr. Alpert testified that he first saw Petitioner on November 1, 2017. The Petitioner brought in an EMG, which is the nerve test from January 6, 2013, at the first visit. Dr. Alpert testified that Petitioner gave him a history that the injury date was November 4, 2014, that she is a glass inspector and she injured her right hand while working. Dr. Alpert noted that Petitioner's history consisted of carrying a heavy pan while

at work and inspecting glass with her hand open all day, when she first noticed pain. Dr. Alpert testified that he recommended an MRI arthrogram of the right wrist. Dr. Alpert testified that after reviewing the MRI results of the right wrist, he opined that her subjective complaints and her physical examination findings were subjectively correlated with her objective findings on the MRI of a triangular fibrocartilage complex tear. Also, Dr. Alpert recommended a wrist splint to help immobilize the wrist and motion in the wrist on November 8, 2017. Dr. Alpert testified that he next saw Petitioner three weeks later on November 29, 2017 and that her pain had dramatically improved.

Dr. Alpert further testified that he next saw Petitioner on January 29, 2018 and noted that the Petitioner had continued to work as an inspector at Cat-I Glass. The last time the Petitioner was seen by Dr. Alpert was on April 20, 2018. Dr. Alpert testified that the permanent restrictions were 10 pounds lifting. Dr. Alpert testified that he would defer the right wrist surgical option to his partner, Dr. Seeds, who does a fair amount of wrist surgery and is the only one in his practice group that performs wrist arthroscopy. (Petitioner's Exhibit No. 4 at page 44) When asked under cross-examination about his recommendations for Ms. Sotelo's future medical treatment, Dr. Alpert deferred to his partner, Dr. Seeds, but indicated that because Petitioner had exhausted all conservative measures, she would probably benefit from surgical treatment of the TFCC tear.

Further, Dr. Alpert opined that, based upon the reasonable degree of medical and orthopedic certainty that Ms. Sotelo's TFCC tear was caused by her work-related activities, based on what he described as a competent mechanism of injury. Dr. Alpert testified that he completely disagrees with Dr. Vender's opinion that her condition is solely degenerative in nature. Dr. Alpert testified that he agrees that the degenerative condition of ulnar positive

variance exists, but not all patients with ulnar positive variance need surgical intervention. Dr. Alpert opined that Petitioner had a work-related aggravation of a pre-existing degenerative condition that was previously asymptomatic, until the work activities aggravated it beyond temporary level.

On cross-examination, Dr. Alpert admitted that he would defer right wrist surgery to his partner, Dr. Seeds, in this case because "Dr. Seeds just does more of them and he is better at it than I am so I want the patient to be in the best hands possible." (Dr. Alpert's Deposition at page 39, Petitioner's Exhibit No. 4) Further, Dr. Alpert admitted, on cross-examination, that he initially missed the diagnosis of ulnar impaction syndrome, but concurred with the opinion of the diagnosis rendered by Dr. Vender of ulnar impaction syndrome. Dr. Alpert testified that he agrees with Dr. Vender, that there is a component of ulnar impaction syndrome. On cross-examination, Dr. Alpert admitted that he failed to diagnose the condition of ulnar impaction syndrome initially, "I mean it something that I personally didn't document or look at, I looked at it again when Dr. Vender wrote his IME." (Transcript at page 55)

Dr. Alpert acknowledged, on cross-examination, that he does not know the weight of the pan that the Petitioner was lifting, the weight of the glass and the shape or size of the glass inspected by Petitioner. Further, Dr. Alpert admitted that he had no knowledge of the position that the Petitioner had to hold the glass or pan at work and there was no history and he had no knowledge regarding frequency which he lifted the pan or glass pieces. Dr. Alpert testified that Petitioner told him she initially felt pain when lifting a heavy pan, that "any kind of repetitive griping, using the hand and lifting heavy objects increases the stress in the wrist joint," and testified that her job "appears to be heavy." (Petitioner's exhibit 4 at 31, 53)

CONCLUSIONS OF LAW

The Arbitrator adopts and incorporates the above Findings of Fact in support of the foregoing Conclusion of Law.

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 Commission*, 79 Ill. 2d 249, 253 (1980)), including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Commission*, 129 Ill. 2d 52, 63 (1989).

Decisions of an Arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e).

The Arbitrator finds that the testimony of the Petitioner was somewhat credible. Petitioner's testimony was a bit confusing as to the date of injury mostly because the Arbitrator believes Petitioner was focused on when she reported that her wrist hurt to Respondent. However, the dates are important because Petitioner testified that she had a sudden onset injury on November 4, 2014 and later admitted that she first sought treatment on October 27, 2014, a date she received a splint for her wrist. The medical condition Petitioner has is degenerative in nature and she has a condition where one bone is longer than the other congenitally and the expectation is gradual decline. Petitioner's testimony that the pain in her wrist was a sudden onset is inconsistent with the medical record. Petitioner's demeanor at trial was sincere, if

confused at times. Petitioner's credibility is not conclusive one way or the other because this case is really a battle of the experts.

REGARDING ISSUES (C), WHETHER AN ACCIDENT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

It is fundamental that the claimant employee has the burden of proving the elements of her claim by a preponderance of credible evidence. *Vestal v. Indus. Comm'n,* 84 Ill. 2nd 469 (1981). The claimant must show that she suffered an injury that arose out of the and in the course of her employment. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193 (2003). To prove a repetitive trauma claim, the claimant must prove by a preponderance of the evidence that the job is repetitive and that his current condition of ill being is causally-related to his repetitive job duties. *Williams v. Indus. Comm'n*, 244 Ill. App. 3d 204 (1993). It is well-settled Illinois law that "an employee who alleges injury based on repetitive trauma must still meet the same standard of proof as other claimants alleging an accidental injury. There must be a showing that the injury is work related and not the result of a normal degenerative aging process." *Peoria County Bellwood Nursing Home v. Indus. Comm'n*, 115 Ill. 2d 524 (1987). In repetitive trauma cases, the claimant generally relies on medical testimony establishing a causal connection between the work performed and claimant's disability. *Nunn v. Indus. Comm'n*, 157 Ill. App. 3d 470, 477 (1987). Compensation has been denied in numerous cases back on the lack of corroborative medical histories, conflicting medical histories and/or lack of claimant credibility. *McRae v. Indus. Comm'n*, 285 Ill. App. 3d 448 (1996).

The medical evidence introduced at trial fails to support causation in this case. Based on the totality of facts and circumstances surrounding this case the Arbitrator relies on the credible and persuasive medical opinion of Dr. Vender in finding that the Petitioner failed to prove that a

causal connection exists between the Petitioner's work activities and her current condition of ill-being, the Arbitrator finds that the medical opinion of Dr. Vender is more persuasive, reliable and consistent with the credible objective medical evidence and should be given greater weight than that of Dr. Alpert. Dr. Vender is a board certified orthopedic surgeon with a subspecialty in hand surgery. On the other hand, Dr. Alpert is an orthopedic surgeon with a subspecialty in sports medicine.

Furthermore, the Petitioner admitted, on cross-examination, that Dr. Vender asked more questions about her work with glass than Dr. Alpert. (Transcript at page 76) Dr. Vender further noted that Ms. Sotelo had a degenerative condition and the risk known as ulnar impaction syndrome. The work activities she performed did not aggravate or accelerate the underlying degenerative condition. Ulnar impaction syndrome is a developmental condition where the ulna grows longer than the radius at the level of the wrist, which leads to the increased pressure on the ulnar impaction aspect of the wrist from the long ulna. Dr. Vender testified that over time, there is a degeneration of the tissues on the ulnar side of the wrist, which manifests with tears of the triangular fibrocartilage complex and also changes in the lunate bone. Further, Dr. Vender opined that these findings are present in previously performed diagnostic studies and are not related to an incident of October 27, 2014, nor would an incident accelerate or aggravate the underlying condition.

Based upon the reasonable degree of medical and surgical certainty, Dr. Vender opined that the Petitioner's job duties are not a contributing factor to the current diagnosis.

Dr. Alpert's opinion is rejected. He had no idea regarding the size, weight, frequency or way in which the Petitioner inspected glass at Cat-I Glass, when he issued his causal connection opinion and concluded that her work activities were a competent mechanism of injury which

aggravated her pre-existing condition of ulnar impaction syndrome. Dr. Alpert testified that Petitioner told him she initially felt pain when lifting a heavy pan, that "any kind of repetitive griping, using the hand and lifting heavy objects increases the stress in the wrist joint," and testified that her job "appears to be heavy." (Petitioner's exhibit 4 at 31, 53) The Arbitrator, having viewed the video of Petitioner performing her job and all the testimony regarding the weight of glass pieces and the FCE report, finds that Petitioner's job was light to medium duty. Since Dr. Alpert's opinion presumes a heavy duty job, his opinion on causation is questionable. The Arbitrator finds that Dr. Alpert's opinion is speculative and it is given less weight that than of Dr. Vender, a hand specialist.

Where the two doctors do concur is the Petitioner would benefit from surgery in the way of wrist arthroscopy and distal ulnar shortening, regardless of causation. Where the two experts differ is whether the work-related activities contributed to or aggravated the Petitioner's developmental condition of ulnar impaction syndrome.

The Arbitrator further notes that Dr. Torosian diagnosed ulnar impaction syndrome and did not relate the developmental condition to work. After Dr. Torosian released the Petitioner from his care at maximum medical improvement on September 4, 2015, Petitioner sought treatment from Dr. Alpert on November 1, 2017, on a referral from her attorney. (Transcript at page 47)

Based upon the totality of facts and circumstances surrounding the case and the reliable and persuasive expert medical opinion of Dr. Vender and the more speculative opinion of Dr. Alpert, the Arbitrator finds that the Petitioner failed to prove she sustained an injury on November 4, 2014, which is causally connected to her current condition of ill-being.

Having found there was no accident, the remainder of the issues are moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC021010
Case Name	ASHHAB, ZAHIEH AL v. WALMART ASSOCIATES INC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remanded Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0013
Number of Pages of Decision	20
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Andrew Kriegel
Respondent Attorney	Michelle LaFayette

DATE FILED: 1/7/2022

/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 up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Zahieh Al Ashhab,

Petitioner,

vs. No. 19 WC 21010

Walmart Associates, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW PURSUANT TO §19(B) AND §8(A)

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

Petitioner, a 41-year old deli worker, lacerated her right thumb on a meat slicer on April 18, 2019. She received emergency room treatment and was given right hand restrictions which Respondent was able to accommodate. While Petitioner's thumb laceration healed, she developed other symptoms to her right hand, and then her left. She underwent therapy and was referred by her primary physician to orthopedic physician, Dr. Metz. Dr. Metz's impression was complex regional pain syndrome I of both upper limbs, and bilateral hand pain with concern for CRPS. He prescribed a Medrol Dosepak, gabapentin and an edema glove. When Petitioner saw Dr. Metz on August 30, 2019, she had new complaints of left foot pain. Dr. Metz authorized her off work and referred her to Dr. Sarantopoulos.

Petitioner saw Dr. Sarantopoulos on September 6, 2019. He noted she had been referred with a diagnosis of CRPS Type I of the right and left upper extremities. He documented her multiple complaints, which included bilateral foot pain, increased right and left hand pain, and radiating pain up her left forearm accompanied by burning sensations. His assessment of her was CRPS Type I of right upper limb, left hand pain, CRPS Type I of the left limb, bilateral foot pain, and anxiety, status post right thumb laceration. Dr. Sarantopoulos referred Petitioner for physiotherapy and recommended therapeutic desensitization techniques.

In October 2019, Dr. Sarantopoulos documented Petitioner's new complaint of neck pain, and he continued her off work status and medications. Over the next year, he continued to treat her with osteopathic manipulation therapy for her cervical, thoracic and lumbar spine issues, and also recommended she see Dr. Dabah to discuss possible stellate ganglion blocks.

On July 30, 2019, Petitioner underwent a Section 12 exam by orthopedic surgeon, Dr. Yaffee. Dr. Yaffee documented Petitioner's complaints of pain throughout her upper extremities, bilateral hand tremors, marked hypersensitivity, and point tenderness of her hands and forearms. Dr. Yaffee reported that Petitioner's global hypersensitivity was one sign of CRPS, though he found no other signs of CRPS. He admitted he did not measure her upper extremity temperature – a test for CRPS. Dr. Yaffee did not have an orthopedic diagnosis to explain Petitioner's left upper extremity symptoms, and he could not directly relate her left upper extremity condition to her work. Dr. Yaffee admitted he usually refers patients suspected of CRPS to pain medicine specialists, and that he would defer diagnosis and treatment to them.

Petitioner submitted to a second IME on December 4, 2019, with Dr. Konowitz. Dr. Konowitz documented Petitioner's pain to her hands, right thumb, top of her feet, shoulders and neck, which she described as burning, stabbing, cramping, heavy and sharp. He acknowledged that she had dysesthesias in her left and right hands, and superficial peroneal dysesthesias in both feet – which he believed could be related to the gabapentin she had been prescribed. Dr. Konowitz opined that Petitioner met some but not all of the requirements for a diagnosis of CPRS pursuant to the Budapest criteria. He found that she could return to unrestricted work, and that the only treatment she needed as a result of her work accident was for the dysesthesias in the area of her thumb.

However, Dr. Konowitz also acknowledged Petitioner reportedly had skin color change and allodynia. He acknowledged she had two symptoms of CRPS: sensory and vasomotor. He admitted that, though rare, CRPS could spread from its source to other extremities or areas of the body. He also agreed that a local injection would be reasonable to treat Petitioner's pain.

At arbitration, Petitioner testified that although her laceration healed, she developed other symptoms which have not improved. Her right hand is shiny and oily, she has swelling on her palm. Her right thumb is not the same anymore; it has been hypersensitive since her injury. She tries to use her hand daily, but has limited use of it. Although most of Petitioner's problems are

with her right hand, she also experiences sensitivity in her left hand, and sometimes in her lower extremities and feet. When she uses her hand, it starts getting more yellow and reddish.

In finding that Petitioner's work injury only caused her right thumb laceration and residual right thumb area dysesthesias, the Arbitrator found Dr. Konowitz's opinions more credible than those of Dr. Metz and Dr. Sarantopoulos. The Commission, however, views the evidence differently. Petitioner demonstrated considerable symptoms of CRPS, and was in fact diagnosed with that condition by Dr. Sarantopoulos. In addition, Dr. Konowitz acknowledged that the gabapentin Petitioner was taking as a result of her accident could be the cause of her ongoing dysesthesias, which was diagnosed in all four of her extremities. The Commission finds the opinions of Petitioner's treating physicians, Drs. Metz and Sarantopoulos, more persuasive than the opinions of Respondent's Section 12 examiners. Petitioner's treaters spent more time with her, and were more familiar with her symptoms and complaints. The Commission further notes that none of Petitioner's extremity symptoms or complaints were present before Petitioner's work accident and that her symptoms remained persistent thereafter. Accordingly, the Commission finds Petitioner proved she developed causally related CRPS and an ongoing extremity dysesthesias injury as a result of her April 18, 2019 work accident. The Commission further finds that Petitioner's complaints to her neck and spine are not causally related to the work accident of April 28, 2019.

Because Petitioner was authorized off work by Dr. Metz beginning August 30, 2019, and then continuously thereafter by Dr. Sarantopoulos, the Commission finds Petitioner entitled to TTD from August 30, 2019 through October 5, 2020. The Commission also finds Petitioner entitled to all of her medical expenses from April 18, 2019 through October 5, 2020, and for prospective care related to her conditions of CRPS and nerve dysesthesias. Treatment for her neck and spine conditions are denied, as the Commission finds as those conditions not causally related to Petitioner's work injury.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 21, 2021, is hereby modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of medical expenses is modified. Respondent shall pay Petitioner all outstanding reasonably and necessary medical bills incurred from Core Orthopedic, St. Alexius Medical Center, Advanced Physical Medicine Associates, Radiological Consultants of Woodstock, Envision Medical Imaging, Pain Therapy Associates and for her prescriptions, through the date of arbitration on October 5, 2020, as provided by §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the denial of temporary total disability benefits is vacated. Respondent shall pay Petitioner temporary total disability benefits

of $292.81 per week for 57-4/7 weeks, commencing on August 30, 2019 through October 5, 2020, as provided by §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the denial of prospective medical treatment is vacated. Respondent shall authorize and pay for the reasonable and necessary prospective care recommended by Petitioner's treating physicians for her conditions of CRPS and nerve dysesthesias only. Prospective care and treatment related to Petitioner's neck and spine conditions is denied.

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

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $68,200. 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.

January 7, 2022

/s/ *Marc Parker*
Marc Parker

MP/mcp
o-11-18-21
068

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC021010
Case Name	ASHHAB, ZAHIEH AL v. WAL-MART ASSOCIATES INC
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Douglas S. Steffenson, Arbitrator

Petitioner Attorney	Andrew Kriegel
Respondent Attorney	Michelle LaFayette

DATE FILED: 4/21/2021

INTEREST RATE FOR THE WEEK OF APRIL 20, 2021 0.04%

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)

ZAHIEH AL ASSHAB
Employee/Petitioner

v.

WALMART ASSOCIATES, INC.
Employer/Respondent

Case # **19** WC **21010**

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 **DOUGLAS S. STEFFENSON**, Arbitrator of the Commission, in the city of **CHICAGO**, on **OCTOBER 5, 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. ☒ 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, **APRIL 18, 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 $**22,829.44**; the average weekly wage was $**439.22**.

On the date of accident, Petitioner was **41** 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 $**0.00** under Section 8(j) of the Act.

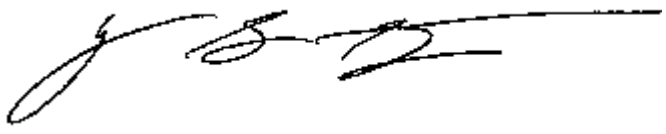
ORDER

As detailed in the attached memorandum discussing the *Findings of Fact and Conclusions of Law*:

- The Arbitrator finds Respondent shall pay reasonable and necessary medical services of $4.00 for a co-pay charge, as provided in Section 8(a) of the Act.; and,
- Petitioner's claim for payment of other medical services is denied.; and,
- Petitioner's claim for TTD benefits is denied.; and,
- Petitioner's claim for prospective medical treatment is denied.; and,
- 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

APRIL 21, 2021

ICArbDec19(b)

ZAHIEH AL ASSHAB v. WALMART ASSOCIATES, INC.

19 WC 21010

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

This matter was tried pursuant to Petitioner's Section 19(b) Petition before Arbitrator Steffenson on October 5, 2020. [1] The issues in dispute were causal connection, medical bills, prospective medical care, and Temporary Total Disability (TTD) benefits. (Arbitrator's Exhibit 1). The parties requested a written decision, including findings of fact and conclusions of law, pursuant to Section 19(b) of the Act, and agreed to receipt of this Arbitration Decision via e-mail. (Arbitrator's Exhibit (*hereinafter*, AX) 1 and Transcript at 8-9).

FINDINGS OF FACT

While slicing meatloaf for a customer April 18, 2019, Petitioner lacerated her right thumb on the blade of the meat slicer. Petitioner was wearing gloves. When she removed her glove, she described the blood as being like a "fountain" and she thought she had cut her thumb off. Petitioner was taken to St. Alexis Medical Center where a bleeding skin avulsion of the radial side and tip of the thumb was noted. A gel foam was applied for hemostasis. Petitioner was given restrictions of no use of the right hand, and she was directed to keep the wound clean and dry.

On the Request for Hearing form, Petitioner claimed she was off work and entitled to benefits beginning on April 19, 2019. (AX 1). On cross-examination, Petitioner admitted Respondent offered her a position within her restrictions, she accepted the position and she returned to work on April 20, 2019. Petitioner testified she was assigned to work as a fitting room attendant and would fold clothes. Petitioner admitted her restrictions were accommodated and she worked through July 3, 2019.

[1] This matter moved to trial under the Illinois Workers' Compensation Commission (IWCC) "Special Circumstance Arbitration Procedures" that were implemented due to the 2020 COVID-19 pandemic.

Medical Treatment:

Petitioner was seen for follow-up treatment with no sign of infection noted on April 22 and April 30, 2019. At the appointment on April 30th, the gel foam was removed, and the wound was noted to be healing. Petitioner complained of left arm pain, claiming she did too much at work the day before. Her restrictions were modified, now allowing for lifting loads up to 10 pounds, pushing and pulling up to 10 pounds, and no tight/prolonged gripping or pinching with the right hand. Petitioner had also developed a rash, which was suspected to be an allergic reaction, so she was to have no skin contact with chemicals.

Throughout May of 2019, Petitioner reported pain and discomfort of the right thumb. X-rays taken on May 21, 2019 demonstrated no acute findings while some degenerative changes at the interphalangeal joint were noted. The diagnosis was a laceration of the right thumb without damage to the nail.

On May 22, 2019, Petitioner presented to Dr. Sam Biafora of Hand Surgery Associates for evaluation and treatment. She reported sensitivity to the right thumb tip, pain in the remainder of her fingers and demonstrated how she had been bypassing the thumb with difficulty to perform activities. On examination, Dr. Biafora noted a healed laceration, trace swelling, sensitivity with guarding to palpation, intact IP motion limited due to pain at the tip, no pain to palpation in the other fingers, good finger motion and no triggering. Dr. Biafora noted significant sensitivity to the thumb, recommending therapy for desensitization. He stressed to Petitioner the importance of incorporating her thumb into her daily activities, but he recommended she not fold laundry and instead perform more clerical type duties with the right hand when working. Petitioner testified Respondent accommodated her restrictions and her job duties were again modified.

Petitioner was seen by Dr. Biafora only one additional time on June 12, 2019. Petitioner reported much less pain in the right thumb and some pain in the right hand. Dr. Biafora noted therapy had been limited to date with Petitioner attending only a couple of sessions so far. Dr. Biafora noted significant improvement with an interosseous strain representing a limiting factor. He recommended she continue with therapy over the next four (4) weeks given her attendance at therapy had otherwise been limited. However, Petitioner never returned to Dr. Biafora for further evaluation.

Instead, she returned to her physician at Amita Health Group, Dr. Meyer, on June 19, 2019. She now complained of left wrist/hand pain from use and twisting, claiming she overused her left hand due to the right thumb injury. She was diagnosed with a left wrist sprain

and encouraged to return to Dr. Biafora. Additionally, Petitioner's work restrictions remained in place.

However, she instead presented to Dr. Raymond Metz[2] for evaluation on August 5, 2019. Dr. Metz noted Petitioner's symptoms of pain began four months earlier secondary to a laceration of the finger at work. She reported pain located at the dorsal and volar aspect of the hand, rating the pain at 7 out of 10. On examination, Dr. Metz noted no color change, equal temperature in both hands, hypersensitivity at the tip of the thumb with a very slight abnormality of the pulp of her thumb, pain with heavy gripping and complaints of diffuse pain up her forearm to the elbow. Range of motion was 0-140 degrees without difficulty. In the left hand, he noted complaints of hyperesthesia in the superficial radial nerve distribution, a negative Finkelstein test, the ability to make a full fist and achieve terminal extension without difficulty. Median nerve testing, bilaterally, was not done. Dr. Metz diagnosed complex regional pain syndrome (CRPS) of the right and left upper extremities without any further explanation as to this finding.

Dr. Metz opined "there is no question her thumb injury is worker's comp related," but he also stated "there is a significant question mark with regards to her left wrist being work related or not. I did not comment on the nature of her left wrist being related to her work injury." He recommended an EMG, prescribed gabapentin and a Medrol Dosepak, and use of an edema glove.

When she returned to Dr. Metz on August 30, 2019, Petitioner reported symptoms and complaints in her left foot, which began approximately two (2) weeks earlier and had become progressively worse with no improvement of her bilateral upper extremity symptoms. Dr. Metz referred Petitioner to Dr. John Sarantopoulos[3] with Advanced Physical Medicine Associates.

Dr. Sarantopoulos saw Petitioner for the first time on September 16, 2019. She complained of right-hand pain, mainly in the first two digits of the hand and moving upward toward her forearm and upper right extremity, burning pain and hypersensitivity. She also reportedly developed pain in the left hand, radiating to her left forearm with a sense of burning sensations. Additional complaints of right foot pain were reported.

[2] Dr. Metz appears to be an orthopedic physician, but his qualifications and medical background were not admitted into evidence.

[3] Dr. Sarantopoulos' qualifications and specialties were not admitted into evidence.

Dr. Sarantopoulos indicated Petitioner's right hand and entire right upper extremity were very sensitive to touch with her withdrawing after he touched her. He noted decreased right grip strength in the right compared to the left and that both hands were cold. He found the left hand to also be sensitive to touch, but not to the extent to which the right hand was sensitive. Elbow flexion was symmetric bilaterally, sensation was symmetrical bilaterally. She was non-tender in the cervical and thoracic spines. Her gait was non-antalgic. She reported right and left foot pain in the medial and lateral dorsal areas of the foot.

Dr. Sarantopoulos diagnosed CRPS Type I in the right and left upper extremities, bilateral foot pain, anxiety and status post-right thumb laceration. He recommended lab studies to further evaluate for an inflammatory process, a whole-body scan and prescribed Norco, gabapentin and meloxicam. He referred her for physical therapy for the bilateral hands/upper extremities and bilateral feet.

Petitioner began physical therapy at Dr. Sarantopoulos' facility, Advanced Physical Medicine Associates, on September 11, 2019. The whole-body scan of September 12, 2019 was unremarkable. When she returned to Dr. Sarantopoulos, she complained of neck pain in addition to her other complaints of pain. Dr. Sarantopoulos added cervical myofascial pain and cervicalgia to her diagnosis. He recommended continued physical therapy. MRIs of the right and left hands were obtained on September 26, 2019, demonstrating only mild first interphalangeal joint osteoarthritis. He spent the appointment on September 20, 2019 preparing Petitioner to be seen by referral by Dr. Dabah for interventional treatments for CRPS. Dr. Dabah then recommended stellate ganglion blocks and Petitioner advised Dr. Sarantopoulos she would consider these recommendations.

Between September 11, 2019 and September 30, 2020, Petitioner was seen 134 times for therapy, per the medical invoice of Advanced Physical Medical Associates. Treatment included OMT to the cervical, thoracic and lumbar spine with activator technique for myofascial pain. Physical therapy for CRPS, right hand pain, left hand pain, right foot pain and left foot pain. Medications were to include Diclofenac topical solution to be applied to painful areas, Meloxicam for pain and inflammation, Gabapentin for pain and numbness and Trazadone for sleep. Dr. Sarantopoulos continuously authorized Petitioner off work. Dr. Sarantopoulos also continuously recommended Petitioner consider the stellate ganglion blocks recommended by Dr. Dabah, but Petitioner refused. However, at the hearing, Petitioner testified she sought authorization for the injections recommended by Dr. Dabah and Dr. Sarantopoulos. The focus of treatment by Dr. Sarantopoulos was for CRPS and not the localized sensitivity to Petitioner's right thumb.

The records and medical bills from Advanced Physical Medicine Associates do not differentiate between treatment related to the right thumb and the treatment for the right upper extremity, left upper extremity, bilateral feet, and thoracic, lumbar and cervical spines. Dr. Sarantopoulos does not prescribe a localized injection to the right thumb or indicate which medications are for the thumb, if any, rather than for the diagnosis of CRPS. Petitioner testified she sought authorization for an injection as prospective medical treatment, but also testified the injections recommended by Dr. Sarantopoulos and Dr. Dabah were stellate ganglion blocks. She seeks authorization for the blocks recommended by the two doctors.

Testimony of Dr. Mark Yaffee:

Dr. Mark Yaffee, a board-certified orthopedic hand surgeon, examined Petitioner on July 30, 2019. At the time of his examination, he noted a healed laceration to the right thumb, but Petitioner noted a combination of pain and limitations diffusely throughout the entire right upper extremity. He testified she described several global complaints of pain and limitation to her upper extremities bilaterally. He concluded the laceration was healed based on the coloration of the thumb, the wound was closed, there was no drainage, no redness or erythema, no skin discoloration and no further edema or swelling. He therefore concluded she was at maximum medical improvement for the right thumb laceration. He recommended no further treatment.

Dr. Yaffee also examined Petitioner's left upper extremity but had no specific orthopedic diagnosis to give as an explanation for her symptoms because the symptoms did not follow in a specific dermatome or anatomic distribution. He acknowledged some residual sensitivity to the thumb consistent with the laceration, but otherwise found her complaints to be out of proportion to the objective, clinical examination findings. Based on his examination of Petitioner, he opined she could return to work without restrictions. He also opined he could not relate Petitioner's left upper extremity complaints to her employment or the activities she performed while working in a restricted duty capacity for Respondent.

Testimony of Dr. Howard Konowitz:

Dr. Konowitz specializes in pain management, anesthesia and internal medicine. He is board certified in all three areas of medicine, and he actively diagnoses and treats patients with CRPS. Dr. Konowitz testified a diagnosis of CRPS is based on the Budapest Criteria and whether it is a Type I or a Type II condition for no nerve injury versus a nerve injury. The Budapest Criteria evaluates symptoms – what the patient reports or describes, and signs – the clinical examination findings. To diagnosis CRPS, the physician is looking for symptoms in three of the

four symptom categories and signs in two of the four sign categories. The symptom/sign categories are:

1. Sensory – allodynia or hyperalgesia.
2. Vasomotor – temperature change/sensation or skin color changes (regional and not just limited to a spot on the body).
3. Sudomotor – diffuse swelling, followed by heat, differing sweat patterns.
4. Motor Trophic – regional weakness, intermittent, but uncontrolled tremor, nail and hair growth anomalies.

When Petitioner reported her symptoms, Dr. Konowitz acknowledged she met the sensory and vasomotor symptoms based on what she reported, which was sensitivity (allodynia) and skin color change, which he had to consider in greater depth. While she reported complaints of swelling, her complaints were global to the upper and lower extremities, which is not what the Budapest Criteria is looking for. For the color change she reported, he indicated it is not what would be expected for the Budapest Criteria because it was a well-localizing, non-changing single area Petitioner described as "bruised." Dr. Konowitz testified Petitioner only reported symptoms in two of the four categories and those were the sensory and vasomotor categories. While Petitioner did not meet the Budapest Criteria for symptoms, Dr. Konowitz did not end his evaluation there; he went on to evaluate whether she met the criteria for the signs on clinical examination.

On examination for CRPS, Dr. Konowitz noted she demonstrated an increased sensation over the area of the thumb, which met the sensory sign for allodynia or hyperalgesia. Dr. Konowitz testified he reported petitioner's response as hyperalgesia because her response was excessive to pain. He determined she did not meet the criteria for vasomotor signs because bruising at the thenar eminence did not meet the clinical criteria for CRPS.

Because she did not report symptoms in 3 of 4 categories and have signs in 2 of 4 categories, Dr. Konowitz testified she did not meet the requirements for a diagnosis of CRPS. For a diagnosis, he determined she had superficial peroneal dysesthesias, which was not work-related, severe anxiety and right thumb dysesthesias where the injury occurred. He described dysesthesias as an abnormal sensation of how Petitioner perceived a stimulus in the area.

Based on his examination of Petitioner, Dr. Konowitz opined she could return to work without restrictions. He also placed her at maximum medical improvement for the injury, the laceration, to the thumb. On cross-examination, Dr. Konowitz testified treatment for the dysesthesia could include a localized injection to the painful area of Petitioner's thumb with a

steroid to claim it down. Neuropathic medications could also be considered. However, he cautioned that Petitioner exhibited a high degree of anxiety and this would likely interfere with her recovery.

CONCLUSIONS OF LAW

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

Issue F: *Causal connection*

It is Petitioner's burden to prove by a preponderance of the credible evidence there is a causal connection between her current condition of ill-being and the April 18, 2019 work injury. *See, Rambert v. Industrial Commission*, 133 Ill.App.3d 895, 477 N.E.2d 1364, 87 Ill.Dec. 836 (1987). Respondent does not dispute Petitioner sustained a laceration to the right thumb from the meat slicer. The dispute is whether Petitioner's current conditions of ill-being includes a diagnosis if CRPS and whether the conditions throughout her bilateral upper and lower extremities are causally related to the work injury, as well as whether conditions of the cervical, thoracic and lumbar spines are related. The Arbitrator finds those conditions are not related to the work injury and Petitioner failed to meet her burden of proof for the reasons set forth herein.

The only physician to provide a detailed explanation of whether Petitioner met the criteria for CRPS was Dr. Konowitz. He documented both her subjective complaints and the examination findings (signs) and then explained why her condition did not meet the Budapest Criteria for CRPS. Dr. Metz and Dr. Sarantopoulos diagnosed the condition, but never explained in their records or with deposition testimony how Petitioner's condition met the Budapest Criteria. In addition, there is no evidence either physician has any expertise or specialty in diagnosing and treating CRPS. In contrast, Dr. Konowitz is board certified in internal medicine, anesthesiology and pain management. He also diagnoses and treats patients with CRPS. The Arbitrator therefore finds the testimony and opinions of Dr. Konowitz more credible than the diagnosis and recommendations of Dr. Sarantopoulos.

Dr. Konowitz testified a diagnosis of CRPS can only be made when the following criteria are met:

1. Pain disproportionate to the inciting event.
2. Symptoms in at least three of four categories – sensory, vasomotor, sudomotor and motor trophic.
3. Signs on examination in at least two out of four categories – sensory, vasomotor, sudomotor and motor trophic.
4. A condition that is not explained by another diagnosis.

The focus of Dr. Konowitz's testimony was on #2 and #3. In the symptom categories, Petitioner reported symptoms that could fall into two categories. The first complaint was sensitivity, which Dr. Konowitz testified was consistent with allodynia and met the criteria for the sensory category. Petitioner also reported skin color change, but Dr. Konowitz probed further into Petitioner's symptom reporting and found she referred to a localized, non-changing single area of color change she described as bruising. The color change reported by Petitioner did not meet the Budapest Criteria for color change of the skin, but Dr. Konowitz still documented she met two of the four symptom categories because she reported the symptom. For symptoms, Petitioner did not report symptoms in three of four categories for a diagnosis of CRPS to be made.

When Dr. Konowitz looked at the examination findings to determine whether she had signs in two of the four categories, he found she only had signs in one of the categories. She reported increased sensation over the area of the thumb. Because her response to pain was excessive, he determined her response was that of hyperalgesia. She did not have signs for the other three categories on examination. Petitioner therefore did not meet the criteria for symptoms or signs for CRPS; thus, she does not have the diagnosis.

Dr. Konowitz diagnosed superficial peroneal dysesthesias, severe anxiety and right thumb dysesthesias. The only condition related to the work injury was the right thumb dysesthesias, which Dr. Konowitz acknowledged could be treated with a localized steroid injection and neuropathic medications for pain. The diagnosis for the right thumb made by Dr. Konowitz was consistent with the diagnosis of Dr. Biafora. Dr. Biafora recommended therapy for desensitization and increased use of the thumb when he saw Petitioner on June 12, 2019. The records suggest Petitioner did not pursue the recommendations from Dr. Biafora. She offered no reason for why she did not return to Dr. Biafora for further treatment or for why she did not follow his recommendations.

When she came under the care of Dr. Metz on August 30, 2019, her complaints were well beyond sensitivity localized to the right thumb. As treatment with Dr. Metz and Dr. Sarantopoulos progressed, her condition came to include symptoms to the entire right upper extremity, left upper extremity, bilateral feet, cervical spine, thoracic spine and lumbar spine. Other than the right thumb sensitivity, there is no evidence offered by Petitioner her other conditions are causally related to the work injury. In fact, Dr. Metz, a treating physician, opined there was a "significant question mark" as to whether her left upper extremity complaints were related and stated he therefore did not comment on the nature of the left upper extremity being related to the work accident. The treatment provided under the direction of Dr. Sarantopoulos was focused on her global complaints and an unsupported diagnosis of CRPS.

Based on the foregoing, the Arbitrator finds Petitioner only proved the condition of her right thumb for a laceration and residual dysesthesias is causally related to the work injury. The conditions of CRPS, of her right upper extremity other than the right thumb, the left upper extremity, her bilateral feet, and the cervical, thoracic and lumbar spines are not causally related to the work injury.

Issue J: *Medical bills*

The treatment provided to Petitioner at the emergency room, with Amita Health and by Dr. Biafora through June 26, 2019 was reasonable, necessary and causally related to the work injury. Of the bills entered into evidence by Petitioner, only the $4.00 co-pay for medication at Walmart is a charge related to the work injury.

As previously noted, the services provided to Petitioner by Dr. Metz and Dr. Sarantopoulos were for a diagnosis of CRPS, which the Arbitrator found was not supported by the evidence. The records and billing from neither physician indicate specifically which treatments, if any, were for dysesthesias of right thumb as opposed to the medications and therapy recommended for the bilateral upper extremities, bilateral lower extremities and the thoracic, cervical and lumbar spine. The limited description in Dr. Sarantopoulos' records indicates the treatment modalities were targeting the diagnosis of CRPS for the upper extremities and conditions in the cervical, thoracic and lumbar spines as well as generalized pain complaints of pain and the bilateral feet. The doctor never focuses on the right thumb and any residual complaints relating specifically to the thumb. Accordingly, all other charges are found to be unrelated to the work injury and are denied.

Dr. Konowitz opined in his report the course of treatment for dysesthesias would be neuropathic medications, providing a list of medications to be used. The Arbitrator notes the

neuropathic medications mentioned by Dr. Konowitz are not medications prescribed by Dr. Sarantopoulos. Petitioner did not provide evidence of whether the medications Dr. Sarantopoulos prescribed were neuropathic medications and whether those were consistent with Dr. Konowitz's recommendations. It is also clear the medications were being prescribed to treat the alleged condition of CRPS. Accordingly, Petitioner's request for medications other than the co-pay at Walmart is denied as she failed to provide evidence the medications were reasonable, necessary and related to treatment for the limited work injury.

Based on the foregoing, the Arbitrator finds Respondent shall pay the sum of $4.00 to Petitioner for reasonable, necessary and causally related medical expenses.

Issue K: *Prospective medical care*

Petitioner testified she sought authorization for injections. The treating physicians, Dr. Sarantopoulos and Dr. Dabah, recommended stellate ganglion blocks. According to Dr. Sarantopoulos' records, the blocks would be to treat the diagnosis of CRPS, which the Arbitrator found to be unsupported by the evidence and unrelated to the work injury. Neither physician specifically related the blocks to the right thumb injury. Neither physician ever addressed whether there is dysesthesias in the right thumb, as noted by Dr. Konowitz in December of 2019.

During his deposition testimony from September of 2020, Dr. Konowitz suggested a localized injection to the thumb at the area of the laceration could be used to mitigate some residual effects of dysesthesias, but he cautioned success may be limited by Petitioner's high levels of anxiety. He also recognized not all physicians would elect to administer the injection, suggesting it was something to be considered by the treating physician in consultation with the patient. The Arbitrator notes Petitioner returned to Dr. Sarantopoulos after the deposition of Dr. Konowitz, but Dr. Konowitz's recommendation for a localized injection does not appear to have been discussed with or considered by Dr. Sarantopoulos. There is no evidence the treating physician recommended or agrees with the need for a localized injection. At the last documented appointment on September 16, 2020, Dr. Sarantopoulos maintained the diagnosis of CRPS, and he once again recommended the injections prescribed by Dr. Dabah. Interestingly, Dr. Sarantopoulos indicated Petitioner did not want to pursue the injections, but she then testified she sought authorization for the injections.

While Dr. Konowitz suggested a localized injection could be tried, there is no current prescription for the injection. Petitioner's request for prospective medical is therefore denied.

Issue L: *TTD*

An award for temporary total disability benefits is appropriate when an employee cannot return to gainful employment as a result of the work injury. The period of temporary total disability will continue until the employee's condition has stabilized, meaning he reaches maximum medical improvement, or until the employee returns to gainful employment. *See*, *Mt. Olive Coal Co. v. Industrial Commission,* 295 Ill. 429, 129 N.E. 104 (1920) and *Interstate Scaffolding v. Workers' Compensation Commission*, 236 Ill.2d 132, 923 N.E.2d 266, 337 Ill.Dec. 707 (2010).

Petitioner's allegations on the Request for Hearing claimed she is entitled to TTD benefits from April 19, 2019 through September 28, 2020 when the case proceeded to hearing. On cross-examination, Petitioner testified she was given work restrictions by the emergency room on April 18, 2019, Respondent made an accommodated duty offer on April 19, 2019, she accepted the offer and she returned to work on April 20, 2019. Petitioner further admitted she continued working until on or about July 3, 2019, as Respondent continued to accommodate her restrictions even when modified by Dr. Biafora in May of 2019.

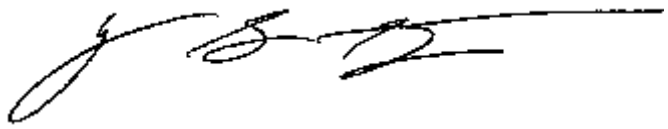
Until she came under the care of Dr. Metz on August 30, 2019, there is no evidence of a change in Petitioner's work status in the medical records. Petitioner did not offer an explanation or testimony for why she stopped working in early July of 2019. The treatment she sought with Dr. Metz and Dr. Sarantopoulos was largely unrelated to the work injury, as it was for unrelated conditions (see Arbitrator's findings for the causation issue). Neither physician addressed whether Petitioner required work restrictions or was unable to work due to the condition of her right thumb or if the off-work status was necessitated by her non-work related conditions. Prior to this, Petitioner was under the care of Dr. Biafora, who while recommending limitations on her work activities, also encouraged Petitioner to use her thumb throughout her daily activities. Dr. Biafora never authorized Petitioner to be off work entirely.

Respondent sought an evaluation with Dr. Yaffee, an orthopedic physician, on July 30, 2019. Dr. Yaffee noted the unrelated conditions along with some residual sensitivity to the right thumb. He testified Petitioner could return to work without restrictions. Dr. Konowitz, following his examination of Petitioner on December 4, 2019 also noted sensitivity to the right thumb. He also agreed Petitioner could return to work without limitation despite the residual sensitivity of the thumb.

Because Petitioner offered no evidence or explanation for why she was restricted from returning to work in any capacity by Dr. Metz and Dr. Sarantopoulos, the Arbitrator finds she failed to meet her burden of proof to establish an entitlement to TTD benefits. Neither

physician explained whether her inability to work was related to the thumb or her other conditions. Dr. Biafora provided limitations related to the thumb, which Respondent accommodated. There is no evidence offered by Petitioner Respondent became unable or unwilling to accommodate those restrictions. Instead, the evidence shows Petitioner eventually did not return to work because Dr. Sarantopoulos authorized her off work for unrelated conditions.

Finally, 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.



Signature of Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	09WC013311
Case Name	SKYBA, ANDRIJ v. STATE OF ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0014
Number of Pages of Decision	28
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Patrick Ryan
Respondent Attorney	Dan Kallio

DATE FILED: 1/10/2022

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANDRIJ SKYBA,

Petitioner,

vs. NO: 09 WC 013311

STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary disability, medical expenses and prospective medical, 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 March 10, 2020, 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 Section 19(f)(1) of the Act, this decision is not subject to judicial review. *820 ILCS 305/19(f)(1) (West 2013)*.

January 10, 2022

KAD/bsd
O11/23/21
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/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Thomas J. Tyrrell*
Thomas J. Tyrrell

/s/*Maria E. Portela*
Maria E. Portela

22IWCC0014

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

SKYBA, ANDRI
Employee/Petitioner

Case# **09WC013311**

ST OF IL ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES
Employer/Respondent

On 3/10/2020, 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 0.40% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0125 COHN LAMBERT RYAN & SCHNEIDER
BRIAN DINELLA
10 S LASALLE ST 18TH FL
CHICAGO, IL 60603

6285 ASSISTANT ATTORNEY GENERAL
DANIEL KALLIO
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
SPRINGFIELD, IL 62704

0499 CMS RISK MANAGEMENT
801 S SEVENTH ST 8M
PO BOX 19208
SPRINGFIELD, IL 62794-9208

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

MAR 10 2020

Brendan O'Rourke, Assistant Secretary
Illinois Workers' Compensation Commission

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

Andri Skyba
Employee/Petitioner

v.

State of Illinois, Illinois Department of Children and Family Services
Employer/Respondent

Case # **09** WC **13311**

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 **January 16, 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 **03/04/2009**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did 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 $**69,366.00**; the average weekly wage was $**1,333.96**.

On the date of accident, Petitioner was **55** years of age, **married** with **2** children under 18.

Petitioner ***has not*** received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $**0.00** for TTD, 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 that Petitioner did not sustain an injury arising in and out of the course of his employment. The Arbitrator further finds that Petitioner's current condition of ill-being is not causally related to his current condition. As such, all benefits are denied.

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

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

Joseph J Maiulis

Signature of Arbitrator

03/09/2020

Date

MAR 10 2020

STATE OF ILLINOIS)
)
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

Andrij Skyba
Employee/Petitioner

Case # 09 WC 13311

v.

State of Illinois Department of Children and Family Services
Respondent/Employer.

ADDENDUM TO ARBITRATON DECISION
FINDINGS OF FACTAND CONCLUSIONS OF LAW

On January 16, 2020, a hearing was held before Arbitrator Joseph Amarilio in the City of Chicago, State of Illinois. The following are at issue: 1. accident, 2. causation, 3. medical bills, 4. TTD, and nature and extent of the injury.

I. Findings of Fact

On March 4, 2009, Petitioner was 55 years old, married with two dependent children (Arb. Ex. 1) and employed by Respondent as a Child Protection Investigator. Petitioner's job duties primarily consisted of investigating allegations of child abuse. (Tx. pp. 9-13; 28).

Petitioner testified that on March 4, 2009, he was doing paperwork and needed some supplies, so he proceeded to the front of the office where supplies were kept. (Tx. p. 13-14). According to Petitioner, remodeling being done in that area and there were "wires all over the place." *Id.* Petitioner testified that while he was returning to his work area, his "feet got tangled up in the wires," causing him to fall. (Tx. p. 14). Petitioner stated he "went head-first into a cabinet. The cabinet fell on me; rolled over. And I landed on my back eventually." (Tx. p. 14). Petitioner testified that were no direct eyewitnesses to the accident, but there were post-accident

witnesses who came to his assistance while he was still on the floor. (Tx. p. 32). Petitioner remained floor bound until the ambulance arrived. (Tx. pp. 14-17). The Petitioner testified that he was taken via ambulance to St. Francis Hospital. (Tx. p. 18).

On March 4, 2009, Petitioner was seen in the emergency room of St. Francis Hospital (Px3 *et seq.*). Dr. Akbarnia noted in his triage assessment that Petitioner gave a history of a "fainting spell" and was standing up when he "felt his 'feet go out from under' him while walking. He thinks he may have tripped." (Px3, p. 1). Petitioner reported being unsure whether he struck his head. *Id.* Petitioner denied any previous musculoskeletal history. *Id.* Following an evaluation in the emergency room, Dr. Akbarnia's medical impression is noted as "syncope, fall." (Px3, p. 4). Petitioner was then admitted to St. Francis Hospital for an overnight stay. *Id.*

The history and physical report prepared by Dr. Bortnick at St. Francis Hospital states Petitioner fell when he tripped over "a post and wires" and "passed out for a few moments." (Px3). Petitioner underwent an MRI of the cervical spine which revealed mild narrowing at C5-C6 with posterior osteophyte at C4 – C6. *Id.* Degenerative changes were noted at C4-5 and C5-6. *Id.* A CT scan of the head revealed left hypertrophy of the nasopharynx and otherwise showed no signs of injury. (Px3) A metabolic profile and EKG were unremarkable. *Id.*

The assessment by Dr. Bortnick states "[t]he patient had a witnessed fall by his secretary, tripped and then fell, no syncopal episode, no fainting." *Id.* He was further diagnosed with a mild concussion and a "mild whiplash type neck injury." *Id.* Petitioner was discharged on the morning of March 5, 2009.

The medical records introduced by Petitioner at trial are voluminous and document approximately ten years' worth of physician visits for both unrelated health issues as well as complaints of back and neck pain. *Id.* To date, Petitioner has undergone a number of

conservative treatment measures and injections for his neck and back but has not undergone a surgical intervention.

On March 11, 2009, Petitioner started treating with Dr. Muhammad Alvi at Western Foster Medical. Petitioner gave a history that while at work got his feet got tangled in telephone cables lying on the floor and fell down. Patient lost consciousness for about 2 minutes then was taken to St. Francis. The patient developed pain in lower back, neck and let shoulder, left elbow, and hip. He was authorized off work and prescribed physical therapy. for physical therapy. (Px,5, p. 9)

On March 23, 2009, Dr. Alvi notes an MRI of cervical spine shows herniated disc at C3-4, C4-5.C5-6. 8-9 mm disc herniation at L5-S1 with spinal stenosis neuroforaminal narrowing and to remain off work. *Id.*at 8.

On April 6, 2009, Dr. Alvi, notes that patient saw a neurosurgeon for a herniated disk, pain in neck is slowly improving mild to moderate pain in left shoulder. *Id.* at 7. Pain increases during physical therapy sessions. Diagnosis of lumbo-cervical spine strain, cervical spine sprain, let shoulder sprain, hip strain, contusion., told to continue to remain off work. *Id.*

On, April 20, 2009, Dr. Alvi notes improvement to neck pain, not much improvement to lower back pain. MRI shows problems at l5-S1 and partial spondylosis and herniated disc at L5-s1 and l4-5 levels. He also notes hip contusion. Patient to follow up with neurosurgeon. Id. at 6.

On May 4, 2009, Dr. Alvi later notes patient was unable to consult with neurosurgeon due to issues with workers' compensation. Patient has mild to moderate pain in neck, mild to moderate pain in shoulder, moderate to severe pain in lower back. Pain in lower back is worsened by carrying heavier objects. Dr. Alvi referred Petitioner to Dr. Morgenstern for

consultation. Petitioner received a diagnosis of a cervical spine sprain, lumbar strain, and was authorized to remain off work. Id. at 7.

On May 14, 2010, Dr. Alvi noted limited pain relief and that " he still get exacerbation of lower back pain with driving, repetitive bending, and going up and down stairs" with petitioner stating that though he gets some relief from therapy "some days are really bad" regarding the lower back pain. (Px. 5, pp. 3-4) Petitioner continued to treat with Dr. Alvi through to June 25, 2010. *Id.*

Petitioner testified that he was then seen by Dr. Morgenstern at Gold Coast Orthopedics as he continued treatment with Western Foster. Petitioner offered the records of Gold Coast Orthopedics into evidence as Petitioner's Exhibit 6. On Petitioner's initial visit of May 13, 2009, Dr. Morgenstern notes the patient was on the job and tripped over some wire that were on the floor and struck his head while falling on some cabinets before falling to the floor. (Px 6, p.36). He sustained injuries to head, neck, and lower back. Kept overnight for a concussion and had a chest x-ray that was negative. *Id.* Patient notes progressive symptoms of pain to the neck and lower back. Patient notes pain radiating to the left greater than right shoulder and upper extremity with intermittent symptoms of numbness and tingling. The patient also noted decreased range of motion of the neck with increased pain with range of motion of the neck. *Id.* The patient also notes increased pain to the lower back with radiation to the right greater than the left lower extremity. *Id.* The pain radiates past the knee into the calf. *Id.* Petitioner gave a history that he has been unable to work due to the continued symptoms emanating from his fall. *Id.* He is receiving therapy with little relief of symptoms. *Id.* A review of the MRI of neck shows posterior disk herniation at level C3-C4, C4-C5, and C5-C6. *Id.* The MRI of the lumbar spine demonstrates disk herniation at levels L4-L5 and L5-S1 with anterolisthesis and grade one

spondylolisthesis. *Id.* Dr. Morgenstern makes a recommendation to have a series of cortisone shots. Encouraged to continue therapy continue his current prescription and told to remain off work. *Id.*

Dr. Morgenstern then prescribed three epidural injections between May and July of 2009. *Id.* at 16-23. Dr. Morgenstern then notes on August 6, 2009, "he continues with intermittent symptoms of pain with radiation to the buttocks and lower extremities. Symptoms are worse with extended standing walking and with position changes of the trunk. "Id. at 9. On examination the patient has tenderness and rigidity of the paralumbar spinal region. *Id* Notes the patient is continuing with symptoms of lumbosacral disk syndrome. *Id* The patient was given a prescription refill for carisoprodol, a muscle relaxant, for muscle spasm and insomnia symptoms. *Id*

Due to the patient's continued symptoms despite conservative therapy, the Petitioner was given referral for a neurosurgical evaluation. *Id.* The Petitioner was encouraged to continue home conditioning exercises and his tramadol as needed for breakthrough pain and was to remain off work. *Id.* The Petitioner continued to treat with Dr. Morgenstern with the doctor noting that the patient stated an increase in symptoms of numbness and tingling in both buttocks and that the symptoms were worse with "extended walking and position changes of the trunk." *Id.* at 8. The Petitioner being given conservative treatment, therapy, and acupuncture as he treated with Dr. Morgenstern with limited improvement to the cervical and lumbar spine. *Id.* at 1-7.

The Petitioner then testified that due to issues with insurance he began treating with his primary care doctor, Dr. George Czajakowski. R. 20. Dr. Czajakowski's records note that on September 16, 2010 "chronic back pain due to work related injury" and notes transferred

services to their care due to insurance issues and was previously seeing orthopedic service. He notes that surgical intervention may be necessary. He prescribed a acupuncture and notes patient is on disability based on this. Pet Ex 1. at 212-215. The Petitioner continued to treat, with Dr. Czajakowski from 2010 to the present with the doctor continuing to note his disability and spinal stenosis throughout. *Id.*

On March 6, 2009, Petitioner was seed by Dr. Reddy at Presence St. Joseph upon referral from Dr. Czajakowski. Dr Reddy notes that Petitioner attempted physical therapy, but his pain is nearly as bad as after the day after his accident and notes a chief complaint of neck pain and additional pain in the arms, legs, and headaches and that he has been temporarily disabled since his accident in 2009. Dr. Reddy notes cervical radiculopathy at C-5. Dr. Reddy continues to prescribe gabapentin for neuropathic pain. (Px3, p.5)

On April 25, 2013, Dr. Reddy states Petitioner reports neck and right arm pain throughout the day, additionally numbness and shaking in both hands. Petitioner has C7 weakness and possible spinal compression. He continues to note cervicalgia, lumbago, brachial neuritis. *Id.* at 20.

On May 28, 2013, Dr. Reddy notes now has pain going down both thighs and down to both ankles, scheduled appointment with neurosurgeon, Dr. Lichtenbaum, for his spinal stenosis weakness. *Id.* at 46. Dr. Lichtenbaum notes that he has had back and neck pain since the 2009 accident that radiates to the right arm, later notes C4-5 and C5-6 spondylosis with left sided foraminal stenosis, reversal of normal lordosis. Dr. Lichtenbaum states that if Petitioner is still symptomatic after physical therapy, he will discuss surgical options. *Id.* at 65.

On June 25. 2014, Dr. Lichtenbaum notes that Petitioner is taking Neurontin three times a day and has constant pain between 3-9. *Id.* at 101. Petitioner complains of numbness in both

arms. *Id.* Has been walking but limited to 30 minutes able to sit for about 10-15 minutes but must move due to pain. *Id.* His chief complain was back pain and additional complaints of leg pain and arm pain. *Id.* Continues to proscribe Neurontin every day and Flexeril at bedtime. Continues scapular stabilization exercises. *Id.*

On September 22, 2014, the physical therapist notes that he is improving with therapy, but his optimal score is worse than the previous appointment. *Id.* Dr Reddy later notes on April 1, 2015 notes still has lower back pain that radiates to right buttock and he is still taking Flexeril at night. *Id.* at 157. He notes L4-5 diffuse disc bilge with mod bilat foraminal stenosis and possible contact with descending L5 nerve root, central annual tear. L5-S1 mild disc bulge.

Dr Reddy referred the Petitioner to Dr. Barra for an TFESI injection with Dr. Batra on April 16, 201515. *Id.* On April 30, 2015, Dr. Batra notes 20-30 percent improvement however petitioner notes neck pain worse than leg pain and he will drop items from right hand suddenly. *Id.* at 253-255. The Petitioner complained of that the pain is preventing him from walking and that cervical range of motion is limited in all planes. Also notes no Wendell signs are present, Lumbar AROM is painful and limited in flexion and extension and also notes lumbosacral radiculopathy at L5, begins a trial of Lyrica. Patient notes pain at l4-l5 and if continued pain will get an MRI of cervical spine. *Id.* at 253-255.

On May 11, 2015, the Petitioner received another transforaminal epidural steroid injection continues to note petitioner is deemed disabled as pain continues through to July 14, 2015 with the Petitioner noting the pain is worse with standing and continues in neck, right leg and shoulder. *Id.* at 297, 390. Dr. Batra increases his Lyrica to 100 mg twice a day. *Id.* Dr. Erik McHure and Dr. Batra preform additional Lumbar bilateral Transforaminal Epidural steroid

injection at L4-L5 and L5-S1 on 9/28/15 and 3/9/16 respectively, Petitioner is continued to be deemed disabled. *Id.* at 448, 522.

The Petitioner testified that he was referred to Dr. Lipov by his primary care doctor. Tx.20-22. Dr. Lipov begins treating the petitioner on October 4, 2017 and notes patient has continued lower back pain and radiculopathy in the lumbar region, preforms a lumbar epidural steroid injection. (Px. 7).

Dr Lipov's October 30, 2017 note indicates "patient notes pain is 9/10 with radiation to the right leg" and states "the pain is sharp and shooting in nature" he then preforms Lumbar epidural steroid injection. *Id.* at 3. Dr. Lipov notes on November 27, 2017, patient had a good response to previous lumbar injections, however the response was shortened. Notes low back pain radiating down bilateral leg and neck pain. *Id.* at 5. Petitioner was given caudal epidural steroid injection. *Id.* On December 18, 2017, Petitioner presented for follow up appointment post caudal ESI. *Id.* at 7. Petitioner stated that there he experienced some relief, but the pain never goes away. *Id.*

Additionally, Petitioner had a consultation with Dr. Muro, who believed that a lumbar fusion will be needed for his ongoing symptoms. *Id.* His pain is worse with standing and walking and he has numbness, tingling, and burning pain in his lower extremities. *Id.* Dr. Lipov's A March 6, 2018 note indicates patient had a permanent dorsal column stimulator placement on February 25, 2018. *Id.* at 9. Notes improved pain relief in the lower legs. *Id.* However, Petitioner "reports noticeable pain in the neck and bilateral arms and reports tingling and numbness going to finger. Feels that resolution of the lower extremity pain unmasked the pain in the upper extremity." *Id.*

An appointment on April 23, 2018 notes follow up office visit for chronic neck and lower pain status post permanent stimulator placement on April 11, 2019 to discuss stimulator revision lead replacement. *Id.* at 11. Petitioner complained of pain radiating down states radiation of pain going down to the sides and said it is made worse by certain positions. *Id.* At this time, he is only taking Gabapentin with very mild relief and notes neck pain is noticeable and in bi lateral arms. *Id.* Petitioner also reports tingling and numbness going to fingers. *Id.* The office notes reflect that the MRI of September 6, 2017 of lumbar spine is overall stable since the prior MRI dated March 3, 2015. *Id.* Dr. Lipov states, "[w]ill take patient back to the operating room to replace the lead which seems to have migrated significantly to the right as well as potentially place another lead. Both wounds healing well". *Id.*

Dr. Lipov on June 7, 2018, notes that the patient continues to report pain due when standing and having activity, will refer patient to Dr. Slavin. *Id.* at 13. Dr. Lipov later removed the spinal stimulator wires and battery as it was unable to provide relief. *Id.* at 14.

Petitioner testified that he was referred to Dr. Slavin by Dr. Lipov for a second opinion regarding a possible surgery. Rx 24. Dr. Slavin notes the original accident as the injuries to the lower back, notes that Petitioner wanted to avoid surgery if possible. (Px 8, p. 7. The notes reflect that petitioner is currently on disability and not working. *Id.* The doctor opines, that the L5-S1 fusion could be a less invasive procedure than replacing the malfunctioning stimulator. *Id.* Additionally, he stated that the stimulator could be an option for future pain relief. *Id.*

Petitioner testified that he continues to see his primary care doctor and takes gabapentin and bupropion. (Tx p. 25) Petitioner notes that the medication makes him hazy and that he "can't perform. I just can't do and still can't do the things that I should." (Tx p. 25)

The Petitioner continues to complain that he cannot even hold things in his hands due to the numbness and describes the pain shooting and radiating down to his ankles. He testified that he "can't find a comfortable position at all. (Tx. p. 26) Petitioner testified that he cannot go for a long walk, has trouble doing simple things like grocery shopping, and was using a walker for a period of time prior in the past (Tx. p. 27).

On cross-examination, Petitioner testified that he had not undergone any medical treatment for his back prior to March 4, 2009. (Tx. pp. 36-39). Petitioner further testified that he did not file, or participate in litigation, related to a prior workers' compensation claim involving his back. *Id.*

Petitioner was ultimately terminated from his employment with Respondent for falsifying records related to an abuse allegation. (Px10 *et seq.*). Petitioner denied any wrong-doing and further denied he was subject to a paid on-duty suspension at the time of the alleged injury. (Tx. P. 41). Petitioner was a Union Steward during his employment with Respondent. (Tx. p. 45). Petitioner denied knowledge of being subject to disciplinary issues on of the date of injury. *Id.* Petitioner testified that he was suspended a "day or two" following the accident and that suspension papers were brought to him and laid on his chest while at the hospital. (Tx. p. 41).

Petitioner testified he has been receiving non-occupational injury benefits through SERS and disability benefits from Social Security since 2013 upon referral from SERS. He is also in the process of transitioning to State of Illinois retirement benefits due to age. (Tx. pp. 45-46)

Mr. Pete Wessel ("Wessel") was called to testify on behalf of Respondent. (T. p. 50 *et seq.*). Wessel is currently the Chief Labor Relations Officer for the Department of Juvenile Justice. (Tx. p. 50). Prior to this position, Wessel was the Chief Labor Relations Administrator

for the Department of Children and Family Services ("DCFS"). *Id.* Wessel had worked for DCFS for approximately twenty-six years prior to moving to the Department of Juvenile Justice. *Id.*

Wessel's primary job duties at DCFS were to review disciplinary actions for employees across the state. (Tx. p. 51). Wessel became familiar with Petitioner through the process of the instant workers' compensation claim and a review of the disciplinary file. (Tx. p. 52). Wessel was designated to be the representative for Petitioner's case three to four years prior to hearing. (Tx. p. 61).

Wessel testified about the process of employee discipline, and specified that Petitioner had been investigated, and then discharged, for falsifying a record in relation to a child abuse investigation he was assigned to. (Tx. pp. 54 – 56). For this specific violation, DCFS has a zero-tolerance policy based on an Illinois Supreme Court decision which states that if a DCFS worker falsifies documentation, it is an automatic discharge. *Id.*

On January 14, 2009, two months before Petitioner's alleged accident, Petitioner's record falsification charge was the subject of a pre-disciplinary meeting. (Tx. p. 57). Wessel testified that Petitioner would have been notified of the disciplinary action being brought against him at least a few days prior to the meeting. *Id.* AFSCME members must be provided documentation of the charges prior to such a meeting. *Id.* On January 23, 2009, a rebuttal of the charges was submitted via his union. *Id.*

Pursuant to the AFSCME collective bargaining contract, once a pre-disciplinary meeting is concluded and a rebuttal is filed, disciplinary action must be taken within 45 days. (Tx. p. 58) In this instant case, the 45-day period ended on March 9, 2009, the Monday following Petitioner's alleged accident. *Id.* This process and time frame is common knowledge among Union Stewards. (Tx. p. 59).

Wessel testified that Respondent's Exhibit 4, a copy of Petitioner's attendance report, is a coded document for timekeeping purposes which indicates whether the person was at work, had a day off, or was suspended. (See Rx4; Tx. p. 53). Upon reviewing the document, Wessel testified that subsequent to March 4, 2009, Petitioner was placed on an unpaid suspension and was unable to return to work. (Tx. p. 54).

Petitioner was discharged effective April 3, 2009. (Tx p. 63). At Arbitration, just cause was found for Petitioner's discharge, affirming the termination. (Rx10).

On November 8, 2010, Petitioner underwent a Section 12 Examination with Dr. Kern Singh at Respondent's request. (Rx5 *et seq.*). Dr. Singh specifically noted in his report that "[i]t should be noted the patient has an extensive medical history of both neck pain, as well as low back pain as early as 1996..." (Rx5, p. 2). Dr. Singh further noted, "[i]t should also be noted that prior to the patient's injury he had an MRI of his cervical and lumbar spine dated from August 4, 2007, because of persistent cervical and lumbar pain complaints." *Id.*

Dr. Singh reviewed several pre-injury MRI studies. (Rx5, P. 4). A review of an MRI of the lumbar spine from October 3, 2000, revealed a disc herniation at L4-L5, a broad-based disc herniation at L5-S1, with L5 nerve root impingement. *Id.*

A review of a cervical MRI from August 4, 2007 revealed degenerative disc disease from C4-C7 with mild central stenosis from C4-C7. *Id.*

A review of a lumbar MRI from August 4, 2007 revealed bilateral defects at L5-S1 with grade 1 anterolisthesis at L5 on S1. *Id.*

Dr. Singh diagnosed Petitioner with degenerative cervical spondylosis with pre-existing cervical stenosis C3-C7 and isthmic L5-S1 spondylolisthesis (pre-existing). (Px5, p. 5). Dr.

Singh further opined that Petitioner's condition is pre-existing and unrelated to any work accident. *Id.*

Dr. Singh specifically noted that "I also find it disingenuous that the patient claims that he has had no prior treatment when in fact he has had several years of extensive treatment for his neck and lumbar spine." *Id.*

Respondent introduced exhibits at trial related to Petitioner's discharge of employment with Respondent. Respondent's Exhibit #4 is an attendance report which indicates that, subsequent to Petitioner's alleged injury, he was placed on unpaid suspension status before ultimately being terminated. (Rx4 *et seq.*)

Respondent's Exhibit #7 is a notice of suspension dated March 3, 2009, one day prior to the alleged accident. This document indicates that Petitioner was being placed on an unpaid suspension pursuant to a "falsification of information" charge. (Rx7, p. 2). This document further indicates Petitioner had been suspended five times in the previous seven years. *Id.* Moreover, this document also indicates that it was sent by mail and was not delivered in person. (Rx7, p. 1).

Respondent's Exhibit #8 is a notice of discharge with an effective date of April 3, 2009. (RX8). Petitioner was terminated for the "falsification of information" pursuant to Personnel Rule 302.720. *Id.*

Respondent's Exhibit #10 is a copy of the arbitration decision in which just cause was found for Petitioner's termination. The decision reads, in pertinent part, "[i]n addition to their skills as investigators, employees in this position must have a reputation for truthfulness. By his own actions, [Petitioner] has destroyed his usefulness to the Department." (RX10, P. 14).

II. 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 the elements of his claim O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980) including that there is some causal relationship between his employment and his injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989) Decisions of an arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e)

The Arbitrator does not find Petitioner to be a credible witness in this case. The following are some of the credibility issues and factual discrepancies noted in the records, trial exhibits, and testimony.

The Arbitrator finds it suspicious that Petitioner alleges he was injured during an unwitnessed trip and fall while being the subject of a disciplinary investigation into a falsified records charge. The Arbitrator notes the severity of this charge, as well as its relation to Petitioner's credibility. The Arbitrator further notes Petitioner's subsequent termination for this charge was upheld at Arbitration. Moreover, the Arbitrator finds that, despite his testimony to contrary, Petitioner was fully aware of the pending charges against him. Among other things, Petitioner sent an email on January 22, 2009 regarding his rebuttal pursuant to the pre-disciplinary meeting. (See Rx13). Given that Petitioner had been through the disciplinary

process on at least five prior occasions, and acted as a Union Steward, the Arbitrator finds that he would have known he was subject to discipline in the immediate future.

Notwithstanding the circumstances surrounding the fall, the Arbitrator additionally finds that Petitioner is not credible for reasons corroborated by independent sources.

What the Arbitrator finds most troubling about Petitioner is his apparent untruthfulness regarding past medical treatment for his back and denial his prior workers' compensation claim and hearing. Petitioner was adamant in his testimony that he had not undergone any meaningful treatment to his back prior to the date of accident. At best, Petitioner's testimony is misleading.

Petitioner extensive medical history with regards to his back and neck are well documented, not only in Dr. Singh's Section 12 report, but also in Respondent's Exhibit #11, which are Petitioner's medical records from Advocate Health Center.

Dr. Singh in report of November 8, 2010, stated in his report that "[i]t should be noted the patient has an extensive medical history of both neck pain, as well as low back pain as early as 1996..." (Rx5, p. 2). Dr. Singh further said, "[i]t should also be noted that prior to the patient's injury he had an MRI of his cervical and lumbar spine dated from August 4, 2007, because of persistent cervical and lumbar pain complaints." *Id.*

A review of the records from Advocate Health Center indicates that Petitioner sought recurrent and regular treatment for more than ten years prior to the alleged accident. While one could certainly be excused for failing to recall infrequent complaints and irregular treatment from several years prior, the Arbitrator finds it highly unlikely that Petitioner would simply fail to recall the extensive amount of treatment he underwent including examinations, diagnostics, and injections. Petitioner clearly suffered from chronic back pain long before the alleged accident.

Furthermore, and despite his testimony to the contrary, Petitioner filed a prior claim with the Illinois Industrial Commission regarding his back. (See Rx6). On March 26, 2004, Petitioner's claim, 00 WC 25442, was heard by Arbitrator Edward Lee in Chicago. Petitioner testified. In that case, Petitioner claimed to have injured his back in the course of employment. (Px6, p. 4). In that hearing, Petitioner testified that "prior to the accident he had no complaints of low back pain." *Id.* The decision goes on explain that "this statement was totally contradicted by his medical records which revealed a history of continued chronic low back pain and an epidural injection prior to his accident." *Id.* The claim was denied at Arbitration. (Px6). The similarities between the case at hand and Petitioner's case from 2000 are remarkable.

Moreover, Petitioner testified that he became aware of his suspension a "day or two" following the accident and the suspension papers had been brought to him and laid on his chest while at the hospital. (Tx p. 41). There is nothing in the record which corroborates Petitioner's version of events. To the contrary, the notice of suspension document indicates that it was filled out the day prior to his alleged accident to be mailed to Petitioner. (See Rx 7, p. 1). Nothing in the hospital records, or otherwise, indicate anyone associated with Respondent came and laid suspension papers on his chest while he was in the hospital. Furthermore, Petitioner's signature is not present on the document. The Arbitrator finds it highly unlikely that a representative of Respondent would go through the effort of delivering this documentation to the hospital without obtaining a signature, or at least a refusal to sign, from Petitioner.

In summary, the Arbitrator finds that Petitioner is a remarkably unreliable witness. Many of his claims are false, many are exaggerations, and some of them are incredible. Also, the Arbitrator is inclined to agree with Dr. Singh who stated that Petitioner is "disingenuous." (Px5, p. 5).

C. With respect to the issue of did an accident occur that arose out of an in the course of Petitioner's employment by Respondent, the Arbitrator makes the following conclusions of law:

To obtain compensation under the Act, it is well established that a claimant bears the burden of showing, by a preponderance of the evidence, that he or she has suffered a disabling injury which arose out of and in the course of his employment. The Arbitrator finds that Petitioner failed to do so.

The Arbitrator finds that Petitioner failed to present enough credible evidence that his injury arose out of and in the course of his employment with the Respondent. As previously noted, the Arbitrator finds it suspicious that Petitioner alleges he was injured as a result of an unwitnessed trip and fall while the subject of a disciplinary investigation into a falsified records charge. While the Arbitrator believes that this fact alone is not necessarily fatal to Petitioner's claim, the Arbitrator does not find Petitioner to be a credible witness and bases this decision primarily on the totality of the discrepancies in the medical records, the trial exhibits, and the testimony before the court.

According to Petitioner's testimony, on March 4, 2009, after he was returning to his work area from obtaining office supplies, his "feet got tangled up in the wires" causing him to trip and fall. (Tx at p. 14). Petitioner testified that he "went head-first into a cabinet. The cabinet fell on me; rolled over. And I landed on my back eventually." (Tx. at p. 14). The Arbitrator notes inconsistencies between Petitioner's testimony at trial and his "Workers' Compensation Claim" form which Petitioner filled out and signed on March 13, 2009, nine days after his alleged accident.. (See Rx2). In this document, Petitioner wrote "feet entangled in telephone

wires / cords in clerical area streamed across floor / workspace causing fall to bare concrete floor." There is no mention of Petitioner falling "head-first into a cabinet" or that a cabinet fell on him as he claimed in his testimony. While the Arbitrator understands that Petitioner had limited space to document the details of the incident, Petitioner only stated he fell to the concrete floor. An office cabinet falling on top of Petitioner would have been a remarkable fact to omit from his own written accident description.

Furthermore, the Arbitrator notes discrepancies in the records from St. Francis following the accident. The triage notes by Dr. Akbarnia state Petitioner presented to the emergency room with a "fainting spell" and was standing up when he "felt his 'feet go out from under' him while walking. He thinks he may have tripped." (Px3, p. 1). Following an evaluation, Dr. Akbarnia's medical impression is noted as "syncope, fall" and Petitioner was admitted to the hospital for observation. (Px3, p. 4). This calls into question the circumstances surrounding Petitioner's alleged accident. A "fainting spell" is inconsistent with Petitioner's testimony that he tripped on wires and fell into a cabinet which, in turn, then fell on him.

Once admitted to St. Francis Hospital, the records then give a different mechanism of injury. The assessment by Dr. Bortnick states "[t]he patient had a witnessed fall by his secretary, tripped and then fell, no syncopal episode, no fainting." *Id.* He was further diagnosed with a mild concussion and a "mild whiplash type neck injury." *Id.* Again, there is no mention of a cabinet falling on him. And, Petitioner specifically denied that anyone witnessed his alleged trap and fall. Additionally, Petitioner's testimony that he struck his head on the cabinet while falling and that that an office cabinet fell on him, the initial medical records at Hospital, are silent as to objective physical findings in support such as red marks, bumps or bruises.

Finally, the Arbitrator does not find any compelling evidence of an acute injury as a result of Petitioner's alleged fall. At St. Francis, Petitioner underwent an MRI of the cervical spine which revealed mild narrowing at C5-C6 with posterior osteophyte at C4 – C6. (Px3). Degenerative changes were noted at C4-5 and C5-6. *Id.* A CT scan of the head revealed left hypertrophy of the nasopharynx and otherwise showed no signs of injury. (Px3) A metabolic profile and EKG were unremarkable. *Id.*

Petitioner underwent an MRI of the lumbar spine and cervical spine approximately two weeks later, on March 19, 2009. (Px4). The lumbar MRI revealed L5-S1 anterolisthesis, a L5-S1 herniation with stenosis and narrowing, and L4-L5 herniation. (Px4) The cervical MRI revealed herniation at C3-4, C4-5, and C5-6 with mild bilateral neuroforaminal narrowing. (Px4).

There are no significant differences between these, and pre-injury diagnostics reviewed by Dr. Singh, which Petitioner denied undergoing. Dr. Singh's review of a lumbar MRI from October 3, 2000 revealed a disc herniation at L4-L5, a broad-based disc herniation at L5-S1, with L5 nerve root impingement. (Rx5, p. 4). A review of a cervical MRI from August 4, 2007 revealed degenerative disc disease from C4-C7 with mild central stenosis from C4-C7. *Id.* A review of a lumbar MRI from August 4, 2007 revealed bilateral defects at L5-S1 with grade 1 anterolisthesis at L5 on S1. The Arbitrator is troubled by the fact that Petitioner was not forthcoming about his previous treatment with either Dr. Singh or in his testimony at trial. The Arbitrator can only conclude that Petitioner did this in an attempt to conceal his medical history.

After reviewing all the evidence and considering the totality of the circumstances surrounding Petitioner's claim, the Arbitrator finds that Petitioner has failed to prove, by a preponderance of the evidence, that he sustained an injury arising out of and during the course

of his employment. As such, all benefits are denied. All other issues are moot. However, the Arbitrator addresses the issue of causation because it buttresses and overlaps the no accident finding.

F. With respect to the issue of whether the Petitioner's current condition of ill-being is causally related to his injury, the Arbitrator makes the following conclusions of law:

A review of the evidence relating to the issue causation, overlaps with the disputed issue of accident; the combination of which addresses the issue of credibility.

In the instant case, Petitioner claimed that prior to the alleged fall on March 4, 2009, he had no complaints of back pain. However, this is simply not true. Petitioner has a long history of back issues and treatment that goes back at least as far as 1996. . Office notes from October 2, 1996, state that Petitioner was seen for "back discomfort" in the "low back area" and was referred to an orthopedist. (Rx11 at 13).

On March 22, 2000, Petitioner was seen by Dr. Czajkowski for right sided sciatica. (Rx11 at 23). He was again seen for pain complaints on April 22, 2000, after being in an automobile accident. (Rx11 at p. 24). On April 28, 2000, Petitioner was seen by Dr. Stephen Boren. (Px11 at p. 10). Even at this time, Petitioner was taking Vicodin for "chronic back pain." *Id.* The office notes further state that the "patient has a long history of back pain" and "recently had an epidural injection." *Id.*

Dr. Singh reviewed several pre-injury MRI studies. (Rx5 at 4). Dr. Singh's review of a lumbar MRI from October 3, 2000 revealed a disc herniation at L4-L5, a broad-based disc herniation at L5-S1, with L5 nerve root impingement. *Id.* A review of a cervical MRI from August 4, 2007 revealed degenerative disc disease from C4-C7 with mild central stenosis from

C4-C7. *Id.* A review of a lumbar MRI from August 4, 2007 revealed bilateral defects at L5-S1 with grade 1 anterolisthesis at L5 on S1.

In contrast, Petitioner underwent an MRI of the cervical spine at St. Francis immediately following the accident which revealed mild narrowing at C5-C6 with posterior osteophyte at C4–C6. (PX3). Degenerative changes were noted at C4-5 and C5-6. Id. Two weeks later, on March 19, 2009, Petitioner underwent an MRI of both the lumbar and cervical spine. (Px4). The lumbar MRI revealed L5-S1 anterolisthesis, a L5-S1 herniation with stenosis and narrowing, and L4-L5 herniation. (Px4) The cervical MRI revealed herniation at C3-4, C4-5, and C5-6 with mild bilateral neuroforaminal narrowing. (Px4).

Dr. Singh n his review of these diagnostic studies, found no significant differences between the diagnostics taken following the accident and the pre-injury diagnostics. The Arbitrator finds Dr. Singh's assessment that Petitioner's condition is pre-existing, was not aggravated or exacerbated, and unrelated to any work accident, to be more persuasive than the medical records submitted by Petitioner.

The Arbitrator also notes that Petitioner was involved in a prior arbitration with the Illinois Industrial Commission where he also claimed a back injury and denied prior treatment. (See Rx6). In the decision, Arb. Lee wrote "Petitioner claimed that prior to the accident he had no complaints of low back pain. However, this statement was totally contradicted by his medical records which revealed a history of continued chronic low back pain and a epidural injection prior to his accident." (Rx6, at p. 4). The Arbitrator finds that this is again the case with Petitioner.

Thus, the Arbitrator finds that Petitioner has failed to prove by a preponderance of the evidence that his current condition of ill-being is causally related to the events of March 4, 2009.

J. With respect to the issue whether the medical services that were provided to the Petitioner were reasonable and necessary, the Arbitrator makes the following conclusions of law:

The Arbitrator having found that Petitioner did not sustain an accident arising out of his employment awards no medical benefits.

K. With respect to the issue of TTD benefits, the Arbitrator makes the following conclusions of law:

The Arbitrator having found that Petitioner did not sustain an accident arising out of his employment does not award TTD benefits.

L. With regard to the issue of the nature and extent of the Petitioner's injury, the Arbitrator makes the following conclusions of law:

The Arbitrator having found that Petitioner did not sustain an accident arising out of his employment does not award any permanency.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC006638
Case Name	BENTLEY, PETER v. GOVERNORS STATE UNIVERSITY
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0015
Number of Pages of Decision	13
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Patricia Lannon Kus
Respondent Attorney	Danielle Curtiss

DATE FILED: 1/10/2022

/s/Maria Portela, Commissioner

Signature

22IWCC0015

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PETER BENTLEY,

Petitioner,

vs. NO: 19 WC 6638

GOVERNORS STATE UNIVERSITY,

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, temporary total disability, medical expenses, and 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, with the modifications stated below.

The Arbitrator found that Petitioner's injuries "arose out of" his employment because, although he was exposed to a neutral risk of walking down stairs, he faced a risk of injury greater than the general public since he was going down an interior staircase in Respondent's theater while carrying his 20-pound tool bag to get to Respondent's truck and drive to his next maintenance job. *Dec. 5*. The Arbitrator also found that Petitioner was in an area where he needed to be to perform his job and that his testimony is corroborated by the accident report. *Id*. Initially, we note that the Decision indicates that the accident report is "RX#2." However, we hereby correct this clerical error to reflect that it is Respondent's Exhibit 1.

Although the Arbitrator's neutral-risk analysis is supported by the evidence, we find that it is unnecessary because Petitioner was exposed to a distinctly employment-related risk. First, Petitioner's unrebutted testimony is that the stairs he used were used by "the workers" and that, during theater performances, the door to the stairs (Rx3) is a fire door that is normally closed to the public. *T.33-34*. However, on the date of his injury, the door was "pried open when I walked through there." *T.34*. Therefore, we find that the stairs on which Petitioner fell are actually behind a fire door that is not open to the public during the shows at the theater and "normally it's closed all the time," except in cases of emergency.

Second, Petitioner testified that he had finished fixing a urinal in the theater and was on his way to complete his next work order. *T.12*. To accomplish this, Petitioner transported his 20-pound tool bag by carrying it down the stairs. *T.13*. We find that this was a distinctly employment-related risk and an act "which the employee might reasonably be expected to perform incident to his assigned duties." *Caterpillar Tractor Co. v. IC*, 129 Ill. 2d 52, 58, 541 N.E.2d 665, 667 (1989)

Respondent argues that Petitioner was exposed to a personal risk because, instead of taking his tools and cart down a nearby ramp, he chose to take the dangerous route (i.e., the stairs) for his own convenience and personal benefit. We completely disagree and find that Petitioner was not carrying his tools for his own "personal benefit." Instead, he was performing his job duties and attempting to transport his tools to his work truck, which is a distinctly employment-related task. In terms of it being for Petitioner's "convenience," Petitioner testified that although he took the ramp going into the theater (T.32), on his way out he took the stairs because his truck was "right there" and the ramp was "farther down." Therefore, the evidence shows that Petitioner took the stairs because it was closer to his work truck. We find that was not for his own "convenience" but, rather, an attempt to be as efficient as possible with his time for which Respondent was paying him. Although Petitioner might have been able to avoid the accident had he taken the longer route and used the ramp, his unsuccessful decision (in hindsight) to remove the tools from the cart and carry them down the stairs does not transform this employment-related task into something he did for his "personal benefit." Even if Petitioner had done it solely to make his job easier or quicker, this would not make it a "personal benefit."

Respondent argues that "common sense would dictate that if a ramp was available nearby, albeit slightly further away from Petitioner's truck, where Petitioner was using a wheeled device such as a cart, the ramp is a safer route." *R-brief at 8*. However, just because Petitioner could have chosen a different route to transport his tools does not mean that Petitioner's actions removed him from the course of employment or that the accident did not arise out of his employment. Furthermore, Petitioner testified that, prior to this accident, he had previously taken his tool bag and the tool cart down the stairs without incident and there was no rule against him doing so. *T.38*. On the date of his accident, Petitioner chose to use the stairs instead of a ramp that was farther away. Although using the ramp might have been the "better" or "safer" choice, we find that both options (stairs or ramp) were reasonable for Petitioner in the performance of his assigned duties.

We also point out that Respondent argues Petitioner "was injured while carrying a heavy tool bag and tool cart down a flight of stairs." *R-brief at 7*. However, that was not Petitioner's testimony. Although Petitioner may have intended to eventually pull the cart down the stairs (*T.30*), his accident occurred when he removed his tool bag from the cart to carry the tool bag down first:

Q: When you grabbed the tool bag with your right hand, what did you do next?
A: I just turned, started going down the stairs.
Q: What happened?
A: Next thing I know I slid down and I was at the bottom of the stairs.
Q: How many stairs did you slid down -- slide down?
A: Four I believe.
Q: Were the stairs carpeted?
A: Yeah.

Q: Okay. Did the tool bag come down with you?
A: Yeah, it fell on top of me.
Q: What about the tool cart?
A: No, that was on top of the stairs. *T.14*.

In other words, Petitioner grabbed his tool bag, turned and "started going down the stairs" when he slid down the carpeted stairs. His tool bag fell on top of him, but the tool cart did not since that was still at the top of the stairs.

Ultimately, we agree with the Arbitrator's rejection of Respondent's argument that Petitioner chose to take the dangerous route for his own convenience and personal benefit. Although Petitioner may have made a poor decision to use the stairs instead of the farther-away ramp, he was still engaged in an act that was reasonably expected in the performance of his work duties. Therefore, his accident arose out of his employment due to the employment-related risk of transporting his 20-pound tool bag from one work assignment to another using the stairs. Nevertheless, should a reviewing court find that a neutral-risk analysis is more appropriate, we would affirm the Arbitrator's decision.

Finally, we clarify that Petitioner failed to prove that his sleep apnea is causally related to his work accident. However, we affirm the award of expenses for the February 18, 2019 sleep study. The February 14, 2019 Manor Care record indicates that it was a prescribed test while Petitioner was in the hospital for his quadricep surgery and Petitioner complained of snoring, daytime tiredness and sleepiness while in the nursing home recovering from the surgery.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 16, 2019, is hereby affirmed and adopted, with the modifications 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.

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.

January 10, 2022

/s/ *Maria E. Portela*

SE/
O: 11/23/21
49

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

22IWCC0015

BENTLEY, PETER
Employee/Petitioner

Case# **19WC006638**

GOVERNORS STATE UNIVERSITY
Employer/Respondent

On 12/16/2019, 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 1.52% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0320 LANNON LANNON & BARR LTD
MICHAEL S ROLENC
200 N LASALLE ST SUITE 2820
CHICAGO, IL 60601

6149 ASSISTANT ATTORNEY GENERAL
DANIELLE CURTISS
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

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

0499 CMS RISK MANAGEMENT
801 S SEVENTH ST 8M
PO BOX 19208
SPRINGFIELD, IL 62794-9208

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

DEC 16 2019

Brendan O'Rourke, Assistant Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF WILL)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Peter Bentley
Employee/Petitioner

Case # 19 WC 6638

Consolidated cases:

v.

Governors State University

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gregory Dollison**, Arbitrator of the Commission, in the city of **New Lenox, Illinois**, on **November 12, 2019**. 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 16, 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 $**85,997.60**; the average weekly wage was $**1,653.80.**

On the date of accident, Petitioner was **68** 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 $**319.11** under Section 8(j) of the Act. 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.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $1,102.53/week for 24-5/7 weeks, commencing January 17, 2019 through July 6, 2019, as provided in Section 8(b) of the Act.

Respondent shall pay to Petitioner reasonable and necessary medical services, pursuant to the Medical Fee Schedule, of $112,750.06, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay to Petitioner $980.35 for his out of pocket medical expenses.

Respondent shall pay Petitioner permanent partial disability benefits of $813.87/week for 90.625 weeks, because the injuries sustained caused 7-1/2% loss of Petitioner's left hand (15.375 weeks) and caused 35% loss of Petitioner's left leg (75.25 weeks), as provided in Section 8(e) of the Act.

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

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

Signature of Arbitrator

12/13/19
Date

DEC 16 2019

Attachment to Arbitrator Decision
(19 WC 6638)

FINDINGS OF FACT

Petitioner testified that as of January 2019, he had been employed with Respondent for 8-1/2 years as a power plant engineer. His job duties included taking care of the electricity, plumbing, heating and fire alarm systems. He also had to change air filters.

Petitioner testified that on January 16, 2019, he arrived for work at Governors State University and signed in. After he signed in, he performed his morning rounds which included checking the meters. Upon completing his morning rounds, he proceeded to the engineer's office to get additional work orders from his boss. Petitioner testified that he had a radio with him. Petitioner testified that he was working on the urinals in the men's washroom in the theatre just before he got hurt. He testified that when he finished fixing the urinals, he was going to another maintenance job. Petitioner testified that he had a tool bag and tool cart with him. The tool bag weighed about 20 lbs. and the tool cart was on wheels. He testified that he wheeled the cart with the tool bag on it to the top of the landing. With his right hand, he went to grab his tool bag and when he turned to go down the steps, he missed the top step and fell down four carpeted steps. Petitioner testified the tool bag fell on top of him, but the cart stayed on the landing.

Petitioner testified he was cutting through the green room which is a rehearsal room for the theater performers. He was cutting through this room in order to get to the mechanical room as his Governors State University truck was parked near the mechanical room. According to Petitioner, he needed the truck in order to get to another building for the next maintenance job.

Petitioner testified that the stairs are in the green room and he had gone down the stairs with his tool bag and tool cart on many prior occasions. Petitioner also testified there are no written rules or regulations prohibiting him from bringing his tool bag and tool cart down these stairs. Petitioner also testified he was never reprimanded by anyone for doing so.

Petitioner testified that after he fell, he could not feel his left leg and both of his wrists were sore. He also testified his head hurt. Petitioner testified there were some girls in the green room who were University employees who must have heard him fall because they came and called the paramedics.

Petitioner initially received medical treatment on January 16, 2019 at Franciscan Health Olympia Fields Hospital. The medical records reflect Petitioner was complaining of left knee pain, left wrist pain, and pain to his left forehead. There was no loss of consciousness. There was some right ankle pain which had resolved. X-rays of the right wrist revealed a radiopaque foreign body in the volar soft tissues over the right first digit. X-rays of the left femur revealed no acute fracture or dislocation. X-rays of left knee revealed no acute fracture or dislocation. Irregular angulation of the patella with rounded suprapatellar soft tissue swelling. An MRI of the left knee confirmed left quadricep tendon rupture. Surgery was scheduled for January 28, 2019 to repair Petitioner's left knee. Petitioner was diagnosed with a questionable triquetral avulsion fracture of the left wrist and a possible quadriceps tendon tear. Petitioner was discharged home that same day. (PX #1)

Petitioner testified he returned home and was having difficulty taking care of himself. On January 22, 2019, he called the paramedics who took him back to Franciscan Health Olympia Fields Hospital. Petitioner informed the nurse that the day before, he slid down between his bed and was stuck between the bed and dresser for two hours before his children could get him up. He related that he had been in significant pain since the fall and was unable to stand without significant instability. He also was unable to raise his left leg.

Petitioner was admitted and on January 25, 2019, he underwent a left quadriceps tendon repair by Dr. William Payne of Specialty Physicians of Illinois. Petitioner remained hospitalized until January 31, 2019 when he was transferred to Manor Care at Oak Lawn West. (PX #1)

Petitioner was admitted to Manor Care on January 31, 2019 and remained there until February 27, 2019. Part of the treatment Petitioner received at Manor Care included occupational and physical therapy. (PX #2)

During his stay at Manor Care, Petitioner was seen on February 8, 2019 by Robin Major, NP, of Specialty Physicians of Illinois. This was a follow-up visit after his left quadriceps tendon repair. Petitioner was advised to continue wearing the brace given to him at the nursing home. (PX #3)

On February 18, 2019, Petitioner underwent a sleep study by Dr. Muhammad Saddiq of Midwest Sleep Laboratories. Petitioner testified he was having problems sleeping due to the pain he was in following this injury and was referred here by his primary care physician, Dr. Chandra. Dr. Saddiq recommended Petitioner use a CPAP device, weight loss, avoiding sedative medicines and avoid driving and operating machinery until the condition is corrected. (PX #4)

After being discharged from Manor Care, Petitioner returned for a follow-up visit with Robin Major on March 5, 2019. The incision was healing well and Petitioner was advised to begin physical therapy as of March 6, 2019. He was also advised to continue wearing his brace locked in extension.

Robin Major continued to monitor progress through July 2019. During that period Petitioner participated in physical therapy for his left knee at Sports & Ortho, P.C. through July 3, 2019, or total of 34 therapy sessions. (PX #3, PX #5)

On July 2, 2019, Petitioner saw Major who noted there was no instability present in the left knee. Petitioner was advised to continue with home exercises and return to work on July 7, 2019 with no restrictions. Petitioner was discharged from medical care at this visit. (PX #3) Petitioner testified he returned to work for Respondent on July 7, 2019.

Petitioner testified that presently his left wrist "get weak and acts up on him." He testified he notices this while performing his maintenance work and using wrenches. He testified he feels occasional sharp pain in his left wrist. Petitioner also testified that he does not work in his garden anymore nor does he ride his motorcycle because he is afraid if it falls, he will not be able to pick it up.

With respect to his left knee, Petitioner testified he has balance issues which he never had before. He testified he does things "real slow" so he does not lose his balance. He testified his left knee feels like it is going to "kink out." He massages the knee to loosen it up at times. Petitioner also testified that he does not drop down to his knees anymore but instead descends slowly and has to hold on to something when he raises up. He also testified he has pain in the knee occasionally.

On cross-examination, Petitioner testified that his tool bag came down first. He also testified that he was going to wheel his cart down the staircase as he had done before. Petitioner testified that there was a ramp farther down but he had to get out of the theatre to get to it. He testified his truck, however, was near the staircase. Petitioner testified the theatre is open to the public as they have different shows there.

Respondent's counsel showed Petitioner what was marked as RX #3 and he placed an X on the landing where he was just before he fell. The two doors in the picture were open but Petitioner testified sometimes those doors are closed. That particular day, he testified they were open when he got there which is why he

went down the stairs. He testified he believes those stairs can be used by the general public to get into the theatre.

Petitioner also identified RX #8 as the tool cart that he used.

Petitioner testified he is not taking any pain medication nor has he seen anyone for his left wrist or left knee since last seeing the nurse practitioner in July 2019. Petitioner testified he does take Ibuprofen for his knee and that he did drive to the hearing and will drive back home. He testified it is about a 40-minute car ride. He also testified that he has no issues with his left knee when sitting.

With respect 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:

Petitioner testified he arrived for work at 7:00 a.m. on January 16, 2019. After signing in, he did his morning rounds and then got his work orders from his boss.

Petitioner testified that after he finished working on the urinals in the men's washroom, he placed his tool bag on his tool cart and pushed that to the landing of a staircase in the green room. Petitioner needed to get to the green room in order to get to the mechanical room as his Governors State University truck was parked near there and he needed the truck to get to his next repair job. As Petitioner reached the landing, he went to grab his tool bag with his right hand and as he turned to go down the stairs, he missed a step and fell down 4 stairs with his tool bag falling down on top of him.

An employee's injury is compensable under the Act "only if it arises out of and in the course of the employment." *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill.2d 52, 57, 541 N.E.2d 665(1989). The "in the course of employment" element refers to "injuries sustained on an employer's premises, or at a place where the claimant might reasonably have been while performing his duties, and while a claimant is at work…." *Metropolitan Water Reclamation District of Greater Chicago vs. Illinois Workers' Compensation Comm'n*, 407 Ill. App.3d 1010, 1013-1014, (1st Dist. 2011) citing *Caterpillar Tractor Co.*, above.

Where an "employee is exposed to a risk common to the general public to a greater degree than other persons, the accidental injury is also said to arise out of his employment." *Caterpillar,* 129 Ill. 2d 52, 58. In other words, a Petitioner must demonstrate that the risk of injury was peculiar to or increased by his work duties and the increased risk may be either qualitative, such as some aspect of the employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public." *Metropolitan Water Reclamation District of Greater Chicago citing Potenzo v. Illinois Workers' Compensation Comm'n*, 378 Ill. App.3d 113, 116, 881 N. E. 2d 523 (2007).

After careful observation of Petitioner and in consideration of all the evidence submitted at trial, the Arbitrator finds Petitioner's testimony to be credible. The Arbitrator notes that stairs are a neutral risk but a fall is compensable if a Petitioner faces a risk of injury to a greater degree than members of the general public. Here, while this staircase may very well have been open to members of the public, Petitioner's risk of injury on the staircase was increased as a result of his employment. The record reflects that Petitioner had completed maintenance work in the men's urinal and was on his way down an interior staircase in the University attempting to carry his 20 lb. tool bag in order to get to his University truck to drive to his next maintenance job. Petitioner was in an area of the University where he needed to be in order to perform his job.

Petitioner's testimony is also corroborated by RX#2, the accident report completed by Petitioner.

The Arbitrator notes that the only evidence offered by Respondent in rebuttal was that members of the general public were able to use the staircase and that there was a ramp nearby. Petitioner was very clear in his testimony that there were no rules or regulations prohibiting him from carrying his tool bag down the staircase which, in and of itself, would not have precluded him from recovery.

Based on the above, the Arbitrator finds that Petitioner sustained accidental injuries arising out of and in the course of his employment with the Respondent on January 16, 2019.

With respect to F.) Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds the following:

Petitioner testified he fell down four steps at work sustaining injuries to his left wrist and left knee which were diagnosed as a left triquetrum avulsion fracture and a left quadriceps tendon rupture. The treatment he received was for the injuries he sustained. Respondent offered no rebuttal evidence whatsoever.

The Arbitrator adopts the conclusions and opinions of Dr. Payne and Robin Major, NP, of Specialty Physicians of Illinois.

The Arbitrator finds that Petitioner's current condition of ill–being involving his left knee and left wrist are causally related to the accident of January 16, 2019.

With respect to 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 the following:

Petitioner placed into evidence the following medical bills from the following providers:

Franciscan Alliance	$63,260.29
EMP of Cook County	$ 2,412.99
SMI Radiology Imaging Cons.	$ 390.00
Elite Medical	$ 1,199.00
Specialty Physicians of Illinois	$ 1,719.00
Northstar Anesthesia of Illinois	$ 5,276.14
Manor Care of Oak Lawn West	$25,850.29
Specialty Needs Transportation	$ 177.00
Midwest Imaging Diagnostic	$ 3,500.00
Sports & Ortho P.C.	$12,175.38
Orbit Medical	$ 134.02

The medical bills reflect that Petitioner's insurance paid $319.11 to EMP of Cook County. The bills also reflect Petitioner made payment of $980.35 on some of the medical bills. The unpaid balance of all of these medical bills is $112,755.06.

Petitioner's testimony and the medical records support the services that were provided to Petitioner for which these bills were incurred. Respondent presented no contrary evidence on the issue of reasonableness, necessity or liability.

The Arbitrator awards to Petitioner the balance of $112,755.06 which is due on these bills.

The Arbitrator awards Respondent an 8(j) credit for the payments of $319.11 which was made by Petitioner's group carrier. Respondent shall hold Petitioner harmless from any claims by any providers for these services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

The Arbitrator further awards Petitioner his out of pocket expenses of $980.35 which he made to the providers.

With respect to K.) What temporary benefits (TTD) are in dispute, the Arbitrator finds the following:

Following the accident of January 16, 2019, Petitioner was taken immediately to Franciscan Health Olympia Fields Hospital. Petitioner was discharged home following his treatment in the emergency room.

Petitioner testified that due to his injuries, he was unable to care for himself. As a result, he was readmitted to Franciscan Health Olympia Fields Hospital on January 22, 2019 where he underwent a left quadriceps tendon repair. Petitioner remained hospitalized until January 31, 2019 at which time he was discharged from the hospital to Manor Care at Oak Lawn West. Petitioner remained at Manor Care until February 27, 2019. Upon his discharge, Petitioner resumed medical treatment with Specialty Physicians of Illinois.

Based on the nature of the treatment Petitioner received and the opinions contained in the medical records, Petitioner was unable to resume work activities until July 7, 2019.

Respondent presented no contrary evidence on the issue of Petitioner's inability to work during the claimed period of disability.

The Arbitrator finds that Petitioner was temporarily totally disabled from January 17, 2019 through July 6, 2019, a period of 24-5/7 weeks.

With respect to M.) Should penalties or fees be imposed upon Respondent, the Arbitrator finds the following:

The Arbitrator finds that a legitimate dispute existed regarding the issue of accident. As such, Petitioner's request for penalties is denied.

With respect to L.) What is the nature and extent of the injury, the Arbitrator finds the following:

Petitioner sustained a left triquetrum avulsion fracture and a left quadriceps tendon rupture for which he underwent a left quadriceps tendon repair.

Pursuant to Section 8.1b of the Act, the following factors are to be considered in determining the level of permanent disability for accidental injuries occurring on or after September 1, 2011:

(i) The reported level of impairment;
(ii) The occupation of the injured employee;
(iii) Age of employee at the time of injury;
(iv) The employee's future earning capacity;
(v) Evidence of disability corroborated by the medical records.

With regard to subsection (i) of Section 8.1b(b) of the Act, 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 Section 8.1b(b) of the Act, the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a building engineer at the time of the accident and that he is still able to work in this capacity. The Arbitrator, therefore, gives greater weight to this factor.

With regard to subsection (iii) of Section 8.1b(b) of the Act, the Arbitrator notes that Petitioner was 68 years old at the time of the accident. Because of Petitioner is an older individual, he will enjoy a shorter work-life expectancy. As such, the Arbitrator assigns less weight to this factor.

With regard to subsection (iv) of Section 8.1b(b) of the Act, Petitioner's future earnings capacity, the Arbitrator notes that Petitioner testified he is earning the same amount of money as he was at the time of this accident. The Arbitrator, therefore, gives no weight to this factor.

With regard to subsection (v) of Section 8.1b(b) of the Act, the evidence of disability corroborated by the treating medical records, the Arbitrator notes that in the final visit with Robin Major on July 2, 2019, it was noted that examination of Petitioner's left knee showed range of motion 0 to 120°, evidencing a loss of about 15° in having full range of motion. The Arbitrator, therefore, gives greater weight to this factor.

Based upon the foregoing, the Arbitrator finds that Petitioner sustained a loss of 7-1/2% disability to his left hand and a 35% loss of his left leg.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC024165
Case Name	CAVANAUGH, AURORA v. M & H MACHINING, LLC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0016
Number of Pages of Decision	18
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Daniel Klosowski
Respondent Attorney	Amy Bilton

DATE FILED: 1/10/2022

/s/ Deborah Baker, Commissioner

Signature

22IWCC0016

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 up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

AURORA CAVANAUGH,

Petitioner,

vs. NO: 15 WC 24165

M&H MACHINING, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection to Petitioner's current lumbar condition, entitlement to incurred medical expenses, the prospective lumbar fusion surgery recommended by Dr. Fisher, the extension of temporary total disability benefits, and the nature and extent of the injury, 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.

I. FINDINGS OF FACT

The decision of the Arbitrator delineates the facts of the case in detail. As relevant to the issues on review, the Commission notes that Petitioner was employed by Respondent as a Machine Operator on the date of the stipulated July 14, 2015 work accident. At trial, Petitioner testified that her workspace included tables both in front of and behind her. The table in front of her stored long car pieces and a metal gate used to measure the pieces. She was to inspect the pieces for cleanliness. The metal gate was used to measure the pieces. If the piece was too big for the gate, it would not fit in the machine. The table behind her stored the machine which was used to clean these pieces. She then removed the clean pieces from the machine, dried them, and placed them on a skid. Petitioner testified that on July 14, 2015, she was turning "to try the piece" in the machine when a forklift operator lowered a skid to place more metal pieces on the table in front of Petitioner, but in doing so bumped the table, causing metal pieces to fall onto Petitioner's low back and right foot. Petitioner testified to immediate pain in both areas.

Subsequently, an accident report was completed and was signed by Petitioner's supervisor, indicating that a forklift driver had bumped a table, causing it to collapse, and causing "some pieces and a tool" to fall and land on Petitioner's foot. The day after the accident, on July 15, 2015, Petitioner began seeking treatment, which spanned several medical providers throughout the remainder of 2015. The majority of these medical records are typed, but some are written and at times are illegible. The accident histories in the record read as follows:

July 15, 2015 (Alexian Brothers Corporate Health Services)
A typed record indicates Petitioner was standing at work at her machine when she was struck in the right foot by a fork and twisted her body. It is unclear if a qualified interpreter was present.

July 20, 2015 (Alexian Brothers Corporate Health Services)
A typed record indicates Petitioner was standing at her work site when a forklift pushed a table into her low back and a heavy metal gate "fell of[sic] the line" from waist level and hit the heel of her right shoe, while "the light metal piece or pieces" fell onto her right foot. A staff interpreter was present during this visit.

August 10, 2015 (Alexian Brothers Corporate Health Services)
A handwritten record for a follow up visit is largely illegible. Thus, it is unclear if a qualified interpreter was present.
A typed discharge summary on the same date indicates Petitioner was pushed by a table from behind.

August 19, 2015 (New Life Medical Center)
A typed record indicates that a material handler pushed a table behind Petitioner into her back. It is unclear if a qualified interpreter was present.

August 19, 2015 (Preferred Physical Therapy)
A handwritten form is somewhat legible. From what can be gathered, it indicates Petitioner was working on her machine when a helper accidentally pushed over the table behind Petitioner that had materials on it, knocking out the metal pieces and hitting her back. It is unclear if a qualified interpreter was present.

September 28, 2015 (New Life Medical)
A typewritten record for an EMG performed indicates Petitioner was working at her station when a forklift suddenly pushed a work table into her low back, pressing her into the table in front of her, causing injury to her low back. It is unclear if a qualified interpreter was present.

October 5, 2015 (Advanced Spine & Pain Specialists)
A typewritten record indicates Petitioner works with metal machinery with two tables on either side of the machine. A forklift was bringing a pallet when it knocked a table into her lower back and something else fell and also hit her lower back. It is unclear if a qualified interpreter was present.

December 16, 2015 (American Center for Spine & Neurosurgery)
A typewritten record indicates Petitioner was injured in the process of twisting repetitively through the normal course of her duties. It is unclear if a qualified interpreter was present.

II. CONCLUSIONS OF LAW

A. Causal connection to current condition of ill-being

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 Commission*, 79 Ill. 2d 249, 253 (1980)), including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Commission*, 129 Ill. 2d 52, 63 (1989). "Preponderance of the evidence is proof that leads the trier of fact to find that the existence of the fact in issue is more probable than not." *In re C.C.*, 224 Ill. App. 3d 207, 215 (1st Dist. 1991).

Credibility is the quality of a witness which renders her 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, 405 (1968); *see Swift v. Industrial Commission*, 52 Ill. 2d 490, 494 (1972). While it is true that an employee's uncorroborated testimony, standing alone, can support an award under the Act, it does not mean that the employee's uncorroborated testimony will always support an award of benefits when considering all the facts and circumstances shown by the totality of the evidence. *Caterpillar Tractor Co. v. Industrial Commission*, 83 Ill. 2d 213, 217-218 (1980).

The Commission finds that Petitioner generally lacks credibility and thus places more weight on the medical records. The Commission notes that accident is undisputed and it is apparent from the medical records that Petitioner sustained injuries on July 14, 2015. Petitioner testified to an acute traumatic injury involving a forklift bumping a table and having either the table itself or metal pieces strike her back and right foot. Within the medical records, Petitioner provided relatively similar mechanisms of injury until she treated with Dr. Erickson on December 16, 2015, in that there was always some indication of something striking her in the back and/or foot. However, the December 16, 2015 record with Dr. Erickson at The American Center for Spine & Neurosurgery contains a vastly different mechanism of injury, stating that Petitioner developed back pain which soon extended to her right leg while twisting repetitively through the normal course of her work duties. There was no indication of anything striking Petitioner's back or foot. The Commission finds that this materially changes the mechanism of injury, and calls into question the veracity of Petitioner's testimony and allegations subsequent to this date. Based on the above, the Commission modifies the Decision of the Arbitrator, and finds that Petitioner has failed to prove by a preponderance of the evidence causal connection between the July 14, 2015 work accident and her current condition of ill-being subsequent to December 16, 2015.

B. Medical Expenses

In accordance with the above findings and conclusions with respect to causal connection, the Commission also modifies the medical expenses award. With causal connection being extended through December 16, 2015, the Commission herein awards Petitioner reasonable and necessary medical expenses through the same date.

C. Temporary Total Disability

Likewise, in accordance with the above findings and conclusions with respect to causal connection, the Commission herein modifies the Arbitrator's award of temporary total disability benefits. The Arbitrator awarded benefits from September 20, 2015 through November 12, 2015. However, based on the aforementioned causal connection findings, the Commission extends the award for temporary total disability benefits through December 16, 2015.

D. Permanent Partial Disability

Pursuant to section 8.1b of the Act, the Arbitrator weighed the criteria in determining Petitioner's level of permanent partial disability. 820 ILCS 305/8.1b(b) (West 2018).

The Commission views the evidence differently than the Arbitrator. While the Commission agrees that Petitioner had no permanent disability related to her right foot strain/sprain, the Commission also finds that the evidence supports an increase in permanent disability as it relates to Petitioner's lumbar strain/sprain. The Arbitrator found no objective evidence of Petitioner's high pain ratings on a 1-10 scale. To the contrary, the Commission takes note of Petitioner's extensive physical therapy activity through December 16, 2015, as well as the several injections she underwent prior to that date. Taken in conjunction with the contemporaneous lumbar strain/sprain diagnosis, the Commission modifies the Arbitrator's analysis as it pertains to factor (v) of §8.1b of the Act, and gives some weight to the evidence of disability. Accordingly, the Commission finds that this modification warrants an increase in permanent disability benefits from a 0.5% loss of use of a person as a whole to a 2.5% loss of use of a person as a whole.

All else is affirmed.

IT IS THEREFORE FOUND BY THE COMMISSION that causal connection between Petitioner's July 14, 2015 work-related accident and her lumbar spine and right foot conditions of ill-being terminated on December 16, 2015.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 27, 2020, as modified above, is hereby affirmed and adopted.

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 low back and right foot injuries through December 16, 2015, including all related bills noted in the outstanding bills list attached to the Request for Hearing, 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 prospective medical care is denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner temporary partial disability benefits for a period of 8 weeks in the amount of $1,973.44, as provided in §8(a) of the Act. Respondent shall have credit of $246.68 for TPD benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $264.65 per week for a period of 12 & 4/7ths weeks, representing September 20, 2015 through December 16, 2015, that being the period of temporary total incapacity for work under §8(b) of the Act. Respondent shall have credit of $3,990.14 for TTD benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $238.18 per week for a period of 12.5 weeks, as provided in section 8(d)(2) of the Act, for the reason that the injuries sustained caused a 2.5% loss of use of Petitioner's person as a whole.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $65,600.00. 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.

January 10, 2022

O: 11/10/21
DJB/wde
043

/s/ *Deborah J. Baker*
Deborah J. Baker

/s/ *Stephen Mathis*
Stephen Mathis

/s/ *Deborah L. Simpson*
Deborah L. Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

22IWCC0016

CAVANAUGH, AURORA
Employee/Petitioner

Case# **15WC024165**

M & H MACHINING LLC
Employer/Respondent

On 1/27/2020, 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 1.52% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

2553 McHARGUE & JONES LLC
DANIEL R KLOSOWSKI
123 W MADISON ST 18TH FL
CHICAGO, IL 60602

2461 NYHAN BAMBRICK KINZIE & LOWRY
AMY E BILTON
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

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

Aurora Cavanaugh
Employee/Petitioner
v.
M & H Machining, LLC
Employer/Respondent

Case # **15** WC **24165**

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 **Christine M. Ory**, Arbitrator of the Commission, in the city of **Wheaton**, on **November 26, 2019**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **July 14, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$20,642.44**; the average weekly wage was **$396.97**.

On the date of accident, Petitioner was **54** 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.

To date, Respondent has paid **$4,236.82** in TTD & TPD benefits, and is entitled to a credit for any and all amounts paid.

Respondent shall be given a credit for **$3,990.14** in TTD, **$246.68** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$4,236.82.**

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

ORDER

Temporary Total and Partial Disability

Respondent owed and has paid **TTD** from **September 20, 2015 to November 12, 2015**, which is **7-2/7 weeks @ $264.65 per week;** and **TPD of $246.68** for the period from **July 26, 2015 through September 19, 2015**.

Medical Benefits

The claim for past and future medical expenses is denied.

Permanent Disability

Respondent shall pay Petitioner the sum of **$238.18**/week for a period of **2.5** weeks, as provided in Section **8 (d) 2** of the Act, because the injuries sustained caused **.5% loss of use of person as a whole.**

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

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

Signature of Arbitrator

January 24, 2020

Date

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Aurora Cavanaugh	)
Petitioner,	)
vs.	) **No. 15 WC 24165**
M & H Machining	)
Respondent.	)

ADDENDUM TO ARBITRATOR'S DECISION
FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This matter proceeded to hearing in Wheaton on November 26, 2019 under the provisions of §19b/§8a of the Act. (The parties agree if the Arbitrator determined petitioner was at MMI, the nature and extent of injury could be determined). The parties agreed that on July 14, 2015 petitioner and respondent were operating under the Illinois Worker's Compensation or Occupational Diseases Act and that their relationship was one of employee and employer. They agree Petitioner sustained accidental injuries that arose out of and in the course of her employment with respondent and petitioner gave notice to respondent of the accident within the time limits stated in the Act. The parties agree petitioner earned $20,642.44 in the year predating the accident and that her average weekly wage, calculated pursuant to §10, was $396.97.

At issue at this hearing was as follows:

1. Whether petitioner's current condition of ill-being is causally connected to the claimed injury.
2. Whether respondent is liable for the unpaid medical bills.
3. Whether petitioner is entitled to payment of prospective medical treatment.
4. Whether petitioner is due temporary total disability benefits.
5. The nature and extent of petitioner's injury (If petitioner is deemed to be at MMI)

STATEMENT OF FACTS

The Petitioner does not speak English; her native language is Spanish. She testified with the assistance of Linda Azpilcueta, a certified interpreter, qualified to translate Spanish to English and English to Spanish. After being duly qualified and accepted by both parties, Ms. Azpilcueta served as an interpreter for the petitioner.

Petitioner testified that on July 14, 2015 she had been employed by respondent for three years as a machine operator. Petitioner was working with some car pieces that were about a foot in length. She did not know how much the pieces weighed. She was working at a table in front of her with pieces on it and a gate. She reported she turned around as the forklift operator came and dropped pieces on her back. She reported that as the fork lift operator was lowering the skid, he pushed the table and the pieces fell on her. She indicated the pieces struck her lower back and right foot.

After the accident, she went to human resources, where she reported the injury to Mary. Petitioner finished her shift. When she got home, she felt really bad. The next day she was worse. She reported to Mary who completed the paperwork and sent her to the doctor. She testified she went to Alexian Brothers Medical Group where she told the doctors she had pain in her right foot

and low back pain on the right side. She was placed on work restrictions and was provided work within these restrictions. She followed up with Alexian Brothers a few more time into mid-August, 2015, which included a course of physical therapy.

She then started treatment at New Life Medical Center on August 19, 2015. The records reportedly showed petitioner had pain in her back and down her legs. She was also placed on light duty by the doctors at New Life and continued to work within these restrictions. She also received physical therapy. She obtained a MRI of her back on September 19, 2015. She was taken off work as of September 23, 2015. She underwent an EMG on September 28, 2015. Thereafter, she was referred to Dr. Krishna Chunduri.

Petitioner was first seen by Dr. Chunduri on October 5, 2015. She had pain in her low back and down her legs. She received her first injection by Dr. Chunduri on October 12, 2015. She underwent another injection, which was a medial branch block, on November 10, 2015. She did not receive relief from these injections. She was then referred to surgeon, Dr. Robert Erickson. Dr. Erickson recommended back surgery.

At the request of respondent, petitioner was examined by Dr. Lami on December 23, 2015.

She was seen again by Dr. Erickson on February 10, 2016; who again recommended surgery.

She was seen again by Dr. Lami on June 10, 2016.

She was evaluated by another surgeon, Dr. Cary Templin, with Illinois Orthopaedic Network, on July 22, 2016. Dr. Templin sent petitioner for X-rays, which were done on July 29, 2016. Dr. Templin also kept her off work. She returned to Dr. Templin on September 2, 2016. Dr. Templin also recommended surgery. Dr. Templin again recommended surgery when petitioner was seen by him on October 7, 2016. Dr. Templin referred petitioner to a pain management doctor, Dr. Samir Sharma. Dr. Sharma recommended more injections.

She was seen for a third time by Dr. Lami; which was on November 17, 2016.

Petitioner reported her back problems to her PCP, Dr. Dulce, who referred her to Dr. James Diesfeld. Petitioner was first seen by Dr. Diesfeld on October 30, 2017 and received an injection. She was seen again on November 13, 2017 and was prescribed medication and given a device to use for pain. She returned to Dr. Diesfeld in December, 2017 and January, 2018, who continued to prescribe medication.

In order to find a surgeon, she returned to Dr. Dulce who referred her to Dr. Theodore Fisher with Illinois Bone & Joint. She was first seen by Dr. Fisher on January 26, 2018. Dr. Fisher performed an exam and recommended surgery. She returned to Dr. Fisher on April 13, 2018, who then prescribed a cane. She last saw Dr. Fisher on July 27, 2018, who continued to recommend surgery.

She was seen again by Dr. Lami on December 17, 2018.

Petitioner last worked for respondent in September, 2015. None of her treating doctors have released her to return to work. Her bills remain unpaid.

Petitioner testified her back pain was a 10 or 11. She reportedly cannot sweep, mop, or do any real activities. She used to go to the park, play volleyball and run, which she no longer does. She uses ointment and takes something to sleep and to help with her nerves.

On cross examination, she confirmed she chose to follow up a few times with Alexian Brothers Clinic and then her attorney referred her to Dr. Patrick.

Petitioner repeatedly stated her back was struck by the gate when it fell on her back. She denied she said that when the forklift struck, she turned very quickly and hurt her back. Petitioner reportedly gave various versions of how her back was hurt when seeing the subsequent doctors.

Specifically, when asked if she told the doctor who performed an EMG that a forklift pushed a work table into her low back pressing into the table in front of her causing the injury to her lower back, she denied she remember [presumably saying that] but denied that it happened that way. She agreed she told Dr. Chunduri that the forklift bringing the pallet knocked a table into her low back. Petitioner did not seem to understand the question regarding what she told Dr. Erickson about repetitive work she was doing to cause the back problems. She agreed she told Dr. Templin that the forklift ran into the table and knocked a piece of machinery into her back.

She denied she told Dr. Sharma that a table full of metal equipment fell on her mid-back causing pain. She claimed her back pain has been 10 out of 10 since her accident. She denied having any other accidents since this work accident.

Dr. Theodore Fisher April 3, 2019 Deposition (PX.1)

Dr. Theodore Fisher, board certified orthopedic surgeon testified on behalf of petitioner. Petitioner had been referred by Dr. Diesfeld. Petitioner was seen on January 26, 2018. Dr. Fisher testified in accordance with his records as to the history petitioner provided on that date. She reported 10 of 10 pain since the accident. (10)

Dr. Fisher examined petitioner and noted petitioner did not have a pinched nerve severe enough to cause sciatica-type pain (13-14)

Dr. Fisher noted petitioner had a 25% shift of vertebrae at the L4-5 level, which he classified as a grade I spondylolisthesis (17). Dr. Fisher believed this condition could become symptomatic by a lot of things such as accident, stress, lifting injury or falls (20-21). Dr. Fisher opined that the striking accident [as described by petitioner] could gave accelerate or caused some aspect of them becoming new (21).

Dr. Fisher diagnosed herniated disc L1 through L5 and degenerative disk disease; as well as L4-L5 grade I spondylolisthesis. Dr. Fisher recommended surgery in the form of L1 through L5 posterior decompression and interbody fusion in order to unpinch nerves and fuse the bones together. (28-29)

Dr. Fisher determined that, although petitioner had pre-existing degenerative changes in her lumbar spine, the work accident as described accelerated the condition to the point petitioner now requires a decompression and fusion from L1 through L5. (39-40)

Alexian Brothers Medical Group Records (PX.2)

Petitioner presented to the clinic on July 15, 2015. She reportedly was struck in the right foot by a fork, and twisted her body. She did not fall, and now complains of pain in right foot and ankle and in her lower back radiating into her right leg. She was diagnosed with a contusion of the right foot and a lumbosacral strain. She was prescribed Ibuprofen and placed on restricted work.

Petitioner followed-up on July 20, 2015. Petitioner complained minimally of left ankle pain; right foot pain that went up into her right hip; with continued complaints of right lower back pain.

Petitioner was seen on July 27, 2015. X-rays showed eccentric disc space narrowing at the L4-L5 level and some degenerative joint disease with no acute bone injury.

On August 10, 2015, petitioner reported her foot and ankle were doing much better, but continued to complain of low back pain. Petitioner was to follow up on August 21, 2015. The records end with the August 10, 2015 visit.

New Life Medical Center Records (PX.3)

Petitioner was first seen on August 19, 2015 by chiropractor Dr. Terence Patrick. Dr. Patrick placed petitioner on restricted work. On Petitioner reported she injured her back when a material handler pushed the table behind her into her back. Diagnosis was lumbosacral sprain/strain, with radiculitis. She received treatment by Dr. Patrick through January 18, 2106.

On September 23, 2015, Dr. Patrick took petitioner completely off work. The September 28, 2015 SSEP reportedly showed mild to moderate bilateral lumbar radiculitis at L5, S1.

Petitioner was initially evaluated by Dr. Krishna Chunduri, of Advanced Spine and Pain on October 5, 2015, who recommended at L4 bilateral transforaminal epidural injection; which was performed on October 12, 2015. Dr. Chunduri performed a medial branch block at the left L4-L5 and L5-S1 level n November 10, 2015.

Lakeshore Surgery Center Bill (PX.4)

The bill for services rendered for the injections on October 12, 2015 and November 10, 2015 totaled $8,555.70.

Lakeshore Surgery Center Records (PX.5)

The records are for the injections petitioner received on October 1, 2015 and November 10, 2015.

Dr. Robert Erickson's December 16, 2015 Evaluation Report (PX.6)

Petitioner presented to the office of Dr. Erickson on December 16, 2015 with the history that she noted immediate onset of low back pain which she related to an injury in the process of twisting repetitively through the normal course of her duties. Dr. Erickson examined petitioner and reviewed diagnostic studies and concluded petitioner had lumbar stenosis secondary to traumatic disc herniation at L4-L5 and recommended a hemilaminectomy.

Dr. Cary R. Templin Records (PX.7)

Petitioner obtained a second opinion from Dr. Templin on July 22, 2016. Her history to Dr. Templin was that she was working as a machine operator and a forklift ran into a table located near her and knocked a piece of machinery into her back and falling onto her right foot.

On September 2, 2016, petitioner returned to Dr. Templin. Dr. Templin recommended a fusion at the L4-L5 level due to spondylolisthesis.

Chicago Pain Medicine Center Medical Record and Bills (PX.8)

Petitioner was first seen by Dr. Diesfeld on October 30, 2017 as a referral by Dr. Dulce. The history provided wat that she was injured three years before while working when she was struck in the right side of the back by a measuring tool used in parts construction. Dr. Diesfeld provided an injection. She was seen again on November 13, 2017 and a TENS unit was provided. On December 11, 2017, Dr. Diesfeld referred petitioner for physical therapy. On January 8, 2019, petitioner was referred to neurosurgeon, Dr. Konstantin Slavin.

The bills for services rendered totaled $19,621.92.

Illinois Bone & Joint Records and Bill (PX.9)

Petitioner was first seen by Dr. Theodore Fisher on January 26, 2018. The history provided by petitioner was that she was standing, operating a machine with material on it when a forklift hit

a table and the "gate" that was holding pieces on the table hit her in the lower back. Her pain has remained 10 out of 10 ever since. Dr. Fisher diagnosed L1 through L5 herniated nucleus pulposus and degenerative disc disease as well L4-L5 grade I spondylolisthesis.

The X-rays taken on January 26, 2018, showed lateral listhesis of L2 on L3 and L3 on L4. At L4-5 there was an asymmetric collapse of the disc space. There was also loss of normal lumbar lordosis with slight kyphosis from L1-L4. There was a grade I spondylolisthesis of L4 on L5.

Dr. Fisher recommended a fusion from L1 to L5 mainly because petitioner's pain remained high despite the non-surgical treatment.

She returned to Dr. Fisher on April 13, 2018 and July 27, 2018; the recommendations remained the same.

American Diagnostic MRI Report and Bill (PX.10)

The September 19, 2015 MRI showed central disc protrusions at the L2-3 and L3-4, and multilevel disc bulging contributing to neural foraminal and central canal stenosis most prominent at L4-5 level.

The bill for services rendered totaled $1,700.00

Advanced Spine and Pain Specialists Bill (PX.11)

The bill is for services rendered by Dr. Dr. Chunduri totaled $7,446.00.

Windy City Medical Specialists Bill (PX.12)

This bill is for services rendered from November 5, 2015 through February 10, 2016 totaled $21,270.00

Windy City RX Bill (PX.13)

This bill is for prescriptions from February 10, 2016 totaling $1,955.30.

G&U Orthopedic Bill (PX.14)

The bill appears to be for a TENS unit which totals $4,787.65.

Ashland Health LLC (PX.15)

The bill is for prescriptions from Mach 15, 2016 which totaled $2,429.85.

Edgebrook Open MRI Report & Bill (PX.16)

Petitioner obtained flexion and extension X-rays on July 29, 2016 as ordered by Dr. Templin. The only positive finding was thoracolumbar scoliosis and spondylosis. The report indicated there was no significant spondylolisthesis.

The bill for services rendered totaled $275.00.

Dr. Babak Lami April 8, 2019 Deposition (RX.1)

Dr. Babk Lami, board certified orthopedic surgeon testified in behalf of respondent. He examined petitioner four times at the request of respondent.

The first time Dr. Lami examined petitioner was December 23, 2015. At that time petitioner provided a history that she was at work when a forklift hit a table and a metal piece fell off the table hit her in the back and fell on her foot. She didn't' know how much the piece of metal weighed, but stated it wasn't that heavy. She was initially seen at Alexian Brothers, had two

sessions of physical therapy and then was referred by her attorney to a chiropractor. The chiropractor has not helped, but she continued to see the chiropractor because the chiropractor told her to do so. She rated her pain at a 10; centered in her lower back with no radiating pain. Dr. Lami reviewed the September 19, 2105 MRI and found no acute trauma or new findings; it was all degenerative. The July 27, 2015 X-rays report showed disc space narrowing at L4-5 with some degenerative changes with no acute bony injury. Dr. Lami found no spine instability. The diagnosis was subjective back pain with normal orthopedic or neurological exam. Dr. Lami agreed some physical therapy would have been reasonable. Dr. Lami believed petitioner was at MMI at the time of this exam and petitioner could return to work without restrictions.

Petitioner returned for her second exam by Dr. Lami on June 10, 2016. Petitioner reported that she had two injuries since the last time she was seen by Dr. Lami; the first occurred in January when going to the store she fell on her back and in February, 2016, she fell getting out of her car onto her knees and injured her back. Dr. Lami noted a limp when he examined petitioner, but not when she left the office. He also noted she was more restrictive in her movement that she was from the last exam. He also reviewed subsequent medical records, including the opinion of Dr. Erickson who believe petitioner had a herniated disc. Dr. Lami believed petitioner had a broad-based bulge, not a herniated disc. He also reviewed the SSEP test (and not an EMG) which he found not to be an appropriate diagnostic test. He did not agree with Dr. Erickson's recommendation for a laminectomy as the objective findings did not warrant the proceedings. His opinion regarding the need for further treatment or ability to work did not change from his exam of December 23, 2015. (27-38)

Petitioner was seen for a third time by Dr. Lami on November 17, 2016. Petitioner reported, at that time, injuring the right side of her back at home when she hit her shoulder blade when she hit the corner of a window while moving a chair. She was referred by her attorney to Dr. Templin. She reported pain up and down her spine, but not down her leg. Petitioner was wearing brace at this exam. Dr. Lami reviewed the X-rays taken on July 29, 2016 and agreed there was slight spondylolisthesis, without instability. He disagreed with Dr. Templin that there was instability that warranted a L4-L5 fusion. (36- 45)

Dr. Lami saw petitioner for the fourth and final time on December 17, 2018. She reported she had fallen six times. She said she fell four times in 2017 and twice in 2018. She was now using a cane. She was seen in the emergency room at Alexian Brothers in 2017. The Emergency Room report from June 9, 2017 indicated petitioner had a mechanical fall injuring her left shin, knee, upper back while climbing stairs outside. She reported her pain was 10 out of 10. She had been referred by her attorney to Dr. Fisher. Although Dr. Lami noted scoliosis and spondylolisthesis, he did not find any evidence of instability. His diagnosis remained the same. He did not find the need for the L5-S1 fusion irrespective of the cause. Dr. Lami was adamant in his opinion that not only would petitioner not benefit from a fusion, it would be more harmful to her than good. (46-59)

On cross-examination, Dr. Lami was adamant that the findings on the MRI were chronic in nature (70-71). Dr. Lami testified that the semi significant finding of spondylolisthesis at L4-L5 did not correlate with petitioner's pain complaints (76).

Authentic 4D X-ray report of Lumbar Spine (RX.2)

The report of X-rays of lumbar spine done on July 29, 2016 showed scoliosis and relatively mild degenerative disc disease and no evidence of instability.

Authentic 4D X-ray report of Lumbar Spine (RX 3)

The report of X-rays of lumbar spine done on January 26, 2018 showed stable appearance of scoliosis and degenerative changes in lumbar spine, with no evidence of instability.

Supervisor's Report (RX.4)

The report completed by the supervisor indicated (as related by petitioner) on July 14, 2015 was: "I was standing by the machine while the forklift driver was replacing a skid of parts. He bumped the table next to the machine. It collapsed and some parts fell and hit my foot."

December 4, 2015 MCMC Utilization Review (RX.5)

Vascutherm cold therapy prescribed by Dr. Robert Erickson was denied based upon a utilization review by Dr. Davie Trotter.

December 3, 2015 MCMC Utilization Review Report (RX.6)

The back brace was not found to be medically necessary after the utilization review by Dr. Trotter on December 3, 2015.

January 15, 2016 MCMC Utilization Review Report (RX.7)

The tens unit was found to be medically unnecessary based upon the utilization review by Dr. Trotter on January 15, 2016.

January 19, 2016 MCMC Utilization Review Report (RX.8)

Physical therapy was approved for the period from August 19, 2015 to August 31, 2015; all other therapy for the period from August 19, 2015 to December 21, 2015 was found to be unnecessary based upon the utilization review by Dr. Trotter.

January 26, 2016 MCMC Utilization Review Report (RX.9)

Treatment by Dr. Terence Patrick, D.C. was found to be unnecessary based upon the utilization review by Dr. Edwin Rabin, D.C.

Respondent's Payment Screen-Medical (RX.10)

Respondent paid $5,119.24 in medical expenses.

Respondent's Payment Screen-TTD (RX.11)

Petitioner was paid temporary partial and temporary total from July 26, 2015 to January 5, 2016, for a total of $4,236.83.

Respondent's Medical Bill Fee Exhibit (RX.12)

The respondent provided a list of the medical bills submitted and whether the bills had been paid or denied; if denied the reason for the denial.

Report of Licensures (RX.13)

Respondent provided searches for licensures of Chicago Pain Medicine Center, Windy City RX and Windy City Medical.

CONCLUSIONS OF LAW

The Arbitrator adopts the Finding of Facts in support of the Conclusions of Law.

The Arbitrator finds petitioner is not credibility. During her testimony, petitioner testified her pain was 10 or 11 out of 10, and that her pain had remained at 10 since the accident over four years later. The medical records confirm the fact that she never rated her pain at less than a 9. The Arbitrator finds this to be incredible based upon the lack of objection findings in the medical records.

Petitioner also lacked credibility in that she avoided answering many of the questions asked on cross examination.

The Arbitrator also questions petitioner's credibility based upon the histories of the accident petitioner provided. She testified the pieces struck her in the back. The supervisor's report on the day of the occurrence, as related by petitioner, was: "I was standing by the machine while the forklift driver was replacing a skid of parts. He bumped the table next to the machine. It collapsed and some parts fell and hit my foot."

She told Alexian Brothers Occupational Clinic that she was struck in the foot by a fork and twisted her body. She told Dr. Fisher she injured her back when a material handler pushed the table behind her into her back. The history to Dr. Fisher was that she injured her back in the process of twisting repetitively throughout the course of her duties. (However, Dr. Fisher testified that petitioner's history was she was struck in the back when a table was struck by a forklift operator and the "gate" that held the pieces on the table hit her in the lower back. Dr. Templin's records recite a history of a piece of machinery being knocked into her back and falling on her right foot. Dr. Diesfeld's records contain the history of being struck in the right side of her back by a measuring tool. Dr. Lami was given a history that petitioner was struck in the back with a piece of metal that had fallen off a table after the table was hit by a forklift.

The Arbitrator also found petitioner's treating physician, Dr. Theodore Fisher, not to be credible. He, too, avoided answering questions asked on cross-examination. The Arbitrator also questioned Dr. Fisher's credibility based upon the fact that he wanted to perform a four-level fusion on the petitioner, despite the fact that she did not have objections findings and alleged her pain remained at 10 for many years, despite all treatment received.

F. With respect to the issue of whether the petitioner's condition of ill-being is related to the injury, the Arbitrator makes the following conclusions of law:

The most consistent of petitioner's tale as to how she injured her back in the work accident of July 14, 2015 is that she was struck in the back by a part known as a "gate", which then fell on her right foot. She did not know how much this piece weighed, but advised Dr. Lami that it did not weigh too much. Accordingly, at best, petitioner was struck in the back by a part that resulted in a strain/sprain of her back. Nonetheless, petitioner set off in pursuit of unwarranted and unnecessary treatment and is seeking to obtain further unwarranted and unnecessary treatment. There was also evidence presented she had many intervening accidents.

Therefore, the Arbitrator finds petitioner failed to prove by any credible evidence that her ongoing low back complaints were the result of the work accident of July 14, 2015. Furthermore, the Arbitrator finds that said back complaints are unsubstantiated and are not legitimized by any objective or credible evidence.

J. With respect to the issue regarding medical bills incurred, the Arbitrator makes the following conclusions of law:

The Arbitrator finds that any treatment received after the last treatment at Alexian Brothers Medical Clinic, which ended on August 10, 2015, was not only unrelated, it was unreasonable and unnecessary under the provisions of §8 of the Act.

The Arbitrator, therefore, denies the claim for the outstanding medical bills.

Accordingly, as no further medical treatment after August 10, 2015 was reasonable or necessary, the Arbitrator denies the claim for any prospective medical treatment.

K. With respect to the issue regarding temporary total and temporary partial disability, the Arbitrator makes the following conclusions of law:

The Arbitrator finds, per respondent's stipulation, that TTD was due from September 20, 2015 thorough November 12, 2015, which is 7-2/7 weeks, and temporary partial disability for the period from July 26, 2015 through September 19, 2015. All further claim for temporary total disability is not substantiated by any credible evidence and is denied.

L. With respect to the issue regarding the nature and extent of injury, the Arbitrator makes the following conclusions of law:

As a result of the work accident of July 14, 2015, petitioner suffered no permanent disability to her right foot and ankle, and only a sprain/strain to her lower back.

Pursuant to §8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:

With regard to subsection (i) of §8.1b (b) the Arbitrator noted there was no AMA impairment rating. The Arbitrator, therefore, can give no weight to this factor.

With regard to (ii) of §8.1b (b) the occupation of the injured employee, the Arbitrator notes petitioner was employed as a machine operator. Therefore, the Arbitrator gives some weight to this factor.

With regard to (iii) of §8.1b (b) the age of the employee at the time of the injury was 54 years of age. Therefore, the Arbitrator gives little weight to this factor.

With regard to (iv) of §8.1b (b) the employee's future earning capacity, the Arbitrator notes that even though petitioner never returned to work, petitioner failed to prove by any credible evidence that the injury resulted in loss of earning capacity. Therefore, the Arbitrator gives no weight to this factor.

With regard to (v) of §8.1b (b) evidence of disability corroborated by the treating medical records, the Arbitrator notes the medical evidence failed to show any objective reason for her ongoing complaints of pain rated at 10 or 11 out of 10. Therefore, the Arbitrator gives no 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 .5% loss of use of person as a whole § 8 (d) 2 of the Act, and awards 2.5 weeks PPD at the rate of $238.18 per week.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC023333
Case Name	BARKER, JEREMY A v. ALLNET INC, TRAVELERS INSURANCE and PHOENIX INS CO
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0017
Number of Pages of Decision	13
Decision Issued By	Stephen Mathis, Commissioner, Deborah Baker, Commissioner

Petitioner Attorney	Andrew Kriegel
Respondent Attorney	Fred Norman

DATE FILED: 1/12/2022

/s/Stephen Mathis, Commissioner

Signature

DISSENT

/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	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jeremy A. Barker,

Petitioner,

vs. NO: 18WC 23333

Allnet, Inc., Travelers Insurance, and Phoenix Ins. Co.

Respondents.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue(s) of medical expenses, prospective medical care, causal connection, penalties and fees, temporary disability, 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 March 22, 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.

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.

January 12, 2022

o- 11/10/21
SM/sj
44

/s/ Stephen J. Mathis
Stephen J. Mathis

/s/ Deborah L. Simpson
Deborah L. Simpson

DISSENT

I disagree with the majority's decision to affirm the Arbitrator's finding that Petitioner failed to prove his lumbar spine condition is causally related to the stipulated work accident and his need for benefits in the form of incurred medical expenses after October 3, 2018 and prospective medical care at Barrington Orthopedics. In my view, Petitioner established by a preponderance of the evidence that his current condition of ill-being to the lumbar spine is causally related to the stipulated June 20, 2018 work accident and his condition requires additional medical treatment.

The medical records indicate that Petitioner sustained a stipulated work accident on June 20, 2018. Subsequently, Respondent sent Petitioner to AMITA Health Medical Group/Alexian Brothers Corporate Health Services as indicated by the medical records. Records from AMITA indicate that Petitioner quit his job (or was fired) because Respondent did not accommodate the work restrictions given to Petitioner. Petitioner treated at AMITA until October 3, 2018, when he was discharged from care with a diagnosis of "strain of muscle, fascia and tendon of lower back" and released to work full duty. The October 3, 2018 note indicates that Petitioner had "some improvement" after undergoing physical therapy but had continued pain with push-ups, sit-ups, bending backward, or taking long car drives. Petitioner testified that he had begun a new job as a forklift driver around this time and he was able to work full duty because the jobs he had subsequent to working for Respondent were light duty jobs that only required operating a forklift. Petitioner testified further that although he was released from medical care at this time, he did not agree with the doctor's decision to release him. While treating at AMITA, an MRI was never ordered and Petitioner primarily received medications and underwent physical therapy.

A little less than two months later, Petitioner treated at Barrington Orthopedics where he had complaints of continued lumbar spine pain. The records indicate Petitioner underwent a lumbar spine MRI on December 7, 2018, and on December 14, 2018, was diagnosed with a "slight L5/1 disk bulge and degeneration with slight annular tear." Dr. Jagadish also noted that

the MRI may have shown some stenosis on the left side at the S1 nerve, however, Petitioner's pain seemed to be more back than anything else. Petitioner underwent medial branch blocks at L3, L4, and L5 and lumbar radiofrequency lesioning (ablation) at L3 and L4 bilaterally. The medical records indicate that it was not until after Petitioner underwent the lumbar radiofrequency lesioning (ablation) in August 2019, that he began to experience leg numbness. On March 16, 2020, Petitioner reported experiencing mild relief for two to three weeks after the radiofrequency lesioning (ablation) procedure. However, as of the March 2020 visit, he reported new symptoms of left lateral numbness for two to three months. The February 22, 2019 visit mentioned in the Decision of the Arbitrator indicates Petitioner had no numbness or tingling, however, Petitioner reported "he does have some pain with stretching his leg out, but most of his pain is in his low back." This is consistent with Petitioner's testimony that he did not truly experience radicular symptoms in February 2019, instead, he experienced leg pain only after Dr. Jagadish had him walk on his heels and he has not experienced this type of pain since that time.

I find it significant that Petitioner testified he continued to have symptoms on October 3, 2018 and did not agree that he should be released from care at AMITA, which is supported by the fact that Petitioner sought treatment at Barrington Orthopedics a little less than two months later. Petitioner's complaints of lower back pain remained consistent from the time of the June 2018 work accident. I note further that Dr. Butler, Respondent's section 12 examining physician, did not review the lumbar spine MRIs that Petitioner underwent on December 7, 2018 and April 21, 2020, rendering his opinions unpersuasive.

I find Petitioner's testimony was credible and note neither the Arbitrator nor any doctor, including Respondent's section 12 examining physician, found or opined that Petitioner lacked credibility, exaggerated, malingered, or had positive Waddell's signs. Petitioner credibly testified that he had no back injuries or radicular symptoms before the June 20, 2018 work accident and he had no back injuries or accidents after the June 20, 2018 work accident. Accordingly, there is no credible evidence demonstrating a break in the chain of causation.

Based on the above, I would find that Petitioner's lumbar spine condition is still causally related to the undisputed June 20, 2018 work accident and Petitioner requires additional medical treatment to address this condition. Petitioner's lumbar spine symptoms did not resolve as of October 3, 2018, and unfortunately, seemed to have worsened after the radiofrequency lesioning (ablation) procedure, due to no fault of his own.

I would vacate the award of permanent partial disability benefits and award incurred medical expenses in addition to prospective medical care as recommended by physicians at Barrington Orthopedics or another physician of Petitioner's choice. I would also strike the following sentence in the Arbitrator's decision as it has no bearing on whether Petitioner proved he is entitled to benefits "The Arbitrator is not impressed with the treatment that Petitioner received from Barrington Orthopedics and is troubled by the lack of an order for an EMG/NCV study, or a referral to a neurologist, if the numbness and tingling complaints were thought to be significant." I note that regardless of whether a physician should have ordered Petitioner to undergo an EMG/NCV or should have recommended Petitioner to a neurologist, Petitioner's lumbar spine condition is still causally related to the undisputed work accident and Petitioner

requires additional treatment for said condition. I would affirm the Arbitrator's denial of penalties and fees.

For the above reasons, I respectfully dissent.

/s/ *Deborah J. Baker*

Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

22IWCC0017

BARKER, JEREMY A
Employee/Petitioner

Case# **18WC023333**

ALLNET INC ET AL
Employer/Respondent

On 3/22/2021, 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 0.05% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

5625 GRAUER & KRIEGEL LLC
KARINA B ESTRADA
1300 E WOODFIELD RD SUITE 205
SCHAUMBURG, IL 60173

0507 HOLECEK & ASSOCIATES
FRED NORMAN
PO BOX 64093
ST PAUL, MN 55164

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

Jeremy A. Barker
Employee/Petitioner
v.
Allnet, Inc., et al
Employer/Respondent

Case # **18** WC **023333**

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 **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **February 10, 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 any prospective medical care?**

J. Barker v. Allnet, Inc., et al 18 WC 023333

FINDINGS

On **June 20, 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, in part,*** causally related to the accident.

The Parties stipulated that Petitioner's average weekly wage was **$580.00**.

On the date of accident, Petitioner was **23** 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 **$700.00** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$700.00**.

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

ORDER

Petitioner's claim for prospective medical treatment is denied.

Petitioner's claim for penalties and attorney's fees is denied.

Respondent shall pay Petitioner permanent partial disability benefits of $348.00 per week for 37.5 weeks, because the injuries sustained caused the 7-1/2 % loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner the compensation benefits that have accrued from 6/20/2018 through 2/10/2021 in a lump sum, 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

March 18, 2021
Date

MAR 22 2021

INTRODUCTION

This case was tried as a §19(b)/8(a) proceeding on February 10, 2021. The issues in dispute were: causal connection; prospective medical treatment (with Petitioner seeking a diagnostic/therapeutic left L5 TFE, as recommended by David Tashima, M.D.); penalties and attorney's fees and Respondent claiming that an award of PPD was appropriate. The Parties agreed that all medical expenses have been paid. They also agreed that there was no lost time, although they agreed that $700.00 in TTD had been paid and Petitioner testified that he received workers' compensation benefits for about a month after his employment with Respondent was terminated.

FINDINGS OF FACT

On the date of accident, June 20, 2018, Petitioner was 23 years old and employed by Respondent as a shipping and receiving clerk. He had been so employed for 10 to 11 months. His job duties included loading and unloading trucks, inventory and loading customers' vehicles with products such as big speaker cabinets, televisions, speakers, sound bars, electrical equipment and HDMI cords. He lifted 60 to 70 pounds manually and would also use a forklift or pallet jack, when appropriate.

The Parties stipulated that Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent on June 20, 2018. Petitioner was using a pallet jack to unload a skid of speakers from a truck, when a wheel of the jack became stuck on the dock plate, causing it to come to an abrupt stop. Petitioner was pulled forward in a jarring motion and noted back pain and burning. He said that his back felt "compressed" and it needed to be cracked. Petitioner reported the injury to his supervisors, Bill and Scott, the next day.

Petitioner first sought medical care from Dr. Timothy Lyman at AMITA Health Medical Group on June 25, 2018. Petitioner gave a consistent history of accident and complained of mid thoracic and low back pain. No leg pain was noted. Mild tenderness was noted in the mid back and the upper lumbar area to the right and left side. SLR was positive for middle and low back pain only. Sitting SLR test was negative. The physical exam was largely benign, with no leg symptoms or complaints. The diagnosis was lumber strain and Dr. Lyman recommended ibuprofen, muscle relaxers, heat and strengthening exercises. Petitioner was given restrictions of no lifting, pushing or pulling more than 10 pounds. (PX 4)

Petitioner had follow-up care with AMITA Health through October 3, 2018. On June 29, 2018 right and left paralumbar pain which did not go below the buttocks was noted. On July 6, 2018, it was noted that bending and lifting increased Petitioner's complaints. It was charted that Petitioner's work was having him exceed his work restrictions. Prednisone was prescribed. (PX 4)

Petitioner testified that his back pain continued. He argued with Scott at Respondent over work restrictions and either quit or was fired. He was paid workers' comp benefits until he was hired at Lumisource as a forklift loader.

Dr. Lyman ordered PT on July 11, 2018 and continued work restrictions. Petitioner had PT at AMITA in August and September of 2018. Petitioner testified that PT helped him move better, but his back pain remained.

Petitioner's last visit with Dr. Lyman was on October 3, 2018. Nurse's notes document low back pain with certain movements. Some improvement after PT. He had pain with push-ups or sit-ups. He was not taking medication. The doctor noted that Petitioner had finished PT. He had a new job, driving a stand-up

forklift, with no significant hauling or lifting. There was no radiation of pain noted. He had pain only when bending backward or taking a long drive in a car. The physical exam was largely normal. The was normal posture, gait and movement. Range of motion was full, except extension was to 50%, with some pain. There was no tenderness or spasm. Petitioner was released to unrestricted work and was to follow up, PRN. Dr. Lyman's final diagnosis was: strain of muscle and facia tendons of low back. There are no radicular or leg complaints documented in the AMITA records. (PX 4)

Petitioner worked at Lumisource for about a year and the got a job at PTS Logistics, doing the same job for more money. He was then unemployed due to a Covid shutdown for about 8 or 9 months. Petitioner then worked at Forester Tool, from September 2020 to January 1, 2021. He currently is looking for a management type job, because he can't do physical work.

Petitioner testified that he had no low back pain before June 20, 2018. He had no leg pain or numbness or tingling of the legs before June 20, 2018. He testified that he had no accidents to any part of his body after June 20, 2018.

On November 30, 2018, Petitioner was seen at Barrington Orthopedics by Dr. Jagadish. Petitioner chose to seek treatment at this facility. Petitioner gave a consistent history of the June 20, 2018 injury. On exam, Dr. Jagadish noted tenderness of the spinous process at L4-S1 and limited range of motion with pain. There were no complaints of numbness or tingling. Leg pain was denied. Strength was 5/5. The neurologic exam was negative. The diagnosis was low back pain and Dr. Jagadish ordered a lumbar spine MRI which Petitioner underwent on December 7, 2018. (PX 5)

On December 14, 2018, Petitioner followed up with Dr. Jagadish, who told him that the MRI showed an annular tear and disc bulge at L5-S1. On December 26, 2018, Dr. Jagadish noted that Petitioner continued to experience low back pain with limited range of motion and he ordered S1 transforaminal epidural steroid injections, which were denied by the insurance carrier. (PX 5) On February 22, 2019, Dr. Jagadish ordered medial branch blocks and RFA procedures because of Petitioner's localized pain and continued limited range of motion. On March 22, 2019, Dr. Jagadish examined Petitioner and noted a positive bilateral seated straight leg test, tenderness over L4-S1, and restricted range of motion with pain. The neuro exam was said to be normal (+SLR ?). Strength was graded at 5/5. Petitioner was complaining of increased back pain. He was working full time and not taking any medications. Dr. Jagadish discussed with Petitioner the option of obtaining an FCE and long term restrictions if the medical treatment that he was recommending was not approved, and he also discussed surgical management with an anterior lumbar interbody fusion (ALIF) but explained that the surgical option might not give Petitioner the results he desired and should try and exhaust all courses of non-operative management prior to any surgical procedure. Petitioner testified that he discussed surgical options with Dr. Jagadish but that there was a 10 percent success rate and he was not happy with those odds. (PX 5)

On July 15, 2019, Petitioner underwent bilateral medial branch blocks at levels: L3, L4, and L5. Petitioner had a positive response to the medial branch blocks, and Dr. Jagadish recommended a radiofrequency neurotomy procedure thereafter. Petitioner testified that he felt pretty good temporary relief after the first procedure, but the pain did come back eventually. (PX 5)

On August 19, 2019, Petitioner underwent a bilateral radiofrequency neurotomy at L3, L4 and L5 performed by Dr. Tashima from Barrington Orthopedics. (PX 5) Petitioner testified that he recalls feeling great after the RFA, was able to walk, got into his car without pain and was able to walk around the grocery store again and not feel too much pain, and this lasted about 1 month. Petitioner testified that a couple days following the nerve burning procedure, his legs would go numb randomly when sitting or walking around.

Petitioner testified that he told Dr. Tashima about the leg numbness and that he explained that it could be from the radiofrequency neurotomy procedure or a symptom of the back injury.

On March 16, 2020, Dr. Jagadish, examined Petitioner and noted that he had a negative heel and toe test causing him pain, had tenderness over L4-S1, and continued to experience limited range of motion. Strength was 5/5. The complaints were of low back pain without radiation. The neurologic exam was negative. On this date, Petitioner complained of left leg numbness of 2 to 3 months. Dr. Jagadish charted: "He does note for an odd numbness/tingling throughout the left side of his body which is intermittent. He may benefit from a neurologist visit in future." Dr. Jagadish ordered a repeat lumbar spine MRI. (PX 5)

Petitioner underwent the repeat lumbar MRI on April 21, 2020, that showed a 4.8 mm posterior disc protrusion at L5-S1. On May 1, 2020, Dr. Tashima noted that Petitioner reported increased low back pain with greater left leg pain that comes and goes. Dr. Tashima recommended a diagnostic and therapeutic left L5 transforaminal epidural injection to relieve the radicular symptoms. (PX 5)

Petitioner testified that he has not undergone the L5 transforaminal epidural injection because the insurance carrier has not approved the procedure. He would like to undergo the suggested procedure and find out his options for treatment.

On July 7, 2020, Petitioner was seen by Respondent's Section 12 examiner, Dr. Jesse Butler, a board certified orthopedic surgeon. Dr. Butler specializes in disorders of the spine. Dr. Butler testified via evidence deposition. (RX 4) Dr. Butler testified that Petitioner suffered a herniated disc as a result of the June 20, 2018 work injury. Petitioner's history of injury was consistent with his testimony at trial and the medical records. After the injury, petitioner had right and left central back pain. He did not have leg pain. The physical exam was benign. SLR testing was negative. Waddell's testing was negative. The impression was lumber strain, pending review of imaging. No radicular symptoms were noted on exam. Dr. Butler did not review the 2018 MRI film but did read the report. Dr. Butler did have an opportunity to review the 2020 MRI film, and stated that he does not believe that there is a much change between the 2018 and 2020 lumbar spine MRI. The MRI film showed a left paracentral disc herniation at L5-S1. Dr. Butler opined that Petitioner reached MMI on October 3, 2018, when Dr. Lyman noted a benign physical exam and released Petitioner from care at full duty. Dr. Butler agreed that Dr. Lyman advised Petitioner to return as needed given his continued limitation and back pain on October 3, 2018. Dr. Butler also agreed that a herniated disc can cause radicular symptoms to wax and wane. Dr. Butler's opinion that Petitioner does not need an epidural injection is based on the fact that he lacked radicular symptoms immediately following the work injury. Indications for an ESI are radicular symptoms, numbness, tingling, weakness and sciatic type discomfort. Petitioner did not have those symptoms. The medial branch block and RFA were inappropriate. Petitioner has normal facets and no compression, so the RFA is not appropriate. There was no indication for an injection. Dr. Butler's recommendations for Petitioner were to continue conditioning, strength training and anti-inflammatory medications. At age 25, with a low pain score, Petitioner is not a surgical candidate. Dr. Butler would not endorse causation to Petitioner's current symptoms. Petitioner's condition of ill-being related to the accident is a left, non-compressive herniated disc at L5-S1. Petitioner is at MMI. No further medical treatment is needed. He can return to work at full duty. (RX 4)

Petitioner testified to having continued back pain walking or moving for long periods of time. His leg numbness occurs randomly. His back pain is constant, more intense on the left. He also testified that the constant pain forced him to learn to adjust and deal with the pain in a different way every day. He has problems sleeping, which affects his everyday activities.

Petitioner testified that he cannot ride a motorcycle, play guitar for long periods of time, as it hurts his back. He cannot ice skate or skateboard, he does not box, play football or basketball like he used to in high school, because he does not want to get tackled and does not want to try to jump. Petitioner testified that he feels like he is very limited on the activities that he is able to do. Since June 20, 2018, Petitioner has had to change his active lifestyle because he does not want to risk getting hurt and has gained 47 lbs. as a result.

CONCLUSIONS OF LAW

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

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 Commission, 79 Ill. 2d 249, 253 (1980)), including that there is some causal relationship between his employment and his injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989)

Decisions of an arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e)

WITH RESPECT TO ISSUE (F), IS PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS:

Petitioner's current condition of ill-being regarding his low back is, in part, causally related to the work injury of June 20, 2018. The causally related condition is: Strain of muscle and facia tendons of the lower back, with a left, non-compressive herniated disc at L5-S1, as diagnosed by Dr. Lyman and Dr. Butler and found to be at MMI as of October 3, 2018.

The basis of this finding is the medical records and the persuasive opinions of Dr. Butler.

While there was no evidence adduced regarding any prior back or leg problems or treatment for Petitioner, the chain of events does not persuade the Arbitrator that there is sufficient circumstantial evidence to find in favor of Petitioner on the issue of causal connection, as was endorsed by the Illinois Supreme Court in International Harvester v. Industrial Comm'n, 93 Ill. 2d 59 (1982) Petitioner did not seek immediate medical treatment for his injury, waiting 5 days to do so. He was released, PRN, by Dr. Lyman and then continued to work as a forklift operator for Lumisource for almost 2 months before seeking treatment at Barrington Orthopedics. There were no radicular or leg complaints noted in the AMITA records. The first possible documented leg/radicular symptoms appear on February 19, 2019 and then are not documented again in March of 2020, with a history of left leg numbness and tingling of 2-3 months duration. The Arbitrator is not impressed with the treatment that Petitioner received from Barrington Orthopedics and is troubled by the lack of an order for an EMG/NCV study, or a referral to a neurologist, if the numbness and tingling complaints were thought to be significant. The course of events does not support causation on the medical treatment rendered after Petitioner was released from Dr. Lyman's care.

Dr. Butler's opinions are persuasive, given the lack of radicular symptoms/leg complaints initially, the benign strength and neuro exams noted throughout the records, the lack of medication use and Petitioner's ability to work as a forklift driver during the time that he had treatment (albeit with less lifting than Petitioner was required to do at Respondent, but still with being bounced around and getting on and off the lift).

WITH RESPECT TO ISSUE (O), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE?, THE ARBITRATOR FINDS:

Based upon the Arbitrator's finding on the issue of causation, above, Petitioner's claim for prospective medical care is denied.

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

Pursuant to Section 8.1(b) of the Illinois Workers' Compensation Act, for accidents occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. 820 ILCS 305/8.1b. The criteria to be considered are: (i) the reported level of impairment pursuant to the physician's findings per the American Medical Association's "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. 820 ILCS 305/8.1b(b)

Regarding criterion (i), no AMA Impairment Rating was rendered, and therefore, this factor is given no weight in determining PPD.

Regarding criterion (ii), Petitioner was employed as a shipping and receiving clerk at the time of injury. He testified that he was able to have employment as a forklift operator after the accident, until he was laid off due to the Covid pandemic. He is now seeking a supervisory job which would be less physical. Dr. Lyman and Dr. Butler released Petitioner to full duty work. The physician's at Barrington Orthopedics did not restrict Petitioner from work. The Arbitrator gives this factor some weight in determining PPD.

Regarding criterion (iii), Petitioner was 23 years old at the time of the injury. Given the Arbitrator's finding on the issue of causation and Dr. Butler's testimony regarding symptoms of a herniated disc waxing and waning, this factor is given more weight in determining PPD.

Regarding criterion (iv), Petitioner did not prove a loss of earning capacity as a result of the injury. The Arbitrator gives this factor more weight in determining PPD.

Regarding criterion (v), given the Arbitrator's finding on the issue of causation, the treating records do not support Petitioner's subjective complaints beyond those shown in the AMITA records. The Arbitrator gives this factor great weight in determining PPD.

Upon consideration of all of the required factors and the Record as a whole, the Arbitrator finds that, as a result of the injuries sustained, Petitioner has suffered the 7.5% 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:

Based upon the Arbitrator's finding on the issues of Causation and Prospective Medical Treatment, above, Petitioner's claim for penalties and attorney's fees is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC004305
Case Name	BARBOSA, JUSTIN v. FEDEX
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0018
Number of Pages of Decision	20
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Timothy Alberts

DATE FILED: 1/12/2022

/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 Causation, Medical Expenses, Permanent Disability	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JUSTIN BARBOSA,

Petitioner,

vs. NO: 18 WC 04305

FEDEX GROUND,

Respondent.

DECISION AND OPINION ON REVIEW

This matter comes before the Commission pursuant to Petitioner's Petition for Review of the Decision of the Arbitrator. The issues raised on Review by Petitioner include whether Petitioner's current lumbar and thoracic spine conditions of ill-being remain causally related to his undisputed accidental injury, entitlement to temporary disability benefits, entitlement to incurred medical expenses, and the nature and extent of Petitioner's permanent disability. While the matter pended on Review, Respondent raised a jurisdictional challenge. Notice having been given to all parties, the Commission, being advised of the facts and law, finds jurisdiction rests with the Commission, 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.

CONCLUSIONS OF LAW

I. Jurisdiction

Respondent argues Petitioner failed to timely file his Petition for Review, and therefore, the Commission lacks jurisdiction. The Commission disagrees.

Section 19(b) provides that "unless a petition for review is filed by either party within 30 days after the receipt by such party of the copy of the decision and notification of time when filed

*** the decision shall become the decision of the Commission and in the absence of fraud shall be conclusive." *820 ILCS 305/19(b)* (West 2000). "'The Commission, as an administrative, nonjudicial body, has no presumption in favor of jurisdiction.' [citation omitted]. Thus, as the claimant notes, a party seeking review before the Commission must strictly comply with the statute conferring jurisdiction upon the Commission." *Shafer v. Illinois Workers' Compensation Commission*, 2011 IL App (4th) 100505WC, ¶ 32, 976 N.E.2d 1.

The record reflects that the Decision of the Arbitrator was electronically served on the parties on April 10, 2020. As such, "30 days after the receipt" of the Decision was May 10, 2020; however, as May 10 was a Sunday, the filing deadline was automatically extended to the next non-holiday business day – Monday, May 11, 2020. *820 ILCS 305/19.1*. Petitioner's Petition for Review was file-stamped on May 12, 2020. In response to questioning during oral argument, Petitioner's Counsel stated that he appeared at the Commission on May 11, 2020 and tendered the Petition for Review to the filing desk for filing; however, pursuant to a newly implemented procedure, there was no instantaneous file-stamping, but rather Petitioner's Counsel was to return for the file-stamped document the next day. When Petitioner's Counsel retrieved the Petition for Review, despite it having been submitted to the Commission for filing on May 11, the document was not stamped until May 12.

The Commission observes the events at issue occurred early in the COVID-19 pandemic, and on May 5, 2020, in response to the unique challenges presented thereby, the Chairman of the IWCC instituted a new filing policy – documents were to be dropped off for filing on the day submitted, then picked up the next day. The Commission finds Petitioner's Counsel's statement that he tendered the Petition for Review to the filing desk on May 11, 2020 is credible and we accept it as truthful. The Commission notes all practicing attorneys are bound by the Rules of Professional Conduct, including the rule requiring candor toward the tribunal: Rule 3.3 of the Illinois Rules of Professional Conduct provides, "A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." *Ill. R. Prof. Cond. 3.3(a)(1) (eff. Jan. 1, 2010)*. We further note Petitioner's Counsel's statement is corroborated by the Proof of Service, which reflects Petitioner's Counsel hand-delivered the Petition for Review to Respondent's Counsel on May 11, 2020, the same day he tendered the Petition for Review to the Commission.

The Commission finds Petitioner's Petition for Review was filed on May 11, 2020, the date it was tendered to the Commission. Therefore, Petitioner's Petition for Review was timely and we have jurisdiction over the matter.

II. Causal Connection

The Arbitrator concluded Petitioner's current lumbar and thoracic spine conditions are not causally related to his undisputed work accident, and instead causal connection ended as of May 17, 2018, the date Dr. Ghanayem placed Petitioner at maximum medical improvement and opined he was capable of regular duty. The Commission views the evidence differently. The Commission finds Petitioner's unsuccessful attempt to return to full duty work pursuant to Dr. Ghanayem's release establishes that Petitioner had not reached maximum medical improvement.

The Commission first notes that eight days after Dr. Ghanayem's §12 examination, a different spine specialist evaluated Petitioner and concluded his ongoing symptoms necessitated further therapy and limitation to light duty. Dr. Cary Templin's May 25, 2018 office note reflects he reviewed Petitioner's history and complaints, as well as the lumbar spine MRI, on which the doctor identified mild desiccation to the L4-5 disc with a circumferential disc bulge, abutment of the L5 nerve roots but no compression, and no significant central stenosis. Pet.'s Ex. 2. After an examination, Dr. Templin concluded Petitioner had persistent back pain but no evidence of instability and no high-grade stenosis or neural compression; Dr. Templin recommended non-operative treatment with an epidural injection at L4-5 as well as continued therapy, and further recommended modified duty: 10-pound lifting restriction, bending and twisting to tolerance, to be adjusted as Petitioner progressed with therapy. Pet.'s Ex. 2. The Commission finds Dr. Templin's conclusions are most consistent with what occurred when Petitioner thereafter attempted a full duty return to work.

Kevin Reilly explained that in June 2018, Petitioner was contacted and advised he needed to return to work per Dr. Ghanayem. T. 40. Petitioner thereafter reported for full duty work and Mr. Reilly testified he returned Petitioner to his pre-accident job loading trailers, but Petitioner was unable to complete his shift: "…he again said that his back hurt and he could not perform those duties." T. 41. Significantly, on June 20, 2018, Petitioner was re-evaluated by D.C. Perez, who memorialized Petitioner suffered an acute exacerbation of his pain when he had attempted to return to full duty the day before:

> The patient reports that he is experiencing an increase in his pain intensity. The patient reports that his pain worsened after making a return back to his normal full duty work. The patient reports that yesterday he went into work because he was advised by his employer that he was to return back to work within a period of time and if he did not, he would be fired. The patient presented to work yesterday at 5:30 in the morning. The patient was made to load a trailer with boxes that the patient estimates weighed approximately 20 to 40 pounds. The patient had to perform this work repetitively. The patient had to lift/carry the boxes and needed to bend and twist his body in order to perform the job duty. The patient was only able to tolerate doing this activity for approximately 30 minutes before his pain worsened significantly. The patient rated the pain at work 7-8/10. The patient also reports experiencing weakness in his low back and lower extremities. The patient also reports having experienced numbness and tingling great in intensity in his lower extremities from the work he was performing. Pet.'s Ex. 1.

D.C. Perez noted Petitioner ambulated with obvious antalgia, moved slowly and cautiously with little free movements, was in obvious distress, and had difficulty transferring from seated to standing; examination findings included tenderness to palpation over the bilateral thoracic and lumbar paraspinal musculature as well as the T3-10 and L2-S1 spinal levels, moderately decreased and painful range of motion, decreased lower extremity strength, positive straight leg raise bilaterally, and positive Kemp's test bilaterally. D.C. Perez's assessment was Petitioner "is demonstrating an exacerbation of his condition from the work he was needed to perform yesterday at his place of employment." Pet.'s Ex. 1. Documenting that Petitioner "failed in his attempt to return back to his normal full duty work," D.C. Perez authorized Petitioner off work and

recommended continued physical medicine treatment and follow-up with the orthopedic spine specialist. Pet.'s Ex. 1. The Commission observes this June 20, 2018 record is not addressed in the underlying Decision.

Over the next month, Petitioner underwent further physical medicine treatments. At the July 23, 2018 re-evaluation with D.C. Lemus, Petitioner reported improvement in his mid back pain but his low back pain was unchanged. D.C. Lemus noted Petitioner no longer had an antalgic gait and was able to transfer from seated to standing without difficulty. Examination findings included tenderness to palpation, painful range of motion, and positive straight leg raise, Bechterew's, and Kemp's tests. D.C. Lemus' treatment plan was additional physical medicine care and orthopedic follow-up. Pet.'s Ex. 1.

Chiropractic treatments continued as recommended, and on August 16, 2018, Petitioner followed up with Dr. Koutsky. Petitioner advised he had some improvement in his symptoms, but he continued to have lower back pain radiating to his buttocks and thighs with occasional numbness and tingling. On examination, Dr. Koutsky noted paralumbar muscle tenderness and spasm to palpation with limited range of motion, though straight leg raise testing was negative. Dr. Koutsky offered repeat injections through the pain clinic, but Petitioner wished to hold off; instead, Dr. Koutsky ordered further therapy and thereafter an FCE, and restricted Petitioner to modified duty with a 10-pound maximum weight. Pet.'s Ex. 1.

Petitioner underwent continued chiropractic care through the remainder of August and into September. On September 19, 2018, Petitioner was re-evaluated by D.C. Perez. Petitioner reported his mid back pain had resolved, and his lower back pain was intermittent and had improved in intensity to 4/10, though it occasionally reached 6/10. Petitioner further advised he had no radiating pain or numbness and tingling. Noting Petitioner "has clearly demonstrated an overall improvement in his condition," D.C. Perez discontinued formal therapy and released Petitioner to a home exercise program. Pet.'s Ex. 1.

The next day, September 20, 2018, Dr. Koutsky released Petitioner per the August 24, 2018 FCE. As Petitioner reported some persistent thoracolumbar pain, Dr. Koutsky prescribed continued anti-inflammatories, muscle relaxants, and tramadol to be taken as needed; Dr. Koutsky additionally required Petitioner to sign a pain contract and ordered a toxicity screen. Pet.'s Ex. 1.

In the Commission's view, the failed return to full duty evidences that Petitioner had not reached maximum medical improvement as of May 17, 2018. The treating records reflect that prior to that, Petitioner was making slow but steady progress with conservative treatment and modified duty restrictions. However, when Petitioner was directed to return to his regular duty job pursuant to Dr. Ghanayem's §12 report, he experienced an acute and significant exacerbation of his condition. The Commission is also unconvinced by Dr. Ghanayem's opinion that Petitioner's condition required only eight weeks of therapy given that the doctor conceded Petitioner's complaints persisted five months after the work accident. The Commission finds the failed return to work resulted in an exacerbation of Petitioner's condition, and this set back extended Petitioner's treatment course. The Commission finds Petitioner's condition reached maximum medical improvement as of September 20, 2018. At that point, formal physical medicine treatment had been discontinued and Dr. Koutsky released Petitioner per the FCE. Pet.'s Ex. 1.

III. Medical Expenses

Petitioner offered into evidence multiple medical bill exhibits: Petitioner's Exhibit 1 (La Clinica); Petitioner's Exhibit 2 (Chicago Pain and Orthopedic Institute); Petitioner's Exhibit 5 (Archer Open MRI); Petitioner's Exhibit 6 (Prescription Partners); Petitioner's Exhibit 7 (Trisys Medical Group); and Petitioner's Exhibit 8 (Rx Development). The Commission finds the charges detailed therein were incurred for treatment that was reasonable, necessary, and related to the undisputed January 11, 2018 work accident with the following exception:

- The Commission finds Dr. Kaplan's February 6, 2019 pharmacy utilization review (Resp.'s Ex. 5) is persuasive and we rely on Dr. Kaplan's non-certification in finding none of the Terocin patch prescriptions were reasonable or necessary. The Commission denies all expenses associated with prescriptions for Terocin patches.

Further, the Commission strikes the following sentence from page 8: "A simple Google search indicates that over-the-counter Omeprazole costs between $15.00 and $20.00 for a 30-day supply."

IV. Permanent Disability

Petitioner's work accident occurred after September 1, 2011; therefore, pursuant to Section 8.1b(b), permanent partial disability is to be determined following consideration of five factors: (i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. *820 ILCS 305/8.1b(b)*.

Section 8.1b(b)(i) – §8.1b(a) impairment report

Neither party submitted an impairment rating. As such, the Commission assigns no weight to this factor and will assess Petitioner's disability based upon the remaining enumerated factors.

Section 8.1b(b)(ii) – occupation of the injured employee

Petitioner was a package handler. The August 24, 2018 FCE indicates this is a Very Heavy Physical Demand Level position, and Petitioner's capabilities fall below that level. Pet.'s Ex. 3. Petitioner did not return to his pre-accident employment and instead found a new job as an assembler at S&C Electric Company. T. 26-27. Petitioner testified this job requires lifting of up to 20 pounds and is within the restrictions imposed by Dr. Koutsky. T. 27. The Commission finds this factor weighs in favor of increased permanent disability.

Section 8.1b(b)(iii) – age of the employee at the time of the injury

Petitioner was 19 years old on the date of his accidental injury. Petitioner is a very young individual and will therefore experience his residual complaints for an extended period. The Commission finds this factor is indicative of increased permanent disability.

Section 8.1b(b)(iv) - future earning capacity

There is no direct evidence Petitioner's work accident had an adverse impact on his future earning capacity. The Commission finds this factor weighs in favor of reduced permanent disability.

Section 8.1b(b)(v) – evidence of disability corroborated by treating medical records

Petitioner testified his mid back pain has essentially resolved, however he continues to have episodes of significant lower back pain: "It's like somebody is beating me with a bat, baseball bat." T. 25. During these episodes, he has difficulty performing household tasks such as lifting his garbage cans and taking out the trash. T. 26. Petitioner takes over-the-counter Ibuprofen for his pain. T. 28.

The Commission finds Petitioner's testimony is consistent with the medical records which evidence Petitioner's thoracic spine condition resolved within approximately two months of the accident, following trigger point injections. Petitioner's lumbar spine, in turn, required an extensive course of therapy as well as facet injections, and the valid FCE reflects he has ongoing lifting limitations. Pet.'s Ex. 3. The Commission finds this factor is indicative of decreased permanent disability for the thoracic spine, and increased permanent disability for the lumbar spine.

Based on the above, the Commission finds Petitioner's thoracic spine injury resulted in 2.5% loss of use of the person as a whole. The Commission further finds Petitioner's lumbar spine injury resulted in 5% loss of use of the person as a whole.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 9, 2020, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $220.00 per week for a period of 11 weeks, representing February 6, 2018 through April 23, 2018, that being the stipulated period of temporary total incapacity for work under §8(b) of the Act. Respondent shall have a credit of $2,388.58 for TTD benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the reasonable and necessary medical expenses detailed in Petitioner's Exhibit 1, 2, 5, 6, 7, and 8, subject to the exclusion set forth above in this Decision, as provided in §8(a), subject to §8.2 of the Act. Respondent shall have credit for medical expenses previously paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $220.00 per week for a period of 12.5 weeks, as provided in §8(d)2 of the Act, for the reason that the thoracic spine injuries sustained caused the 2.5% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $220.00 per week for a period of 25 weeks, as provided in §8(d)2 of the Act, for the reason that the lumbar spine injuries sustained caused the 5% loss of use of the person as a whole.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of 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 $21,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

January 12, 2022

/s/ *Deborah J. Baker*

DJB/mck

O: 11/17/21

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BARBOSA, JUSTIN
Employee/Petitioner

Case# **18WC004305**

FEDEX GROUND
Employer/Respondent

On 4/9/2020, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.16% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

2553 McHARGUE & JONES LLC
PETAR MILENKOVICH
123 W MADISON ST SUITE 1800
CHICAGO, IL 60602

1685 KOPKA, PINKUS DOLIN PC
MATTHEW G GORSKI
200 W ADAMS ST SUITE 1200
BUFFALO GROVE, IL 60089

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

JUSTIN BARBOSA
Employee/Petitioner

v.

FEDEX GROUND
Employer/Respondent

Case # **18** WC **04305**

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 Cellini**, Arbitrator of the Commission, in the city of **Chicago**, on **November 19, 2019**. 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 _____

Barbosa v. FedEx Ground, 18 WC 04305

FINDINGS

On **January 11, 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 ***was but no longer is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**11,960.00**; the average weekly wage was $**230.73**.

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 $**2,388.58** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**2,388.58**.

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

ORDER

The Arbitrator finds that the Petitioner's mid- and low back conditions were causally related to the January 11, 2018 accident, but that any causal relationship had ended as of May 17, 2018.

Respondent shall pay Petitioner temporary total disability benefits of **$220.00 per week**, the minimum allowable statutory rate, for **11 weeks**, commencing **February 6, 2018 through April 23, 2018**, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of **$2,388.58** for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services **as described and awarded (below) under Issue J in the Arbitrator's Conclusions of Law**, as provided in Sections 8(a) and 8.2 of the Act.

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

Respondent shall pay Petitioner permanent partial disability benefits of **$220.00 per week**, the minimum allowable statutory rate, for **25 weeks**, because the injuries sustained caused the loss of use of **5% of the person as a whole**, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from **January 11, 2018** through **November 19, 2019**, and shall pay the remainder of the award, if any, in weekly payments.

Barbosa v. FedEx Ground, 18 WC 04305

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 7, 2020
Date

APR 9 - 2020

STATEMENT OF FACTS

Petitioner testified that he was employed by Respondent as a package handler, and the job involved loading trucks with packages, which involved lifting, bending and stacking. On 1/11/18, he testified he was performing his normal job activities, squatted down to pick up a heavy (50 to 65 pound) box, using his back to lift it up, and he heard a snap and felt a stabbing-type pain in the mid-back. He initially ignored it, figuring he pulled a muscle, and he finished his shift. He then continued to work for the next few days before reporting the incident to his supervisor, who advised him to go to ATI Physical Therapy, which was located inside of his work building. Petitioner testified he saw a therapist there, whose name he could not recall, who recommended ice, massage and ibuprofen. He testified that ATI didn't actually provide any treatment. The Arbitrator notes that no records were submitted from ATI.

Petitioner testified he was performing the home exercises ATI had recommended and continued to work for the next few weeks but continued to feel the same sharp pain he had before. He tried to ignore it but was having difficulty bending and squatting like he used to. At some point he felt a sharp pain that was stabbing in his mid-back and he felt he could no longer perform his job. On 2/6/18, Petitioner sought medical treatment with Dr. Yehya at La Clinica. His report states that Petitioner reported he was lifting an approximate 70-pound box when he felt a pop in the left side of his back. He noted that Petitioner returned to light duty but was unable to perform those duties. At that time, Petitioner reported significant mid-back to lower back pain and that lifting caused a stinging pain in his lower back. Physical examination revealed pain to palpation over the T12 and L5/S1 region, positive straight leg testing bilaterally, a positive left-sided Yeoman's test, and a positive left-sided Kemp's test. Dr. Yehya recommended that Petitioner begin a course of physical therapy and follow-up with a pain physician. (Px1).

Petitioner testified that he began therapy that day. Petitioner testified that Dr. Hamada also referred him to pain management, where he saw Dr. Patel in pain management. On 2/7/18, Petitioner saw Dr. Patel at Chicago Pain and Orthopedic Institute, reporting thoracic and lumbar spine pain following a lifting injury at work with a pop in the low back. He denied any prior lumbar or thoracic problems. There were no neurologic deficits. Dr. Patel's examination indicated pain to palpation over the thoracic and lumbar paraspinal muscles and a positive straight leg test. Dr. Patel recommended that Petitioner undergo thoracic and lumbar MRIs along with physical therapy, and that he continue taking pain medication. (Px2)

Petitioner underwent the recommended MRIs at Archer Open MRI on 2/16/18. As to the thoracic MRI, the radiologist noted a posterior herniation at T4/5 that contributed to mild foraminal and central canal stenosis. He also noted a left paracentral 4.7 mm herniation at T7/8 causing severe left foraminal stenosis. As to the lumbar MRI, the radiologist noted multilevel spondylosis and an annular bulge with a superimposed posterior herniation at L4/5, which contributed to neural foraminal and central canal stenosis. (Px1).

Petitioner followed up with Dr. Patel on 2/21/18, reporting that his mid and lower back pain was slightly better than his last visit. Following exam and a review of the MRIs, Dr. Patel indicated that, "given the large thoracic disc herniation particularly at T7/8 with severe left foraminal stenosis", he recommended that Petitioner should be evaluated by a spine surgeon. (Px2).

Petitioner saw orthopedic surgeon Dr. Koutsky at Chicago Pain and Orthopedic Institute on 3/2/18. He indicated Petitioner was there for evaluation of thoracolumbar pain without radiation following heavy lifting at work. On physical examination, Dr. Koutsky noted paralumbar muscle tenderness, spasm to palpation, and decreased range of motion. Dr. Koutsky found straight leg raise testing to be negative. He reviewed the thoracic and lumbar MRIs and diagnosed Petitioner with T7/8 and L4/5 disk herniations with stenosis. Noting no neurological findings or deficits, Dr. Koutsky recommended that Petitioner continue with physical therapy and follow up with pain management for possible trigger point injections. Dr. Koutsky also put Petitioner on a ten-pound lifting restriction. (Px2).

Petitioner returned to Dr. Patel reporting ongoing symptoms at a 5 out of 10 (5/10) to 6 out of 10 (6/10) level, and trigger point injections were planned and performed on 3/14/18. Petitioner followed up with Dr. Patel on 4/4/18. He reported significant relief with his mid-back pain but continued to complain of right-sided axial low back pain. As a result, Dr. Patel recommended that Petitioner continue with physical therapy and undergo right-sided diagnostic and therapeutic L4 to S1 intraarticular facet injections. (Px2).

Petitioner testified that his mid-back pain improved with the injections as well as therapy, and that his sharp pain resolved. He remained in therapy in March, which he indicated helped him a lot, and did exercises and stretching at home as well.

When he returned to Dr. Koutsky on 4/6/18, Petitioner reported that his thoracic symptoms improved significantly with physical therapy and trigger point injections but that he had continued lower back pain. Examination was unchanged. Dr. Koutsky recommended lumbar injection, continued physical therapy and the same work restrictions. (Px2).

Petitioner underwent L4/5 and L5/S1 intraarticular facet joint injections on 4/11/18. He testified that he had some improvement with injections, but this was temporary, lasting only a couple of weeks. He followed up with Dr. Patel on 5/2/18 and reported improvement of his lower back pain (50%) following the injections. Dr. Patel noted his exam reflected positive bilateral facet loading in the lumbar spine. He recommended that Petitioner continue taking his pain medication and continue with chiropractic care, and if he didn't improve by the time of a 4 week follow up, lumbar injections would be repeated. (Px2).

A Section 12 examination of Petitioner was performed on 5/17/18 by orthopedic surgeon Dr. Ghanayem at the request of Respondent. At that time, Petitioner reported pain to the lumbar base and far right musculature, and he denied thoracic pain. Examination revealed soft tissue tenderness around the paraspinals on the right lateral lumbar region and lumbar base. Dr. Ghanayem noted normal thoracolumbar range of motion and a normal neurological examination. Dr. Ghanayem also reviewed Petitioner's thoracic and lumbar MRIs and found minimal thickening at L4/5, a disk protrusion at T4/5, and a disk protrusion at T7/8. He opined that the findings on the thoracic MRI were incidental because Petitioner did not report any symptoms at that time that would

correlate to such finding. Additionally, he opined that the minimal thickening noted at L4/5 was not an acute finding and that he has seen this finding in patients who played high school (and/or college) football, like Petitioner said he had. Dr. Ghanayem opined that Petitioner sustained a back sprain as a result of his 1/11/18 work injury, that he had reached maximum medical improvement (MMI) and that any chiropractic treatment beyond eight weeks after the injury was unreasonable and unnecessary. (Rx1).

On 5/25/18, Petitioner saw Dr. Templin, an orthopedic spine surgeon at Hinsdale Orthopedics. He reported continued pain in the lumbosacral area that extended to his right buttock. He had no weakness or numbness. Dr. Templin performed a physical examination, which indicated lumbar flexion of 65 degrees and lumbar extension of 10 degrees. He also noted a negative straight leg test. Dr. Templin reviewed Petitioner's lumbar spine MRI and indicated it showed mild desiccation at L4/5 with abutment of the L5 nerve root without compression. Noting no evidence of instability or high-grade stenosis, Dr. Templin recommended continued nonoperative care, including epidural injections at L4/5 and L5/S1 and continued physical therapy. Dr. Templin did not see any need for surgery. Dr. Templin also recommended a ten-pound work restriction with bending and twisting to tolerance pending progress in therapy. (Px2).

Petitioner testified that he continued to attend physical therapy from June to September of 2018, again stating this helped "a lot" with his mid-back and lower back pain and improved his strength in his back.

Petitioner followed up with Dr. Koutsky on 8/16/18 and reported low back pain radiating to his buttocks and thighs including occasional numbness and tingling. On physical examination, Petitioner had paralumbar muscle tenderness and spasm to palpation with limited range of motion. Dr. Koutsky also noted a negative straight leg test. At that time, Dr. Koutsky recommended that Petitioner continue with physical therapy and undergo an additional lumbar injection. The Petitioner did not wish to undergo an additional injection and Dr. Koutsky instead recommended that Petitioner undergo a Functional Capacity Evaluation (FCE) in order to determine his work capabilities. (Px2).

The FCE was completed on 8/24/18 at Illinois Orthopedic Network. His job was noted to be at the very heavy level based on Petitioner's description of the job, with frequent lifting of boxes that can be 75 pounds or more and lifting up to 200 pounds with assistance. He also reported frequent walking, bending and squatting and constant standing. That evaluation was found to be valid and indicated that Petitioner would be capable of occasionally lifting up to 62 pounds and frequently lifting up to 31 pounds. It was also determined that Petitioner should be limited to occasional squatting. (Px3).

Petitioner followed up with Dr. Koutsky on 9/20/18. At that time, Petitioner reported that his thoracolumbar pain was improving with physical therapy. Physical examination again remained unchanged. Following his review of the FCE, Dr. Koutsky released Petitioner from care pursuant to the restrictions set forth in the FCE report. (Px2).

Respondent obtained a utilization review report from Dr. Kaplan, who indicated that the prescribed Terocin patches were non-certified based on such class of topical medications being experimental, as well as that the medical records reviewed "do not provide a rationale for topical medication in addition to multiple oral medications nor is a rationale or proposed mechanism of action on this topical medication discussed." Dr. Kaplan also noted he attempted a peer-to-peer review of this issue with Dr. Koutsky three times with no response despite leaving messages for a call back. (Rx5).

Currently, the Petitioner testified his mid back pain is essentially resolved but he continues to have low back pain. He indicated the pain comes and goes, it is not constant, but that it feels like someone beating him with a bat. He has ongoing difficulty with things like sports and picking up and throwing out garbage.

Petitioner testified he started working for S & C Electric on 2/7/19, where he assembles parts and works with his hands. He has to lift up to 20 pounds. He testified that he has difficulty at this job carrying frames to make switches. He takes over-the-counter medications for his pain. Petitioner testified he had no prior back injuries or significant back pain prior to 1/11/18.

Petitioner agreed on cross exam that he was issued light duty restrictions on 4/6/18 of 10 pounds. On 4/24/18, Respondent contacted him indicating he could return to work with restrictions, which he did that day. He could not recall the date he provided his updated medical records to Respondent but indicated he did do so. He did bring in the 8/2018 FCE to Respondent and asked to be accommodated but could not say who it was that he provided it to.

Kevin Reilly testified on behalf of the Respondent. He began with Respondent in 2007 as a service manager, with various roles since, and he is currently Respondent's Senior Manager in Hammond, IN. On 1/11/18, he was the assistant Hub Manager in the Bedford Park, IL facility, where he would oversee daytime sort and twilight operations. He oversees the sort managers, who oversee area managers, then operations managers and then package handlers. He would oversee 350 workers or so and was in that position from 12/2017 to 12/2018. Mr. Reilly testified that the Petitioner was a package manager at the Bedford Park facility, and that he was aware of Petitioner's workers' compensation claim. Part of his job involves obtaining documentation on workers' compensation claims, including the determination of whether light duty restrictions could be accommodated, testifying "I oversee that process."

Mr. Reilly acknowledged that he received light duty restrictions, a 4/6/18 work status report (Rx2), regarding the Petitioner, but could not recall if it came from the Petitioner or if he received it directly from the facility. Once received, the Respondent was able to accommodate the restrictions in "induction and smalls", which involves handling packages weighing no more than 5 pounds, picked up from the left with the left hand to the right hand and placed into a rotating sorting tray. On 4/24/18, Petitioner was provided with a light duty offer for this position. Reilly testified that when Petitioner showed up that day, he said he felt he couldn't do the work due to his ongoing back pain and he left for the day. He indicated the Respondent then didn't hear back from Petitioner again until receiving Dr. Ghanayem's report, at which point they advised Petitioner that he needed to return to work. When he returned to work at that time, which he said was the beginning of June 2018, Petitioner tried to perform his package handling job but again indicated he was unable to do so. Mr. Reilly testified he advised the Petitioner he then needed to provide further medical documentation indicating he was unable to perform the work duties. He testified the Petitioner never provided this and he never saw Petitioner at any time after that date. He would have been made aware if Petitioner had come to the facility and talked to someone else. To his knowledge, Petitioner didn't bring in his FCE report.

On cross-examination, Mr. Reilly testified that in the "Induction and smalls" area, small packages are unloaded to an induction slide, where 3-4 package handlers are staged to take them and put them on a tray on a rotating sorter. Larger packages would be sent up a separate conveyor where an automated sorter would sort the packages. Reiterating that he was the person at the facility who would determine if accommodations could be offered to an injured worker, Mr. Reilly testified that such an offer would typically be verbal over the phone, and that he is not required to put anything in writing as far as such a job offer.

Px1 contains billing from La Clinica. The documentation indicates that a total of $31,440 was billed on this case through and 9/19/18 and claims a balance due to $21,670.89. (Px1).

Petitioner offered evidence of medical expenses totaling $3,900 for chest and lumbar MRIs performed at Archer Open MRI on 2/16/18. (Px5). Expenses from Prescription Partners totaled $1,927.36 for four prescriptions on

8/16/18 (Terocin Patch $974.16 for a 20 day supply; Cyclobenzaprine $541.48, Omeprazole $262.19 and Meloxicam $149.53 for 30 day supplied), $1,459.15 for another 30 day supply of Terocin patch on 9/20/18, and $953.20 for additional 30 days supplies of Cyclobenzaprine, omeprazole and Meloxicam on 9/20/18. (Px6). It also appears that the Petitioner is submitting charges totaling $3,400 for a single day (9/20/18) of drug testing for multiple substances, including heroin, amphetamines, fentanyl, MDA, Methadone and multiple others. (Px7). Additional prescription expenses were submitted from La Clinica/RX Development Associates totaling $2,024.22 for 2/7/18 prescriptions for Terocin patches, Meloxicam and Cyclobenzaprine. (Px8).

Respondent tendered logs of its TTD (Rx3) and medical (Rx4) payments to date related to this case.

CONCLUSIONS OF LAW

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

A claimant must establish her current condition of ill-being is causally related to her asserted accident. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill.2d 193 (2003); *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill.App.3d 582 (2005). Where medical opinions differ, Industrial Commission must determine weight given to those opinions. *Boyd Bros., Inc. v. Industrial Com'n*, 200 Ill.Dec. 855, 263 Ill.App.3d 514, 636 N.E.2d 46 (1994). The Commission need not give greater weight to testimony of treating physicians than that given physician who has examined employee solely for purpose of testifying. *Arcole Midwest Corp. v. Industrial Comm'n*, 39 Ill.Dec. 776, 81 Ill.2d 11, 405 N.E.2d 755 (1980).

After reviewing the arbitration record, the Arbitrator finds Petitioner has failed to prove that his current back condition remains related to the work accident of 1/11/18, and further finds that any causal relationship of his back condition to the 1/11/18 accident had ended as of the 5/17/18 Section 12 examination of Dr. Ghanayem.

The Arbitrator finds the opinions of Dr. Ghanayem to be persuasive and entitled to greater weight than that of Dr. Koutsky. The Arbitrator notes initially that Petitioner did not complain of any neurologic or radicular pain at any point throughout his medical treatment, as he consistently denied lower extremity radiation and weakness, and the reports of his treating physicians, including Dr. Koutsky and Dr. Templin, indicate that no abnormal neurologic findings were found on exam. This was also the conclusion of Dr. Ghanayem. Petitioner solely complained of isolated back pain in his mid to low back in the medical records and testimony at trial, and following March 2018 trigger point injections, his mid-back complaints had resolved. Petitioner's MRIs of the lumbar spine and thoracic spine did not reveal any neurologic compression that would appear to relate to the Petitioner's condition. The most significant abnormality was at the thoracic level, and Dr. Ghanayem explained why Petitioner's symptoms did not correlate with that finding and that it therefore was an incidental finding. Dr. Koutsky and Dr. Templin both noted negative straight leg raise testing, unlike La Clinica, and both agreed there was no significant neurologic compression that would result in any recommendation for surgery.

Dr. Ghanayem opined that Petitioner sustained a back strain as a result of the work accident and that a reasonable course of treatment would have been 8 weeks of rehabilitation. The Arbitrator adopts the opinion of Dr. Ghanayem that treatment after that eight-week period was unreasonable and/or unnecessary relative to the work injury. Dr. Ghanayem opined that Petitioner did not have any subjective complaints that would have correlated with findings in the thoracic spine. Dr. Koutsky noted that Petitioner's thoracic complaints improved dramatically as of 4/6/18 and that his main complaint was low back pain. Dr. Ghanayem further opined Petitioner was neurologically normal and his back symptoms involved lumbar and right flank pain. Dr. Ghanayem opined the minimal thickening seen at L4/5 on MRI is not an acute finding and is commonly seen in patients who have played high school and college football.

As of 4/4/18, Dr. Patel noted that Petitioner's mid-back pain had essentially resolved but he complained of right axial low back pain. The Arbitrator notes that the Petitioner's initial injury report indicated he felt a pop in his left low back, not the right.

The idea that this young man was continued in therapy for essentially eight months and resulted in a claimed inability to perform beyond the FCE findings simply does not make sense based on the objective MRI findings and the opinions of Dr. Ghanayem. What makes the most sense based on the greater weight of the totality of the evidence is that the Petitioner sustained was a lumbar sprain or strain that should have been well resolved by May 2018, and a mid-back strain that had resolved by March 2018.

The Arbitrator finds that Petitioner's current condition of ill-being of a back strain was no longer causally related to the work accident as of 5/17/18, the date of Dr. Ghanayem's Section 12 examination. Therefore, all benefits after 5/17/18 are denied.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

As noted above, the Arbitrator finds that Dr. Ghanayem's opinions were more persuasive than those of Dr. Koutsky and, ultimately, Dr. Templin. For the reasons stated above, the Arbitrator finds the MRIs of the thoracic and lumbar spine to be reasonable and related medical treatment. Therefore, the Arbitrator finds that Respondent shall pay reasonable and related medical expenses in Px5 ($3,900.00).

The Arbitrator finds that physical therapy and chiropractic treatment after 5/17/18 was excessive and not reasonable or medically necessary pursuant to the Act. While Dr. Ghanayem indicated that nothing beyond eight week of therapy was needed, the Arbitrator notes that the doctor had not had an opportunity to evaluate the Petitioner at the 8 week point, and therefore it is reasonable to allow the treatment up until his examination date of 5/17/18. As noted above, Px1 contains billing from La Clinica totaling $31,440 for treatment incurred through 9/19/18 and claims a balance due of $21,670.89. As noted above, the Arbitrator awards the expenses of La Clinica that were incurred through 5/17/18. Any charges incurred thereafter were not reasonable and necessary under Section 8(a) and are denied.

The initial trigger point injections on 3/14/18 appeared to assist in resolving the Petitioner's mid-back pain and the Arbitrator finds these injections to have been reasonable and necessary pursuant to Section 8(a) of the Act.

Then there are the medication prescriptions issued by La Clinica and Dr. Koutsky. Supported by the Utilization Review by Dr. Kaplan, the Arbitrator finds that all expenses related to the prescriptions issued by La Clinica and Dr. Koutsky for Terocin patches are denied. Dr. Kaplan made perfect sense in terms of lacking understanding as to why these patches were being prescribed based on a review of Petitioner's records, and it is noted with significant interest that Dr. Koutsky did not reply to his repeated attempts at a peer-to-peer review. In this same vein, the Arbitrator notes that the costs associated with the medications prescribed by Dr. Koutsky are excessive on their face, including the costs of the Terocin. The Arbitrator wishes to note that this is based on both the opinion of Dr. Ghanayem as well as the obvious suspect pricing of some of these medications. A simple Google search indicates that over-the-counter Omeprazole costs between $15.00 and $20.00 for a 30-day supply. The Prescription Partners charge for a 30-day supply: $262.19. Petitioner was charged $974.16 for a 30-day supply of Terocin patches on 8/16/18, which when refilled a month later on 9/20/18 then involved a charge of $1,459.15 for an additional 30-day supply, a difference of over $500.00, over the course of a month.

Prescriptions and prescription charges such as these do nothing whatsoever to enhance the credibility and persuasiveness of the opinions of those providers issuing the prescriptions. As noted above, all of the medication charges which were incurred subsequent to 5/17/18 are denied. It also appears that the Petitioner is submitting charges totaling $3,400 for a single round of drug testing on 9/20/18 for multiple substances, including heroin, amphetamines, fentanyl, MDA, Methadone and multiple others. This expense is fully denied.

Additional prescription expenses were submitted from La Clinica/RX Development Associates totaling $2,024.22 for 2/7/18 prescriptions for Terocin patches, Meloxicam and Cyclobenzaprine. (Px8). As noted above, the costs of the Terocin patches are denied. The remainder of this prescription bill is awarded.

WITH RESPECT TO ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

The parties have stipulated, pursuant to Arbx1, that the Petitioner is entitled to TTD from 2/6/18 through 4/23/18. The Petitioner alleges entitlement to an additional period of TTD from 4/24/18 through 2/7/19 (52-3/7 weeks). The Arbitrator finds that the Petitioner is entitled to TTD benefits from 2/6/18 through 4/23/18.

To be entitled to TTD benefits, it is the claimant's burden to prove not only that he did not work, but also that he was unable to work. *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App. (4th) 100505WC; *McDaneld v. Industrial Comm'n*, 307 Ill. App. 3d 1045 (1999).

Petitioner initially received light duty restrictions on 4/6/18 involving no lifting or carrying more than 10 pounds. Shortly thereafter, Respondent contacted Petitioner to return to work within those restrictions on 4/24/18. The light duty job was called "induction and smalls," which Mr. Reilly testified involved taking small packages, weighing no more than 5 pounds, from a metal slide located to his left, hand it off to his other hand, and place it on a tray of their sorter. Petitioner attempted to return to work on 4/24/18 and Mr. Reilly testified that he reported that he felt he could not perform the light duty job because his back still hurt too much and then left for the day. Mr. Reilly testified that Respondent then did not hear back from Petitioner until after the Section 12 examination of Dr. Ghanayem.

Mr. Reilly testified that Petitioner reported to work in early June 2018 to work his regular job pursuant to Dr. Ghanayem's report, and again stated that his back hurt and he could not perform those duties. Mr. Reilly testified that he told Petitioner that in order for Respondent to progress with Petitioner not performing his regular duties Respondent would need a doctor's note stating that he could not perform those duties, and that Petitioner did not present any additional medical records indicating he could not perform regular duty work. The Arbitrator notes when Petitioner was asked on cross-examination if he ever showed up to work with updated medical records to Respondent after 4/24/18, Petitioner replied: "Yeah, I think so, yeah." When confronted on cross examination, Petitioner testified that he did not know what dates he provided Respondent with updated medical records. Additionally, the Petitioner testified that provided his FCE report to Respondent to ask if they could accommodate his physical capabilities, but he could not recall when he did this or to whom he provided the report.

Therefore, the Arbitrator finds Petitioner's testimony regarding presenting to Respondent with updated medical records and the FCE report after April 24, 2018 is not credible. He did not know any dates that he presented to Respondent with the medical reports nor did he know who he gave the medical reports to at Respondent.
Petitioner's treating providers failed to provide any work restrictions after April 24, 2018 that would have prohibited Petitioner from working the light duty job of "induction in smalls." Respondent was capable of

accommodating the light duty restrictions of no lifting or carrying more than 10 lbs. Petitioner offered no evidence to support he could not return to work between April 24, 2018 through February 4, 2019. Furthermore, Petitioner failed to prove that no reasonable stable labor market existed for Petitioner between April 24, 2018 through February 4, 2019. In contrast, Respondent offered Petitioner a light duty position that he refused to accept.

The Arbitrator also finds Dr. Ghanayem's opinions to be reasonable and persuasive that Petitioner was capable of returning to regular work as of 5/17/18. As to the period between 4/24/18 and 5/17/18, the Arbitrator finds that the Petitioner has not provided sufficient evidence that he was unable to perform a light duty job involving handling 5-pound weights, which was within the restrictions issued by Dr. Koutsky. The Petitioner is entitled to TTD from 2/6/18 through 4/23/18.

The Respondent is entitled to credit against this award of $2,388.58 pursuant to the stipulation of the parties (see Arbx1).

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 for accidental injuries occurring on or after September 1, 2011:

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

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that neither party has presented an AMA permanent partial impairment rating or report into evidence. Therefore, this factor carries no weight in the permanency determination.

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 by Respondent as a package handler. While his treating physician Dr. Koutsky indicated that he has work restrictions that would have prevented him from returning to this job, the Arbitrator finds the opinions of Section 12 examiner Dr. Ghanayem to be more persuasive that the Petitioner was capable of returning to his regular job as of 5/17/18. This factor carries some weight in the permanency determination.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 19 years old at the time of the accident. Neither party has submitted evidence which would tend to show the impact of the Petitioner's age on any permanent condition related to the work accident. This factor carries minimal weight in the permanency determination.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that the Petitioner had been working as a package handler for Respondent at the time of his injury. While his treating physician , Dr. Koutsky, determined that Petitioner should have work restrictions following his discharge from care, the Arbitrator has determined that the more reasonable opinion based on the objective facts in this case was that of Dr. Ghanayem, who indicated Petitioner was capable of returning to regular work. Petitioner testified he has retained employment as of 2/7/19 with S&C Electric, where he assembles parts and carry frames to make switches, lifting up to 20 pounds, and he continued to work in this position as of the date of trial. Thus, the Arbitrator does not see any significant loss of future earning capacity. This factor carries some weight in the permanency determination.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that the Petitioner's subjective complaints and objective findings on the MRIs did not reveal any neurologic compression or radicular components, and that the greater weight of the evidence indicates he sustained mid and low back strains. The Arbitrator finds Dr. Ghanayem's opinions reasonable and credible that Petitioner was able to return to regular duty work as of 5/17/18. The Arbitrator also finds that the Respondent was capable of accommodating Petitioner's previous light duty restrictions of no lifting or carrying more than 10 pounds.

Based on the above factors, the record taken as a whole and a review of prior Commission awards with similar injuries similar outcomes, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of the loss of use of 5% of the person as a whole pursuant to §8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC025878
Case Name	KECK, JEFF v. VEE JAY CEMENT CONTRACTING COMPANY
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remanded Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0019
Number of Pages of Decision	17
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	David Galanti
Respondent Attorney	Donald Murphy

DATE FILED: 1/13/2022

DISSENT

/s/Christopher Harris, 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 up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JEFF KECK,

Petitioner,

vs. NO: 16 WC 25878

VEE-JAY CEMENT CONTRACTING COMPANY,

Respondent.

DECISION AND OPINION ON REVIEW

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

Prior to the start of the Arbitration hearing, the parties acknowledged that there was no dispute as to the left ankle injury. The parties further acknowledged that all temporary total disability (TTD) benefits, between August 10, 2016 and June 8, 2021, have been paid totaling $127,954.32. The Respondent disputed causal connection as it related to the alleged low back injury, liability for certain medical bills, and the need for prospective medical treatment consisting of an L4-L5 disc replacement as recommended by Dr. Matthew Gornet.

The Commission modifies the Decision of the Arbitrator and finds that the Petitioner established that his low back condition is causally related to the August 9, 2016 work-related

accident. The Petitioner sustained an undisputed injury to his left ankle on August 9, 2016 resulting in two left ankle surgeries. The first was on February 21, 2017 and the second was on May 17, 2018. While recovering from the second surgery, the Petitioner sustained an injury to his low back on July 7, 2018. The Petitioner stated that he was walking up a few stairs in his home to get to his freezer when he put his left foot down and experienced a sharp pain through his left ankle. This caused him to fall forward and injure his low back. T.22. He was wearing a CAM boot over his left foot at the time of the fall.

To be compensable under the Act, a claimant's work-related accident must be a causative factor in his condition of ill-being, but it need not be the sole or primary cause. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d at 193, 205, 797 N.E.2d 665, 673 (2003). "Every 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, 786, 821 N.E.2d 807, 812, 290 Ill. Dec. 495 (2005). Where a claimant suffers a second injury due to treatment for the first work-related injury, the chain of causation is not broken. *International Harvester Company v. Industrial Comm'n*, 46 Ill. 2d 238, 245, 263 N.E.2d 49, 53 (1970).

The Commission should apply a "but-for" test to determine whether a subsequent injury is causally related to the initial workplace injury. This test requires the trier of fact to determine whether the subsequent injury "was caused by an [e]vent which would not have occurred had it not been for the original injury." *International Harvester*, 46 Ill. 2d at 245, 263 N.E.2d at 53. This test "extend[s] to cases where the event immediately causing the second injury was not itself caused by the first injury, yet but for the first injury, the second event would not have been injurious." *Id.* at 245, 263 N.E.2d at 53-54. The supreme court in *International Harvester* noted that "[c]lear illustrations of this chain of causation" include "cases where a second injury occurs due to treatment for the first." *Id.*

Here, the evidence establishes that the Petitioner sustained an undisputed injury to his left ankle resulting in two surgeries. The Petitioner was provided a CAM boot as a result of the second surgery. Petitioner was wearing the CAM boot when he experienced pain in his left ankle causing him to fall and injure his back. Applying the above test, the Commission finds that Petitioner would not have been in a CAM boot and would not have experienced left ankle pain causing him to fall “but for” the original injury and subsequent surgeries to the left ankle. Therefore, the Commission finds that the low back injury is causally related to the original work accident of August 9, 2016.

Furthermore, it is well-established that a claimant with a preexisting condition may recover where the employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm’n*, 92 Ill. 2d 30, 36, 440 N.E.2d 861, 65 Ill. Dec. 6 (1982). The evidence demonstrates that the Petitioner had prior complaints at L4-L5. However, the record establishes that the Petitioner was not actively receiving low back treatment immediately prior to the fall and there were no recommendations for surgical intervention. It was only after the fall that the

Petitioner began to undergo regular treatment to his low back and that surgery was recommended. Therefore, the evidence establishes that the fall aggravated Petitioner's degenerative condition.

Turning to prospective medical treatment, the Commission finds the opinion of Dr. Matthew Gornet persuasive. Petitioner began treating with Dr. Gornet after injuring his low back. Dr. Gornet reviewed the MRI from July 11, 2018 and noted that it revealed an annular tear with a high intensity zone centrally at L4-L5. Dr. Gornet noted that the fall, as described, could easily aggravate or cause a disc injury. Dr. Gornet ultimately recommended a single level disc replacement at L4-L5 on April 11, 2019. Dr. Gornet opined that that need for surgery and his symptoms were causally related to the July 7, 2018 injury. PX.9.

The Commission is not persuaded by the opinions rendered by Dr. Michael Chabot and Dr. Christopher O'Boynick. Dr. Chabot disputed the need for the disc replacement. Based upon his review of the records, he found no evidence of an acute injury. PX.1. pg.39. He further stated that the July 7, 2018 injury did not aggravate or exacerbate the chronic degenerative condition at L4-L5. PX.1. pg.46. He thought Petitioner may have sustained a strain injury, which caused his complaints. RX.1. pg.52. Dr. Chabot acknowledged, however, that there were no records showing Petitioner complained of back pain prior to the accident. RX.1. pg.63. He further acknowledged that there was no surgical recommendation prior to July 7, 2018. RX.1. p.g52.

Following his review of the records, Dr. O'Boynick diagnosed Petitioner with low back pain with a possible lumbar strain, lumbar spondylolisthesis at L4-L5 with a disc herniation at L4-L5 and a degenerative L4-L5 annular tear. RX.2. pg.28. He testified that it was possible that the low back pain, secondary to a lumbar strain, may have resulted from the injury. *Id.* He testified that the Petitioner was not a surgical candidate, however. *Id.* Dr. O'Boynick acknowledged that none of the records prior to the fall recommended an MRI, an orthopedic surgeon or pain management. RX.2. pg.37.

While Dr. Gornet may not have reviewed all the prior medical records, the Commission finds that this omission is not fatal to his opinion. Dr. Gornet's opinion, as to the need for the disc replacement, is supported by the fact there are no records prior to the fall indicating that Petitioner needed surgical intervention. The prior records also establish that the Petitioner was not under active medical treatment. It was only after the fall that Petitioner began to undergo consistent treatment to the low back.

The Commission finds that the opinions of Dr. Chabot and Dr. O'Boynick are not supported by the record. Their opinions fail to account for the fact that Petitioner was asymptomatic immediately prior to the injury and that his condition never returned to its pre-injury state. They acknowledge that there was no surgical recommendation prior to the accident and they further acknowledge that Petitioner was not complaining of back pain prior to the accident. It was only after the accident that the Petitioner began to regularly complain of back pain. Therefore, as Petitioner established that his low back condition is causally related to the work-related accident

and that the proposed surgery is related to the injury, Petitioner is entitled to prospective medical treatment consisting of the disc replacement at L4-L5 as recommended by Dr. Gornet.

The Commission further finds that the medical treatment provided to the Petitioner's low back was reasonable and necessary. Petitioner's exhibit 7 establishes that there remains an outstanding balance of $9,200.00 to Multicare Specialists and $460.00 to Dr. Gornet for treatment provided to the Petitioner's low back. Therefore, the Petitioner is entitled to payment of the outstanding medical expenses totaling $9,660.00.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 2, 2021, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $9,660.00 ($9,200.00 to Multicare Specialists and $460.00 to Dr. Gornet) for medical expenses under §8(a) of the Act and subject to the medical fee schedule.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent 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 $9,800.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

January 13, 2022

/s/*Marc Parker*
Marc Parker

CAH/tdm
O: 1/6/22
052

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

DISSENT

I respectfully dissent from the Decision of the Majority. I would have affirmed and adopted the well-reasoned Decision of the Arbitrator.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC025878
Case Name	KECK, JEFF v. VEE JAY CEMENT CONTRACTING COMPANY
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	David Galanti
Respondent Attorney	Donald Murphy

DATE FILED: 8/2/2021

THE INTEREST RATE FOR THE WEEK OF JULY 27, 2021 0.05%

/s/ William Gallagher, 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
19(b)

Jeff Keck
Employee/Petitioner

Case # 16 WC 25878

v.

Consolidated cases: n/a

Vee Jay Cement Contracting Company
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on June 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. ☒ Is Petitioner entitled to any prospective medical care?
L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, August 9, 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 $39,897.84; the average weekly wage was $763.42.

On the date of accident, Petitioner was 42 years of age, married with 0 dependent child(ren).

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

Respondent shall be given a credit of $127,954.32 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $127,954.32.

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

ORDER

Based upon the Arbitrator's Conclusions of Law attached hereto, Respondent is liable for the medical expenses incurred by Petitioner in regard to his left foot/ankle injury, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule, for which they have already made payment through the date of trial. Respondent is not liable for the medical services incurred by Petitioner in regard to his low back.

Based upon the Arbitrator's Conclusions of Law attached hereto, Petitioner's claim for prospective medical treatment in regard to his low back is denied.

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

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

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

William R. Gallagher, Arbitrator
ICArbDec19(b)

AUGUST 2, 2021

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment by Respondent on August 9, 2016. According to the Application, Petitioner "Tripped on rebar carrying wood" and sustained an injury to his "Left foot" (Arbitrator's Exhibit 2). This case was tried in a 19(b) proceeding and Petitioner sought an order for payment of medical bills as well as prospective medical treatment. Petitioner and Respondent stipulated temporary total disability benefits had been paid in full and Respondent was continuing to pay temporary total disability benefits to Petitioner (Arbitrator's Exhibit 1).

Petitioner alleged that, because of his left foot injury, he sustained another accident while at his residence on July 7, 2018, in which he injured his low back. The medical bills for which Petitioner sought payment were for treatment Petitioner received in regard to his low back condition. The prospective medical treatment sought by Petitioner was disc replacement surgery as recommended by Dr. Matthew Gornet, an orthopedic surgeon. Respondent disputed liability on the basis of causal relationship in regard to Petitioner's low back condition, but stipulated to liability for the medical bills incurred as a result of Petitioner's left foot injury, subject to the fee schedule (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a laborer. On August 9, 2016, Petitioner was picking up 2 x 6 pieces of lumber while he was in the process of stepping over rebar used to build concrete forms. Petitioner tripped over the rebar and the rebar locked his left foot/ankle and into place, but Petitioner's body continued to move forward. At that time, Petitioner's left ankle popped and Petitioner experienced an immediate onset of left ankle pain. Petitioner did not have any low back complaints at the time of the accident.

As noted herein, Petitioner has received an extensive amount of medical treatment in regard to his left ankle injury. Because the primary dispute in this proceeding is in regard to the subsequent accident of July 7, 2018, and Petitioner's low back condition, the Arbitrator will briefly summarize the medical treatment Petitioner received for his left ankle injury.

Following the accident of August 9, 2016, Petitioner was seen that same day at Gateway Regional Medical Center. Petitioner advised he hurt his left ankle at work while carrying lumbar. An x-ray was taken of the left ankle which was interpreted as being normal. Petitioner was diagnosed as having sustained an ankle sprain and was discharged (Petitioner's Exhibit 1).

Petitioner subsequently sought treatment at Multicare Specialists where he had been treated previously for a variety of health issues. Petitioner was initially seen there on August 11, 2016, and advised of the accident of two days prior. Petitioner was diagnosed as having sustained a tear of the left talofibular ligament. Petitioner was authorized to be off work and physical therapy and an MRI scan were ordered (Petitioner's Exhibit 2; pp 726-729).

The MRI was performed on August 16, 2016. According to the radiologist, the MRI revealed a longitudinal split tear of the peroneus brevis, tears of the talofibular and calcaneofibular ligaments and a lateral dome osteochondral lesion with chondral stripping and subcortical edema (Petitioner's Exhibit 16).

Petitioner was referred to Dr. George Paletta, an orthopedic surgeon, who evaluated him on August 31, 2016. Dr. Paletta diagnosed Petitioner with a lateral ankle sprain and longitudinal split tear of

the peroneal tendon. Dr. Paletta ordered a repeat MRI scan and subsequently recommended Petitioner undergo surgery (Petitioner's Exhibit 3).

Dr. Paletta performed surgery on February 21, 2017. The surgery consisted of arthroscopy with debridement and chondroplasty of the talar dome lesion, debridement of the longitudinal split of the peroneal tendon and an open Brostrom procedure using an internal brace (Petitioner's Exhibit 6).

Dr. Paletta continued to treat Petitioner following surgery and ordered physical therapy. When he last saw Petitioner on October 18, 2017, Petitioner continued to complain of left ankle pain, swelling and difficulty walking on uneven surfaces. Dr. Paletta opined Petitioner had persistent left ankle pain and ordered an MRI scan (Petitioner's Exhibit 3).

The MRI was performed on October 18, 2017, and Dr. Paletta subsequently reviewed the study. Dr. Paletta opined there were postsurgical changes in peroneal tendinitis and an irregularity of the peroneal tendons. He referred Petitioner to Dr. Mahesh Bagwe, an orthopedic surgeon specializing in treatment of feet/ankles (Petitioner's Exhibit 3).

Dr. Bagwe evaluated Petitioner on April 4, 2018. At that time, Petitioner continued to have significant left ankle/foot complaints. Dr. Bagwe recommended Petitioner undergo another surgery (Petitioner's Exhibit 7).

Dr. Bagwe performed surgery on May 17, 2018. The procedure consisted of arthroscopy with debridement of osteochondral injury of the superolateral talar dome, repair of peroneal brevis tendon, lateral ankle ligament reconstruction and first metatarsal dorsal flexion osteotomy (Petitioner's Exhibit 7).

Dr. Bagwe continued to treat Petitioner following surgery, but Petitioner continued to have left ankle/foot complaints which included numbness along the sural nerve distribution. When Dr. Bagwe saw Petitioner on August 3, 2018, he recommended Petitioner undergo EMG studies (Petitioner's Exhibit 7).

The EMG was performed on September 13, 2018. Dr. Bagwe reviewed the results of the EMG on September 18, 2018, and noted they revealed multiple nerve abnormalities including the sural and peroneal distribution. When Dr. Bagwe last saw Petitioner on December 14, 2018, Petitioner continued to have significant left ankle/foot complaints. Dr. Bagwe opined Petitioner was at MMI and imposed permanent work restrictions of no lifting/carrying more than 40 pounds, no walking on uneven surfaces and no climbing ladders (Petitioner's Exhibit 7).

At trial, Petitioner testified that while he was at his home on July 7, 2018, he was in the process of walking up four steps, experienced a sharp pain in his left foot, fell forward on the steps and injured his low back. Petitioner denied he sustained any type of twisting type injury. At the time of the accident, Petitioner said he was wearing a "moon boot" on his left foot. Petitioner testified his wife definitely saw him sustain the fall and his mother, sister-in-law and other family members were also present at the time it occurred, but he was not certain if they witnessed him fall or not. However, Petitioner also testified that his brother-in-law assisted him in getting up after he sustained the fall.

Following the accident of July 7, 2018, Petitioner sought treatment at Multicare Specialists on July 9, 2018. According to its records of that date, Petitioner advised that he was walking up stairs and his back gave out or he felt a sharp pain in his back. Petitioner advised he was wearing a CAM boot at the time of the incident. Petitioner was diagnosed as having a protrusion of the lumbar disc. An MRI was ordered and Petitioner was referred to Dr. Gornet (Petitioner's Exhibit 2).

The MRI was performed on July 11, 2018. According the radiologist, the MRI revealed a likely annular tear and broad-based protrusion at L4-L5 (Petitioner's Exhibit 16).

Dr. Gornet saw Petitioner on July 13, 2018. According to his record of that date, Petitioner injured his back at home on July 7, 2018, while walking up some steps while wearing a moon boot. Petitioner's left foot gave out which caused Petitioner to fall. When he did so, Petitioner heard a pop in his back and experienced immediate pain. Dr. Gornet reviewed the MRI of July 11, 2018, and his interpretation of it was consistent with that of the radiologist. He opined the fall sustained by Petitioner could aggravate or cause a disc injury. He prescribed medication and continued physical therapy and authorized Petitioner remain off work (Petitioner's Exhibit 9).

As previously noted herein, Dr. Bagwe treated Petitioner for his left ankle injury. When Dr. Bagwe saw Petitioner on July 13, 2018, Petitioner informed him of the accident of July 7, 2018. According to Dr. Bagwe's record of that date, on July 7, 2018, Petitioner slipped on the step while wearing his boot and felt pain and a pop (Petitioner's Exhibit 7).

Dr. Gornet saw Petitioner on August 23, 2018. At that time, Petitioner continued to complain of low back and leg pain, right more than left. Dr. Gornet referred Petitioner to Dr. Helen Blake, a pain management specialist, for an epidural injection on the right at L4-L5 (Petitioner's Exhibit 9).

Dr. Blake saw Petitioner on September 18, 2018. At that time, she administered and epidural injection on the right at L4-L5 (Petitioner's Exhibit 17).

Dr. Gornet evaluated Petitioner on October 25, 2018. Petitioner continued to have low back and leg pain, right more than left. Petitioner advised the injection he received from Dr. Blake did not provide any sustained relief. Dr. Gornet recommended Petitioner undergo discography at L3-L4 and L5-S1 and MRI spectroscopy; however, he noted Petitioner weighed 282 pounds. He directed Petitioner to get his weight down to 260 pounds before he performed the diagnostic tests (Petitioner's Exhibit 9).

When Dr. Gornet saw Petitioner on February 2, 2019, Petitioner weighed 250 pounds. Dr. Gornet noted he would proceed with the discography and MRI spectroscopy he had previously recommended (Petitioner's Exhibit 9).

Dr. Gornet performed a discogram at L5-S1 on March 20, 2019. The disc was determined to be non-provocative with no evidence of an annular tear (Petitioner's Exhibit 12).

When Dr. Gornet saw Petitioner on April 11, 2019, he noted that the MRI spectroscopy revealed normal chemical levels. Because the discogram at L5-S1 was normal, Dr. Gornet did not perform one at L3-L4. Dr. Gornet opined Petitioner had discogenic pain at L4-L5 and he recommended Petitioner undergo disc replacement surgery at that level (Petitioner's Exhibit 9).

At the direction of Respondent, Petitioner was examined by Dr. Michael Chabot, an orthopedic surgeon, on February 21, 2019. In connection with his examination of Petitioner, Dr. Chabot reviewed medical records and diagnostic studies provided to him by Respondent. When seen by Dr. Chabot, Petitioner advised him of the accident of August 9, 2016, and the subsequent accident of July 7, 2018. In regard to the accident of July 7, 2018, Petitioner advised he was wearing a left foot CAM walker and was going up stairs when his left foot gave out. Petitioner said he lost his balance and fell onto his knees and twisted his back (Respondent's Exhibit 1; Deposition Exhibit B).

When seen by Dr. Chabot on February 21, 2019, Petitioner also completed a questionnaire in which he described the accident of August 9, 2016, and July 7, 2018. In regard to the accident of July 7, 2018, Petitioner noted he sustained the injury to his low back when his left ankle "gave out" (Respondent's Exhibit 1; Deposition Exhibit F).

In regard to Petitioner's low back, Dr. Chabot opined Petitioner sustained a trip and fall at home when his left foot gave out, but described it as being a "possibility" because Petitioner described a low energy mechanism of injury. Dr. Chabot opined Petitioner had sustained a lumbosacral strain and additional conservative treatment was indicated. He also opined any surgery at L4-L5 would be to address chronic degenerative changes at that level (Respondent's Exhibit 1; Deposition Exhibit B).

Petitioner was seen by Dr. James Doll, a physiatrist, on May 16, 2019. In regard to the accident of July 7, 2018, Petitioner advised Dr. Doll he was wearing a moon boot, was on the last step, the moon boot twisted which caused him to fall forward injuring his low back. Dr. Doll opined Petitioner had sustained a lumbosacral/sacroiliac joint strain and disc protrusion at L4-L5. He recommended conservative treatment and a right sacroiliac joint injection (Petitioner's Exhibit 13).

Petitioner underwent a right sacroiliac joint injection on May 21, 2019. When Petitioner was again seen by Dr. Doll on August 5, 2019, he advised he continued to have low back pain and the injection did not help. Dr. Doll recommended Petitioner undergo a Functional Capacity Evaluation (FCE), but Petitioner declined to do so (Petitioner's Exhibit 13 and 14).

Petitioner received physical therapy from June 24, 2019, to July 12, 2019. According to the physical therapy record of June 24, 2019, Petitioner injured his low back in July, 2018, as a result of tripping/falling from walking in a CAM walker, landing forward and on the right side of his body (Petitioner's Exhibit 15).

Dr. Chabot examined Petitioner on November 18, 2019. In connection with his examination of Petitioner, Dr. Chabot reviewed up-to-date medical records and diagnostic studies provided to him by Respondent. Dr. Chabot opined there were no positive objective findings on examination, Petitioner had degenerative changes at L4-L5 which were not aggravated/exacerbated by the accident of July 7, 2018, and back surgery was not appropriate (Respondent's Exhibit 1; Deposition Exhibit D).

Dr. Chabot again saw Petitioner on January 29, 2020. In connection with his examination of Petitioner, Dr. Chabot reviewed up-to-date medical records provided to him by Respondent. Dr. Chabot opined the conclusions he previously stated in his prior report were unchanged. He reaffirmed his opinion Petitioner was at MMI in regard to his back, the injury of July 7, 2018, did

not aggravate/exacerbate the degenerative changes at L4-L5 and Petitioner was not a candidate for surgery at L4-L5 (Respondent's Exhibit 1; Deposition Exhibit E).

Dr. Gornet subsequently evaluated Petitioner on August 20, 2020, and April 5, 2021. On both occasions, he renewed his recommendation Petitioner undergo disc replacement surgery at L4-L5 (Petitioner's Exhibit 9).

At the direction of Respondent, Dr. Christopher O'Boynick, an orthopedic surgeon, performed a review of Petitioner's medical records on April 20, 2020. He did not examine Petitioner. In regard to the accident of July 7, 2018, Dr. O'Boynick noted that details of how the accident occurred varied in the documents he reviewed. He noted some of them indicated Petitioner's left foot gave out which caused him to lose his balance and fall to his knees twisting his back. Other documents noted Petitioner's back gave out while climbing the stairs and still other documents indicated Petitioner's left foot gave way causing him to sustain a twisting injury to his back (Respondent's Exhibit 2; Deposition Exhibit 2).

In regard to Petitioner's low back condition, Dr. O'Boynick opined Petitioner had sustained a strain injury to the lumbar spine in regard to the L4-L5 disc. He noted Petitioner had degenerative disease at that level, but opined Petitioner's current complaints were not related to same and Petitioner did not sustain an aggravation of the pre-existing degenerative condition. He opined some additional conservative treatment for Petitioner's low back complaints was indicated, but the surgery recommended by Dr. Gornet would be for the pre-existing degenerative condition (Respondent's Exhibit 2; Deposition Exhibit 2).

Dr. Gornet was deposed on August 17, 2020, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Gornet's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. Specifically, Dr. Gornet testified Petitioner informed him that he had sustained an accident on July 7, 2018, while he was walking up some steps and his left foot gave out on him causing him to fall and Petitioner heard a pop in his back and experienced an onset of immediate pain. Dr. Gornet testified Petitioner's low back condition was related to the accident of July 7, 2018 (Petitioner's Exhibit 10; pp 6, 12).

Dr. Gornet described his findings on examination and the review of the diagnostic tests that he ordered. He testified Petitioner had sustained an injury to the disc at L4-L5 and disc replacement surgery at that level was appropriate (Petitioner's Exhibit 10; p 12).

On cross-examination, Dr. Gornet agreed the purpose of the moon boot was to immobilize the foot and ankle region. He confirmed Petitioner informed him that his left foot gave out while he was wearing the moon boot (Petitioner's Exhibit 10; p 14).

Dr. Chabot was deposed on October 16, 2020, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Chabot's testimony was consistent with his medical reports and he reaffirmed the opinions contained therein. In regard to his examination of Petitioner of February 21, 2019, Dr. Chabot testified Petitioner sustained an injury at home while wearing a left foot CAM walker. Petitioner said he was going up some steps, his left foot gave out, Petitioner lost his balance, fell to his knees and twisted his back. Dr. Chabot described the CAM boot as being a "rigid orthosis" that supports the foot, ankle and lower extremity and it runs to the upper third of the calf. The purpose of it is to keep the foot and ankle "solidly in place" and immobilize the ankle (Respondent's Exhibit 1; p 12).

When questioned how Petitioner's ankle could give out while wearing a CAM boot, Dr. Chabot testified "…physiologically it doesn't seem to be able to happen because the ankle is being supported by a rigid orthosis. I don't really understand how it could give out and that happen." (Respondent's Exhibit 1; pp 12-13).

Dr. O'Boynick was deposed on October 22, 2020, and his deposition testimony was received into evidence at trial. On direct examination, Dr. O'Boynick's testimony was consistent with his medical report and he reaffirmed the opinions contained therein. In regard to the fall of July 7, 2018, Dr. O'Boynick testified the CAM boot was similar to a ski boot and it was designed to immobilize the ankle and provide support. He said that if the CAM boot was properly fitted, it would not permit ankle joint flexion. Dr. O'Boynick also testified the documents he reviewed provided with a couple of versions of how Petitioner had sustained the accident on July 7, 2018 (Respondent's Exhibit 2; pp 9-10).

At trial, Respondent tendered into evidence two reports of surveillance conducted on Petitioner on May 24, 2021 and June 3, 2021, as well as a video of Petitioner obtained on May 24, 2021. The surveillance reports describe Petitioner as driving a vehicle, going shopping, walking/bending and talking to an individual. The report of May 24, 2021, also described Petitioner as stepping onto the bed of a truck, sliding a tire toward him, sliding the tire out of the truck and rolling it out of sight (Respondent's Exhibits 4 and 5).

The video tendered by Respondent was of Petitioner moving the tire as noted in the surveillance report of May 24, 2021. The Arbitrator has reviewed the video and it is consistent with the description contained in the surveillance report. However, the Arbitrator noted that after Petitioner slid the tire across the bed of the truck, he let it drop and made no effort or attempt to pick it up (Respondent's Exhibit 6). At trial, Petitioner and Respondent stipulated the weight of the tire was 50 pounds.

On cross-examination, Petitioner admitted he had a criminal record and had been convicted of three felonies, aggravated DUI, burglary and theft.

Petitioner testified he continues to experience low back pain. He wants to proceed with the surgery as recommended by Dr. Gornet.

Conclusions of Law

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

The Arbitrator concludes Petitioner's current condition of ill-being in regard to his left foot/ankle is causally related to the accident of August 9, 2016.

The Arbitrator concludes Petitioner's current condition of ill-being in regard to his low back is not causally related to the accident of August 9, 2016.

In support of these conclusions the Arbitrator does the following:

Petitioner and Respondent stipulated Petitioner's left foot/ankle condition was related to the accident of August 9, 2016.

Petitioner provided several histories as to how the subsequent accident of July 7, 2018, occurred. At trial, Petitioner testified he was at home on July 7, 2018, and, while wearing a moon boot, was in the process of walking up four steps, experienced a sharp pain in his left foot, fell forward on the steps and injured his low back. Petitioner denied sustaining any twisting type injury. Petitioner testified his wife definitely witnessed the accident, but she did not testify on his behalf at trial. He also testified his brother-in-law helped him get up after he sustained the fall, but he likewise he did not testify at trial either.

When Petitioner was seen at Multicare Specialists on July 9, 2018, he advised he was walking up stairs and his back gave out or he felt a sharp pain in his back.

When Dr. Gornet saw Petitioner on July 13, 2018, Petitioner advised he was walking up some steps while wearing a moon boot, his left foot gave out on him which caused him to fall. However, Dr. Gornet agreed on cross-examination the purpose of the moon boot was to immobilize the foot and ankle region.

When Petitioner was seen by Dr. Bagwe on July 13, 2018, he provided a slightly different history of the accident of July 7, 2018. Petitioner told Dr. Bagwe that on July 7, 2018, he slipped on a step while wearing his boot and felt pain.

When Petitioner was evaluated by Dr. Chabot on February 21, 2019, he informed him that on July 7, 2018, while wearing a CAM walker, he was going up some stairs, his left foot gave out, he lost his balance and fell to his knees twisting his back. However, as noted herein, at trial, Petitioner denied having sustained a twisting injury.

When he was deposed, Dr. Chabot described in detail the CAM boot Petitioner was wearing and noted it was a "rigid orthosis" that supported the foot, ankle and lower leg extending to the upper third of the calf. He stated the purpose of the CAM boot was to keep the foot and ankle "solidly in place" and that, physiologically, he did not understand how Petitioner's ankle would give out.

Respondent's record reviewing physician, Dr. O'Boynick, also noted the variances in the histories as to how Petitioner sustained the accident on July 7, 2018.

Given the inconsistencies in the histories provided by Petitioner at trial and those he provided to various medical providers and the fact his left foot/ankle was immobilized in the CAM boot, the Arbitrator finds Petitioner's low back injury is not causally related to the accident or whatever occurred on July 7, 2018.

The fact Petitioner is a convicted felon also impacts his credibility as a witness.

The Arbitrator is not persuaded by the reports of the surveillance conducted on Petitioner or the video of same that was tendered into evidence. As noted herein, the only activity Petitioner performed of any significance was moving/sliding the tire across the truck bed, he made no attempt to pick it up or absorb its weight.

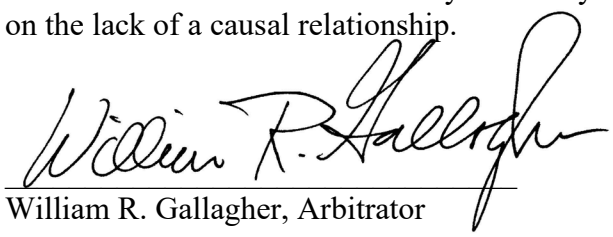
In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

Based on the Arbitrator's conclusion of law in disputed issue (F) Arbitrator concludes Respondent is not liable for medical bills incurred by Petitioner in regard to his low back condition.

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

Based on the Arbitrator's conclusion of law in disputed issue (F) the Arbitrator concludes Petitioner is not entitled to the prospective medical treatment sought by Petitioner in this proceeding, namely, the disc replacement surgery recommended by Dr. Gornet.

The Arbitrator makes no finding as to whether the disc replacement surgery recommended by Dr. Gornet is reasonable and medically necessary. The Arbitrator's conclusion of law is based solely on the lack of a causal relationship.



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC003534
Case Name	PALMER, GRAYSON v. CITY OF MARION
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0020
Number of Pages of Decision	11
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Kylee Jordan

DATE FILED: 1/14/2022

/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

GRAYSON PALMER,

Petitioner,

vs. NO: 20 WC 3534

CITY OF MARION,

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 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.

Although we affirm the permanent partial disability award of 20% of Petitioner-as-a-whole under §8(d)2 of the Act, we modify the analysis of two of the permanency factors in §8.1b(b) of the Act.

For factor (iv), future earning capacity, we find there is no evidence of any reduction in earning capacity and give this factor no weight.

Regarding factor (v), evidence of disability corroborated by the treating medical records, we note Petitioner testified that, as of the date of hearing on May 17, 2021, he was taking Meloxicam twice a day for his pain. *T.18.* On cross-examination, he testified that this was prescribed by Dr. Gornet and Petitioner's last appointment with him was on February 8, 2021. *T.24*. Petitioner testified:

Q. Okay. So how do you get your refills from him since then?
A. So far I haven't had to have any refills.

Q. So your last refill was in February of 2021?
A. I don't know if that's accurate or not. At the time that he issued my last Meloxicam, he gave me, I think, two bottles or thereabouts, so I just haven't ran out yet.
Q. Okay. And did he indicate to you whether or not he thought you would need to continue taking Meloxicam?
A. If memory serves me right, I think he said just call his office, and we could get that refilled.
Q. Okay. And do you have any idea how many were in each bottle?
A. I don't. *T.24-25.*

In contrast, Dr. Gornet's December 3, 2020 record reflects a prescription for 60 days of Meloxicam (7.5 mg p.o. b.i.d.), which was filled in the office. *Px5*. This would equal 120 pills (60 days x 2 per day). In the record of the final visit on February 8, 2021, there is no mention of renewing or refilling that prescription. There are no subsequent records in evidence reflecting a prescription for Meloxicam. Therefore, the medical records do not corroborate Petitioner's testimony that he continues to take Meloxicam twice a day. We agree that this factor is given greater weight but hereby modify the decision to find that Petitioner's testimony regarding the Meloxicam is not corroborated by the medical records and to delete the word "fully" before "corroborated by his treating records." *Dec. 8*.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 19, 2021, 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.

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.

January 14, 2022

/s/ *Maria E. Portela*

SE/
O: 1/11/22
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/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC003534
Case Name	PALMER, GRAYSON v. CITY OF MARION
Consolidated Cases	
Proceeding Type	Request
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Kylee Jordan

DATE FILED: 7/19/2021

THE INTEREST RATE FOR THE WEEK OF JULY 13, 2021 0.05%

/s/ Linda Cantrell, 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
NATURE AND EXTENT ONLY

GRAYSON PALMER
Employee/Petitioner

v.

CITY OF MARION
Employer/Respondent

Case # **20** WC **003534**

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 **Collinsville**, on **May 17, 2021**. By stipulation, the parties agree:

On the date of accident, **2/12/19**, 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 $**57,664.20**, and the average weekly wage was $**1,153.29**.

At the time of injury, Petitioner was **45** years of age, ***married*** with **2** dependent children.

Necessary medical services and temporary compensation benefits have been **or will be** provided by Respondent. **Respondent agrees to pay all reasonable, necessary, and causally related medical bills pursuant to the Illinois Medical Fee Schedule through Petitioner's MMI date of 2/8/21.**

Respondent shall be given a credit of $**67,330.20** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**67,330.20**.

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 $**691.97**/week for a further period of **100** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused permanent partial disability of **20% loss of Petitioner's body as a whole as a result of Petitioner's lumbar spine injury.**

Respondent shall pay Petitioner compensation that has accrued from **February 8, 2021** through **May 17, 2021**, and may 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.

JULY 18, 2021

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATOR DECISION
NATURE AND EXTENT ONLY

GRAYSON PALMER,	)	
	)	
Petitioner,	)	
	)	Case No: 20-WC-003534
v.	)	
	)	
CITY OF MARION,	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Collinsville on May 17, 2021. The parties stipulate that on February 12, 2019, Petitioner was employed as a fire fighter for Respondent, that he sustained accidental injuries that arose out of and in the course of his employment, and that his current condition of ill-being is causally related to his injury. The only issue in dispute is the nature and extent of Petitioner's injuries. All other issues have been stipulated.

TESTIMONY

At the time of the injury Petitioner was 45 years of age, married, with two dependent children. Petitioner has been employed as a firefighter for the City of Marion for 22 years. Petitioner testified that on February 12, 2019 he was pulling on spots of a ceiling looking for hot spots after an active fire and felt something give way in his low back. Petitioner testified he did not have any similar symptoms in his low back prior to this accident.

Petitioner initially received medication and physical therapy which he stated aggravated his symptoms. He attempted to return to full duty work and was ultimately placed on light duty restrictions by Dr. Matthew Gornet. Petitioner underwent steroid injections at L4-5 and L5-S1 that did not improve his low back symptoms. He underwent medial branch blocks and facet ablations at both levels that did not alleviate his pain. He underwent a fusion at L5-S1 on 2/5/20 that dramatically improved his symptoms. Petitioner continues to have some residual symptoms. He testified that standing in place or walking for a long period of time aggravates his symptoms. Petitioner returned to full duty work on December 5, 2020. Petitioner testified that some work activities aggravate his symptoms, such as prolonged walking. He stated his hobbies have been affected by his work injury, including increased low symptoms while fishing due to prolonged standing. Petitioner takes Meloxicam twice per day for pain management.

On cross-examination, Petitioner testified he is able to perform his full job duties and has passed all physical examinations required for his position. When asked to describe his symptoms when they are aggravated, Petitioner stated it was both stiffness and pain that would begin after 30 to 45 minutes of prolonged standing and slow walking. He stated that his baseline pain is mild but if he does not sit and rest, it increased to a five or six out of ten on the pain scale. When asked if his pain was ever at a zero, he testified he did not know if zero would "quite get it," but it was tolerable.

MEDICAL HISTORY

On 2/13/19, Petitioner sought treatment at Heartland Regional Medical Group. Nurse Practitioner Rhonda Heatherly took Petitioner's history, noting that the previous day he was pulling a ceiling with a pipe pull and felt a pop in his back. Since then he has had intermittent left-sided low back pain with stabbing pain shooting into the buttock and left inner leg. His pain was made worse by standing, twisting, and climbing. Physical examination revealed tenderness to palpation to the area of L4-5. X-rays were taken and negative for acute abnormalities. Petitioner was assessed to have low back pain and strain of muscle, fascia, and tendon of his lower back. He was given a prescription of Naprosyn and orphenadrine and recommended to ice his back for 24 hours, continue working full duty, and follow up in one week. When Petitioner returned one week later he had continued symptoms. Nurse Practitioner Nicholas Shockley recommended Petitioner return to work full duty and begin physical therapy.

Petitioner began physical therapy at Heartland Regional Medical Group on 2/22/19. The physical therapist reported a consistent history. Petitioner reported pain in the left lower back, stiffness, and pain in the back side of his left leg after sitting. Petitioner was assessed to have left lumbar pain with mild SI joint dysfunction, soft tissue tightness in the lumbar paraspinals, quadratus lumborum, piriformis, and ITB. His symptoms increased with extension. He was to complete a three-week course of physical therapy, three times per week. At his last visit on 3/19/19, Petitioner continued to have left-sided low back pain with prolonged standing and sitting, as well as pain with reaching in a bent position.

Petitioner was evaluated by Dr. Adam LaBore on 4/11/19. Dr. LaBore noted Petitioner presented with left-sided low back pain following a work incident two months prior. Petitioner reported his pain was left-sided and varied from sharp to dull and moderate to severe. Dr. LaBore noted Petitioner tried physical therapy and was released to work but reaggravated his symptoms while performing his job duties. Physical examination revealed pain with lumbar range of motion and left hip range of motion. Dr. LaBore recommended additional physical therapy, a follow up in two weeks, and possible SI joint injections.

Petitioner resumed physical therapy and returned to Dr. LaBore on 5/8/19. Dr. LaBore noted that physical therapy had exacerbating Petitioner's symptoms. Physical examination showed pain with lumbar range of motion and localized axial pain in the left L5/S1 paraspinal. Dr. LaBore assessed Petitioner with left lumbar radicular pain, suspected L4 versus L5 segment, and he recommended a lumbar MRI. Petitioner was prescribed a Medrol Dosepak.

The following day, Petitioner was seen by Dr. Matthew Gornet for an initial spine examination. Dr. Gornet took his history, noting he presented with low back pain to the left side with occasional left buttock and hip pain following a work accident on 2/12/19. Petitioner reported he was using a pry bar to pull material off a ceiling to look for hot spots and in so doing, he felt a collapsing feeling in his back. He attempted to finish his shift, but his pain and stiffness increased. He noted Petitioner's treatment history to date. Petitioner also reported a distant history of chiropractic care 10-20 years ago with strains in the past, but nothing significant, as he had been working full duty as a firefighter for 19 years. His symptoms were noted as constant and worsened with prolonged sitting, standing, bending, or lifting. Dr. Gornet noted Petitioner had light duty restrictions but was not working. Examination revealed pain with bending and forward flexion. Dr. Gornet assessed a disc injury and opined Petitioner's symptoms were causally connected to his work injury. Dr. Gornet recommended an MRI and kept Petitioner's restrictions the same.

On 5/13/19, Petitioner underwent a lumbar MRI that revealed beaking of the L5-S1 disc and a strong suggestion of an annular tear, suggestion of an annular tear at L4-5, some facet changes and fluid in the joint, and possible hypertrophy on the left L5-S1. Dr. Gornet recommended steroid injections at L5-S1 and L4-5 on the left. If that did not improve Petitioner's symptoms, Dr. Gornet recommended medical branch blocks and facet rhizotomies at both levels. If all of those treatment options failed, Dr. Gornet noted additional studies would be indicated in the form of discography at L4-5 and L5-S1 and a MRI spectroscopy.

Petitioner underwent injections at L5-S1 with Dr. Helen Blake on 6/4/19 and at L4-5 on 6/18/19. On 7/15/19, Petitioner reported the injections helped some of the pain into his left leg, but not all of it. Due to his continued symptoms, Dr. Gornet recommended medial branch blocks and facet rhizotomies at L4-5 and L5-S1 on the left side. Petitioner underwent left-sided medial branch blocks on 7/30/19 at L4-5 and L5-S1. Dr. Blake noted Petitioner felt some relief for an hour and a half after the medial branch blocks, but the pain fully returned. Dr. Blake recommended a radiofrequency ablation at both levels on the left, which was performed on 8/20/19.

On 9/30/19, Petitioner returned to Dr. Gornet and reported the medial branch blocks and left-sided RFAs helped some of his hip pain and buttock pain, but he still had significant low back pain that affected all aspects of his life and his quality of life. Dr. Gornet recommended an MRI spectroscopy from L3 to S1 and a CT discogram from L3 to S1. Petitioner was prescribed Ciprofloxacin. The MRI spectroscopy was performed on 10/11/19 and the CT discogram was performed on 10/15/19 that revealed beaking of the posterior disc at L5-S1 and reproduction of buttock pain when L5-S1 was stimulated. Dr. Gornet diagnosed a moderately provocation disc at L5-S1 with some concordant pain.

Dr. Gornet noted the CT discogram indicated pain at L5-S1 at a level of 5 out of 10 and the MRI spectroscopy revealed pain as a 5.8 out of 10 at L5-S1. He noted the CT portion also revealed facet changes bilaterally at L5-S1 left greater than right. He believed Petitioner's increasing back and left buttock pain related to irritation of his facet joints. Dr. Gornet's working diagnosis was discogenic pain at L5-S1, but more significant facet pain. He noted Petitioner's

options were to live with his current symptoms or undergo a fusion at L5-S1. Petitioner indicated he wished to proceed with surgery due to his continued symptoms. On 2/3/20, Petitioner returned to Dr. Gornet for a pre-operative appointment and he was placed him off work.

On 2/5/20, Dr. Gornet performed an anterior decompression at L5-S1 and an anterior lumbar fusion at L5-S1. Dr. Gornet noted Petitioner was doing well two weeks postop and x-rays revealed good positioning of the lumbar devices. He was ordered to remain off work and follow up in four weeks. When Petitioner returned to Dr. Gornet on 3/19/20 he was doing well but had some achiness. X-rays showed good positioning of his lumbar devices. Dr. Gornet recommended he continue using his bone stimulator and remain off work. On 5/19/20, Petitioner reported he was doing moderately well. A CT scan revealed good early bone consolidation, but it was not fully healed yet. Dr. Gornet placed Petitioner on light duty, prescribed Meloxicam, calcium citrate, and vitamin D3 2000 IU, and ordered physical therapy.

Petitioner underwent physical therapy at Athletico from 5/20/20 through 6/26/20. On 7/20/20, Dr. Gornet noted Petitioner continued to make slow improvement. He recommended continued physical therapy. On 9/24/20, Dr. Gornet again noted Petitioner continued to make good slow improvement. Petitioner reported his left-sided pain was gone, but he was still having some right-sided pain, which Dr. Gornet believed was due to his facet joint not being completely consolidated. A CT scan was taken of his lumbar spine and showed early bone consolidation. It also showed slow closure of his left facet joint and not his right. Dr. Gornet recommended two more months of aggressive physical therapy. Petitioner completed the additional two months of physical therapy and returned to Dr. Gornet on 12/3/20. Dr. Gornet noted Petitioner was doing well and had completed his conditioning and workouts. Dr. Gornet released Petitioner to work full duty with no restrictions beginning on 12/5/20.

Petitioner returned to Dr. Gornet on 2/8/21 at which it was noted Petitioner was working full duty without restrictions. A CT scan was performed that revealed a solid fusion at L5-S1. Dr. Gornet noted clinically Petitioner had done very well. He placed Petitioner at maximum medical improvement.

CONCLUSIONS OF LAW

Pursuant to Section 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).

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that neither party submitted an impairment rating. 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 Petitioner continues to work as a firefighter. Petitioner's testimony and his medical records reflect his job requires physical activity involving his back, which Petitioner has been able to return to for the most part but has some residual symptoms with certain activities. The Arbitrator places some weight on this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes Petitioner was 45 years of age at the time of the accident. He is a younger individual and must live and work with his disability for an extended period of time. Pursuant to *Jones v. Southwest Airlines*, 16 I.W.C.C. 0137 (2016) (wherein the Commission concluded that greater weight should have been given to the fact that Petitioner was younger [46 years of age] and would have to work with his disability for an extended period of time). The Arbitrator places some weight on this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earning capacity, the Arbitrator notes that there is no evidence of reduced earning capacity contained in the record and Petitioner testified his salary has increased since the date of his accident. The Arbitrator gives greater 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 sustained disc pathology at L5-S1 and significant facet changes at L5-S1. Despite conservative care through prescriptions, physical therapy, steroid injections, medial branch blocks, and radiofrequency ablations, Petitioner's symptoms persisted. Petitioner underwent an anterior decompression at L5-S1 and an anterior lumbar fusion at L5-S1 on 2/5/20. He underwent extensive post-operative physical therapy and his recovery was slow. Although the surgery improved much of Petitioner's pain, he still experiences symptoms. He testified he has stiffness and pain with prolonged standing or slow walking. He experiences these symptoms both at work and outside of work. Petitioner's hobby of fishing and activities such as shopping with his wife have been adversely effected, as he now has stiffness and pain with prolonged activity. Petitioner testified he uses medication to manage his symptoms, taking two doses of Meloxicam per day. Petitioner's description of his disability is fully corroborated by his treating records. As a result, the Arbitrator places greater weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained serious and permanent injuries that resulted in 20% loss of the body as a whole under Section 8(d)2 of the Act.

Linda J. Cantrell, Arbitrator

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC024975
Case Name	LOPEZ, GRACIELA v. PEOPLE 4 U INC.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remanded Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0021
Number of Pages of Decision	22
Decision Issued By	Maria Portela, Commissioner, Thomas Tyrrell, Commissioner

Petitioner Attorney	Christopher Bassmaji
Respondent Attorney	MALLORY ZIMET

DATE FILED: 1/18/2022

/s/Maria Portela, Commissioner

Signature

DISSENT

/s/Thomas Tyrrell, 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

GRACIELA LOPEZ,

Petitioner,

vs. NO: 19 WC 24975

PEOPLE 4 U, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent and the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, prospective medical treatment, temporary total disability benefits, the denial of Respondent's Dedimus Postatem Motion, and Sections 16, 19(k) and 19(l) penalties and fees and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, but makes a clarification 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).

In the third paragraph under the Order section, the Commission strikes the last sentence beginning with "Further, this Arbitrator…"

The Commission additionally strikes the last sentence of the first paragraph as well as the last sentence of the last paragraph under Section L beginning with "Further, this Arbitrator…"

Finally, the Commission corrects the two scrivener's errors and revises the following in the second paragraph under Section "L": the Commission replaces "June 28, 2020" with "June 28, 2019" and replaces "August 28, 2020" with "August 28, 2019".

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 1, 2021 is hereby affirmed and adopted with the changes 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 $36,410.00. 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.

January 18, 2022 /s/ *Maria E. Portela*

MEP/dmm

O: 112321 /s/ *Kathryn A. Doerries*

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DISSENT AND PARTIAL CONCURRENCE

After carefully considering the totality of the evidence, I concur with the majority that Petitioner met his burden of proving that her current condition of ill-being is related to the accident, as well as her entitlement to temporary total disability benefits, reasonable and necessary and medical expenses, and prospective medical treatment. However, I respectfully dissent from the opinion of the majority and would reverse the Decision of the Arbitrator on the issue of penalties and fees.

Petitioner sustained an undisputed accident on June 28, 2019, wherein she fell on her arms and knees, causing injuries to her right knee. After being diagnosed with a contusion by Working Well, Petitioner continued to have complaints of pain and sought treatment with Dr. Forman on

August 28, 2019. Dr. Forman ordered an MRI which showed a torn medial and lateral meniscus. Dr. Forman recommended right knee arthroscopy on September 11, 2019. This recommendation continued through September 23, 2020. Dr. Forman opined that this injury was consistent with her work-related accident on June 28, 2019.

Additionally, Petitioner demonstrated credible testimony, consistency with regards to the mechanism of injury, and no prior condition of ill-being to her right knee. As the Arbitrator correctly observed, all of the medical records, accident reports, and even Respondent's video of the accident, evidence her twisting her right knee and falling onto her bilateral hands and bilateral knees.

Despite this evidence, Respondent terminated benefits on October 29, 2019 without justification. Contrary to the majority, I respectfully disagree with the denial of penalties under Section 19(k) and Fees under Section 16.[1]

Petitioner was taken off work by Dr. Forman on August 28, 2019. She was never given a release to return to work after that date. Petitioner did not submit to Section 12 Examination with Dr. Bush-Joseph until January 8, 2020. At that time, Dr. Bush-Joseph opined that Petitioner was not at MMI and that the work injury likely caused an aggravation or acceleration of Petitioner's condition of ill-being. Dr. Bush-Joseph supplemented his opinion on March 22, 2020, where he definitively connected Petitioner's condition of ill-being and the need for surgery recommended by Dr. Forman.[2]

Respondent argued it needed clarification of Dr. Bush-Joseph's opinions, but this was not a good faith basis to cease payment of benefits. This argument is without merit because they terminated benefits on October 29, 2019, well before they scheduled a Section 12 Examination on January 8, 2020. Further, Respondent did not even file its Dedimus Potestatum until August 5, 2020.

In *Bd. of Educ. V. Indus. Comm'n (Tully)*, 93 Ill.2d 1 (1982), the Illinois Supreme Court held that where a delay has occurred in payment of workers' compensation benefits, the employer bears the burden of justifying the delay and the standard is one of objective reasonableness in its belief. Thus, it is not good enough to merely assert honest belief that the employee's claim is invalid or that his award is not supported by the evidence; the employer's belief is "honest" only if the facts which a reasonable person in the employer's position would have. *Id*., at 9-10.

In denying compensation, Respondent has not reasonably relied in good faith on a medical opinion, and has not demonstrated a reasonable belief that its denial of liability was justified under

[1] Penalties pursuant to Section 19(l) were properly denied, as no written demand for payment of benefits was entered into evidence to trigger same.

[2] While the Arbitrator correctly denied Respondent's Motion for Dedimus Potestatum, Respondent offered these reports into evidence with this motion, without limiting their use for the purpose of arguing the merits of said motion.

the circumstances. To the contrary, Respondent was in possession of the opinions of its own Section 12 Examiner providing causal connection and need for surgery.

For the forgoing reasons, I would affirm the Decision of the Arbitrator, but reverse to award penalties and fees pursuant to Sections 19(k) and 16.

o: 11/23/2021
TJT/ahs
51

/s/ *Thomas J. Tyrrell*
Thomas J. Tyrrell

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

LOPEZ, GRACIELA
Employee/Petitioner

Case# **19WC024975**

PEOPLE 4 U INC
Employer/Respondent

On 3/1/2021, 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:

4069 LAW OFFICE OF JONATHAN SCHLACK
CHRISTOPHER BASSMAJI
200 N LASALLE ST SUITE 2830
CHICAGO, IL 60601

5001 GAIDO & FINTZEN
ANDREA CARLSON
30 N LASALLE ST SUITE 3010
CHICAGO, IL 60602

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

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

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

GRACIELA LOPEZ
Employee/Petitioner

v.

PEOPLE 4 U, INC.
Employer/Respondent

Case # **19** WC **24975**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **William McLaughlin**, Arbitrator of the Commission, in the city of **Chicago,** on **September 30, 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. ☒ 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?

FINDINGS

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

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

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

In the year preceding the injury, Petitioner earned $**16,328.00**; the average weekly wage was $**314.00**.

On the date of accident, Petitioner was **58** years of age, ***married*** with **0** dependent children.

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

Respondent shall be given a credit of $**3,148.47** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**3,148.47**.

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

ORDER

Petitioner's current state of ill-being is causally related to the work-related injury.

Petitioner was married at the time of the accident.

This Arbitrator awards TTD benefits for August 28, 2019 through September 30, 2020, representing 57 weeks of TTD benefits in the amount of $14,421.00. Respondent shall be given a credit of $3,148.47 for TTD already paid. Therefore, Respondent shall pay $11,272.53 directly to Petitioner. Further, this Arbitrator awards ongoing TTD benefits.

All medical treatment incurred thus far had been reasonable and necessary and awards payment of same to Petitioner pursuant to the fee schedule.

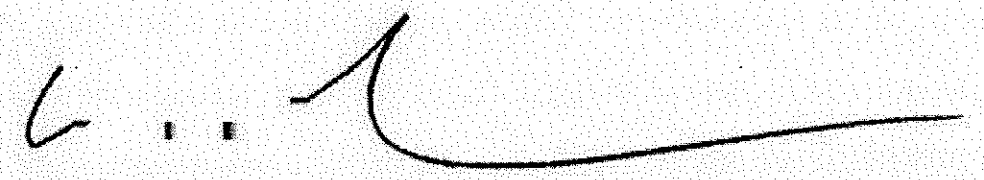
The prospective medical treatment, arthroscopy of the right knee, is reasonable and necessary awards payment of same pursuant to the fee schedule.

This Arbitrator imposes no penalties and fees upon Respondent pursuant to Section 19 of the Act.

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

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

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



Signature of Arbitrator

2/11/21
Date

ICArbDec19(b)

MAR 1 - 2021

FINDING OF FACTS

Petitioner Graciela Lopez, testified that she was employed by Respondent, People 4 U, Inc., which is a staffing agency (Tr. Trans., at 12). She testified that Respondent sent her to work at Ed Miniat, which is a cold meat processing plant located in South Holland, IL (Id., at 12-14). She began working at the meat processing plant in the middle of 2019 (Id., at 14). She testified that her position was a meat weigher, which required her to weigh meat such as chicken for packaging (Id.).

While working for Respondent on June 28, 2019 in her usual and normal position as a meat weigher (Tr. Trans., at 15) she was going on break when she tripped, twisted her right knee and fell onto her bilateral hand and bilateral knees (Id., at 15-17). Petitioner testified that the fall and pain was mostly to her right knee (Id., at 17). After she sustained her injuries, Petitioner testified that she went to the Ed Miniat office and reported the accident (Id., at 17-18). Petitioner testified that she sought medical treatment for her injuries due to the pain (Id., at 18).

Petitioner first sought treatment at the company clinic, Working Well, on July 1, 2019 (Pet. Ex. 1, at 5). Petitioner was treated by Dr. Ward, who noted Petitioner told him she fell at work on June 28, 2019 onto her hands and knees (Id.). It was noted Petitioner's main pain complaints were her right hand and right knee (Id.). Petitioner was diagnosed with contusions of the right wrist and right knee due to the injury at work (Id., at 7). Dr. Ward recommended over-the-counter medications,a right wrist brace and right knee brace (Id.). Petitioner was released to work full duty, without restrictions (Id.). Petitioner returned to Dr. Ward at Working Well on July 5, 2020 for recheck (Id., at 12). Petitioner's main complaint was pain her right knee and it was noted the pain in the right knee was present since the date of the injury (Id.). Even though she continued to complain of pain, Dr. Ward discharged Petitioner from care (Id., at 13).

Petitioner was examined by Dr. Edward Foreman at Chi-town Orthopedics & Sports Medicine on August 28, 2019 (Pet. Ex. 2, at 9). Dr. Foreman noted that Petitioner fell at work on June 28, 2019 injuring her bilateral knees, right worse than left (Id.). Petitioner's main pain complaint was sharp, stabbing, and shooting pain in the right knee, which started after the injury at work (Id.). Dr. Foreman noted no prior injuries (Id.).

Petitioner was diagnosed with knee pain and had a positive McMurray test of the right knee (Id., at 10-11). Dr. Foreman ordered an MRI of the right knee (Id., at 11), prescribed medication and restricted Petitioner from returning to work entirely (Id., at 12-17).

On September 5, 2019, Petitioner underwent an MRI of the right knee at Oak Brook Imaging as ordered by Dr. Foreman (Pet. Ex. 3, at 3). The MRI revealed a large horizontal medial meniscal tear involving the posterior horn extending into the mid-body region, a lateral meniscal tear involving the mid-body with blunting/irregularity, and joint effusion (Id., at 3-4).

Petitioner returned to Dr. Foreman at Chi-town Orthopedics & Sports Medicine on September 11, 2019 (Pet. Ex. 2, at 18). Petitioner continued to complain of pain in the right knee (Id.). Dr. Foreman noted Petitioner had a positive McMurray test of the right knee (Id., at 19). Dr. Foreman reviewed the MRI of the right knee and noted a tear of the medial meniscus and tear of the lateral meniscus with a large effusion (Id.). After conducting the physical exam and reviewing the MRI, Dr. Foreman recommended Petitioner undergo arthroscopic evaluation with partial meniscectomy/meniscal repair and if needed arthroplasty (Id.). Dr. Foreman recommended Petitioner start physical therapy and remain off work (Id., at 19-21). Dr. Foreman stated he was waiting insurance approval of the surgery (Id., at 19). However, on September 26, 2019, the request for surgery was denied without explanation (Id., at 24).

On September 17, 2019, Petitioner began physical therapy pursuant to direction of Dr. Foreman at Advanced Physical Medical Centers to be supervised by Physical Therapist Mitchel Bershader (Pet. Ex. 4, at 4). Mr. Bershader noted that Petitioner presented to physical therapy due to a work related injury on June 28, 2019 when she slipped and fell landing on her right knee (Id.). Mr. Bershader opined that Petitioner's "complaints and current condition are a result of accident on 6/29/19" (Id., at 5). Mr. Bershader opined that Petitioner would benefit from a course of physical therapy and recommended Petitioner be seen 2-3 times a week for 4 weeks (Id.). Petitioner continued with physical therapy and was seen by Mr. Bershader sixteen (16) times through November 27, 2019 (Id., at 6-15). During these visits, Petitioner continued to have right knee pain as well as decreased right knee strength (Id.).

Petitioner returned to Dr. Foreman at Chi-town Orthopedics & Sports Medicine on October 23, 2019 (Pet. Ex. 2, at 25). Petitioner continued to complain of right knee pain with knee effusion (Id., at 25-26). Petitioner was prescribed medication, continue physical therapy, and remain off work (Id., at 26-31). Dr. Foreman recommended surgical intervention and continued treatment while approval for the surgery was pending. (Id., at 26). Petitioner returned to Dr. Foreman at Ch-itown Orthopedics & Sports Medicine on December 4, 2019 (Pet. Ex. 2, at 32). Petitioner continued to complain of right knee pain (Id.). Petitioner was prescribed medication, was to continue physical therapy, and was to remain off work (Id., at 33-38). Dr. Foreman recommended surgical intervention and stated that they continue to await insurance approval for the right knee surgery recommended (Id., at 33). Further, Dr. Foreman noted Petitioner was scheduled for an independent medical evaluation in January of 2020, and she was to return to his office following that exam (Id., at 32-33).

Petitioner returned to Dr. Foreman at Chi-town Orthopedics & Sports Medicine on January 29, 2020 (Pet. Ex. 2, at 39). Petitioner presented with continued pain of the right knee (Id.). Dr. Foreman noted that Petitioner did undergo an independent medical evaluation but did not receive the report or results of the exam (Id.). Dr. Foreman opined, "with her clinical exam and physical findings, that she still would benefit from a right knee arthroscopy" (Id., at 40). Petitioner was prescribed medication, was to continue physical therapy, and was to remain off work (Id., at 40-45). Dr. Foreman stated that he will await the results of the IME and that they continued to await insurance approval of the surgical procedure (Id., at 40).

Petitioner returned to Dr. Foreman at Chi-town Orthopedics & Sports Medicine on July 29, 2020 (Pet. Ex. 2, at 46). Petitioner presented with continued pain in her right knee (Id.). Dr. Foreman noted that the "patient is still having quite a bit of pain and discomfort in her right knee" (Id.). Dr. Foreman stated that "nothing has changed since I last saw her prior to the beginning of the pandemic" (Id.). Dr. Foreman noted that Petitioner did undergo her IME, which recommended that Petitioner should undergo right knee surgery (Id.). Petitioner was prescribed medication, was to continue physical therapy, and was to remain off work (Id., at 47-50). Dr. Foreman stated that they would try to proceed with surgery of the right knee (Id., at 47).

Petitioner returned to Dr. Foreman at Ch-itown Orthopedics & Sports Medicine on September 23, 2020 (Pet. Ex. 2, at 51). Petitioner presented with continued pain in her right knee (Id.). Dr. Foreman noted, "The Patient is still having the same symptomology that she has had since June 28, 2019, when she fell at work and injured her right knee. As has been documented in my previous notes, the patient denied any prior history of injury or trauma to the right knee prior to this work related accident on June 28, 2019. She has been worked up and evaluated and diagnosed with internal derangement of the right knee with a torn medial meniscus" (Id.). Dr. Foreman performed a McMurray test, which remained positive (Id., at 52). Dr. Foreman noted that Petitioner's symptomology has been going on for several months and that she continued to have evidence consistent with a torn medial meniscus, which is "consistent with a work related injury from June 28, 2019" (Id.). Dr. Foreman once again opined that Petitioner would benefit from a right knee arthroscopy and that they continue to await insurance approval for the surgical procedure (Id.). Petitioner was to remain off work (Id., at 53-54).

Petitioner testified that as of the day of trial, she remains under the care of Dr. Foreman and that she had just been examined him one week prior to trial (Tr. Trans. at 20-21). She testified that Dr. Foreman recommended she undergo surgery, which she wants. (Id., at 23). Petitioner testified that she continues to have pain in her right knee, which is a burning pain that prevents her from doing household chores and move around (Id., at 24-25). She has been off-work from June 28, 2019 to the present and has not worked anywhere else since that time (Id., at 23-24). Petitioner testified that she has not had any new accidents or incidents since June 28, 2019 (Id., at 24). Prior to June 28, 2019, Petitioner testified that she did not experience any pain in her right knee (Id.). Further, prior to June 28, 2019, Petitioner testified that she never sought medical treatment for her right knee (Id.).

CONCLUSIONS OF LAW

(F), whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds the following facts:

The Petitioner must prove that some act or phase of the employment was a causative factor in a subsequent injury. The Petitioner must prove that the injury was a causative factor only, so the Petitioner does not have to prove that the injury was the sole or principal factor of the resulting injury. City of Chicago v. Industrial Commission, 45 Ill. 2d 350, 259 N.E. 2d 5 (1970). No compensation may be awarded, if the condition or injury cannot be traced to a definite time, place, and cause and no evidence shows the work activity caused the physical condition. Johnson v. Industrial Commission, 89 Ill. 2d. 438, 60 Ill. Dec. 607, 433 N.E. 2d 649 (1982). Casual connection between an accident and a Petitioner's condition may be established by a chain of events. Sears, Roebuck & Co. v. Industrial Commission, 334 Ill. 246, 165 N.E. 689 (1929).

Even though the parties stipulated that Petitioner did sustain a work-related accident on June 28, 2019 arising out of and in the course of her employment with Respondent, Respondent alleges that Petitioner's present condition of ill-being is not causally related to the work-related accident of June 28, 2019. Whereas, Petitioner asserts that her present condition of ill-being is causally related to the accident of June, 28, 2019. The Arbratior considered Petitioner's testimony the medical records admitted into evidence, as well as the video in concluding that the Petitioner's current condition of ill-being is causally related to the work injury of June 28, 2019.

Petitioner testified that she was employed by Respondent, People 4 U, Inc., which is a staffing agency. She testified that Respondent sent her to work at Ed Miniat, which is a cold meat processing plant located in

South Holland, IL. She began working at the meat processing plant in the middle of 2019 as a meat weigher. Her job duties included weighing meat such as chicken for packaging.

Petitioner testified that she was working for Respondent on June 28, 2019 in her usual and normal position as a meat weigher. On this day, she was going to break when she tripped, twisted her right knee and fell onto her bilateral hand and bilateral knees. Petitioner testified that the fall and pain was mostly to her right knee. After she sustained her injuries, Petitioner testified that she went to the Ed Miniat office and reported the accident. Petitioner testified that she sought medical treatment for her injuries due to the pain.

Petitioner testified and medical records reflect that Petitioner never had any prior injuries to her right knee and never complained of any pain in her right knee. Further, Petitioner testified and medical records reflect that Petitioner never received medical treatment for her right knee in her past.

Arbitrator finds Petitioner sustained a an injury to her right knee as a result of the occurrence on June 28, 2019 that arose out of and in the course of her employment with Respondent. The causal connection between Petitioner's current ill-being and her June 28, 2019 work accident has been corroborated by medical evidence and witness testimony. Petitioner's injury to her right knee is causally related to her work-related injury on June 28, 2019 and is compensable.

Respondent has offered little evidence of any kind to rebut said findings.

This Arbitrator finds that Petitioner's testimony was credible. In *Thorson v. Carlson Roofing Company, a dissenting opinion* went into great detail about what Arbitrators and Commissioners are to consider when judging credibility of a witnesses at trial. 97 WC 48199, 2001 Ill. Wrk. Comp. LEXIS 120. The five criteria outlined by Commissioner Gilgis, were: "1) witness' demeanor, 2) interest or motivation of the witness, 3) probability or improbability of the witness' version, 4) internal inconsistencies in the witness' testimony and conduct and 5) external inconsistencies when the witness' testimony as compared to other evidence, both direct and circumstantial." (Id.) The Arbitrator relies on such factors in concluding that Petitioner was credible.

This Arbitrator observed Petitioner give her testimony in a very calm manner. Petitioner's history of her accident has been very consistent throughout her testimony and the medical records. The history has been

consistently described as Petitioner tripping, twisting her right knee and falling onto her bilateral hands and bilateral knees. All of the medical records, accident reports, and even Respondent's video of the accident (Resp. Ex. 2), evidence her twisting her right knee and falling onto her bilateral hands and bilateral knees. Thus, this Arbitrator finds that Petitioner was credible.

Therefore, this Arbitrator finds that Petitioner sustained injury to her right knee arising out of and in the course of her employment with Respondent. Furthermore, given the temporal relationship between the accident and the onset of pain, this Arbitrator finds that Petitioner's right knee condition was caused or aggravated by her work duties as shown through the direct credible medical evidence and testimony presented at the hearing.

(I), what Petitioner's marital status was at the time of the accident, this Arbitrator find the following:

Petitioner testified that she was married on the date of the accident, June 28, 2019 (Tr. Trans. 10-11 and 35-36). She was divorced in December, which was six months after the accident (Id.). Petitioner also offered into evidence her marriage certificate and testified that this was her marriage certificate (Id., at 11). Arbitrator finds that Petitioner was, in fact, married at the time of the accident.

(J), whether medical treatment rendered was reasonable and necessary, this Arbitrator finds the following:

Section 8 (a) of the Workers' Compensation Act states that an employer shall provide and pay… all necessary medical, surgical and hospital services thereafter incurred, limited, however to that which is reasonably required to cure or relieve the affects of the accidental injury…

Petitioner, through her testimony and through her exhibits, testified she began treating at Working Well on July 1, 2019 for her work related injuries to her right knee, left knee, right hand, and left hand. There are no outstanding charges for Working Well (*see* Pet. Ex. 1, at 2-4).

Subsequently, Petitioner treated with Dr. Edward Foreman at Chi-town Orthopedics & Sports Medicine. Petitioner treated at Chi-town Orthopedics & Sports Medicine from August 28, 2019 through September 23, 2020. There are currently outstanding charges for Chi-town Orthopedics & Sports Medicine in the amount of $344.00 (*see* Pet. Ex. 2, at 2-8).

Petitioner underwent an MRI of the right knee at Oak Brook X-ray and Imaging on September 5, 2019 as ordered by Dr. Foreman. There are currently outstanding charges for Oak Brook X-ray and Imaging in the amount of $2,900.00 (*see* Pet. Ex. 3, at 2).

Petitioner underwent physical therapy at Advanced Physical Medicine as ordered by Dr. Foreman. Petitioner treated at Advanced Physical Medicine from September 17, 2019 through November 27, 2019. There are currently outstanding charges for Advanced Physical Medicine in the amount of $2,128.31 (*see* Pet. Ex. 4, at 2-3).

As the records reflect and Petitioner testified, she was prescribed medication and cream by Dr. Foreman during the course of treatment (*see* Pet. Ex. 5, at 3-6). Petitioner was provided these prescriptions by Persistent Med. There are currently outstanding charges for Persistent Med in the amount of $19,664.70 (*see* Pet. Ex. 5, at 2).

This Arbitrator finds the testimony of Petitioner and Petitioner's treating physicians credible and finds that the treatment to date has been reasonable and necessary. All of Petitioner's treating physicians have consistently noted in their medical records that all treatment rendered was due to the work-related injury of June 28, 2019. Further, Respondent has not offered any witness testimony, expert reports, or evidence of any kind that shows Petitioner's treatment was not reasonable and necessary due to the work injury of June 28, 2019.

Therefore, this Arbitrator holds Respondent responsible for all outstanding medical charges incurred thus far pursuant to the fee schedule. These charges are $344.00 to Chi-town Orthopedics & Sports Medicine,

$2,900.00 to Oak Brook X-ray and Imaging, $2,128.31 to Advanced Physical Medicine, and $19,664.70 to Persistent Med, subject to the limitations of the fee schedule.

(K), whether the prospective medical treatment recommended is reasonable and necessary, this Arbitrator finds the following:

Section 8 (a) of the Workers' Compensation Act states that an employer shall provide and pay… all necessary medical, surgical and hospital services thereafter incurred, limited, however to that which is reasonably required to cure or relieve the affects of the accidental injury…

Given the findings above, this Arbitrator finds the testimony of Petitioner and Petitioner's physicians to be credible and orders Respondent to pay for and authorize the recommended prospective treatment of Dr. Foreman, namely the arthroscopy of the right knee.

Petitioner testified and the medical records reflect that Petitioner underwent conservative treatment from July 1, 2019 through September 23, 2020. During this time, Petitioner had consistent, persistent and severe pain in her right knee. Petitioner underwent an MRI of the right knee at Oak Brook Imaging on September 5, 2019 (*see* Pet. Ex. 3). The MRI revealed a large horizontal medial meniscal tear involving the posterior horn extending into the midbody region, a lateral meniscal tear involving the midbody with blunting/irregularity, and joint effusion. After having failed conservative treatment such as physical therapy and medication, Petitioner was recommended to undergo surgical intervention.

From August 28, 2019 through September 23, 2020, Petitioner was under the care of Dr. Foreman, an orthopedic surgeon, at Chit-town Orthopedics & Sports Medicine (*see* Pet. Ex. 2). After conducting the physical exam and reviewing the MRI, Dr. Foreman recommended Petitioner undergo arthroscopic evaluation with partial meniscectomy/meniscal repair and if needed arthroplasty. In the most recent visit with Dr. Foreman, which was one week before trial, Dr. Foreman noted, "The Patient is still having the same symptomology that she has had since June 28, 2019, when she fell at work and injured her right knee. As has been documented in my previous notes, the patient denied any prior history of injury or trauma to the right knee prior to this work related accident on June 28, 2019. She has been worked up and evaluated and diagnosed with internal derangement of the right knee with a torn medial meniscus." Dr. Foreman performed a McMurray test,

which remained positive. Dr. Foreman noted Petitioner's symptomology has been going on for several months and that she continued to have evidence consistent with a torn medial meniscus, which is "consistent with a work related injury from June 28, 2019." Dr. Foreman once again opined that Petitioner would benefit from a right knee arthroscopy and that they continue to await insurance approval for the surgical procedure.

Petitioner had been seeing Dr. Foreman for over one year. Dr. Foreman first recommended surgery on September 11, 2019 (*see* Pet. Ex. 2, at 18-19). Dr. Foreman's office received a denial to their request for surgery authorization from Respondent's insurance adjuster without any explanation for the denial on September 26, 2019 (Id. at 24). Petitioner continued to follow up with Dr. Foreman through September 23, 2020. Dr. Foreman recommended surgery of the right knee at every single visit from September 11, 2019 through her last visit of September 23, 2020. He continued to note that they awaited insurance approval for the surgery at every single visit. Petitioner has been recommended to undergo surgical intervention of the right knee for over one year, and Respondent has not offered any explanation as to why the request for authorization for the surgical procedure was denied.

Petitioner testified that as of the day of trial, she remains under the care of Dr. Foreman and that she had just seen him one week prior to trial. She testified that Dr. Foreman recommended she undergo surgery, and she wants to proceed with the surgery recommended by Dr. Foreman. Petitioner testified that she continues to have pain in her right knee, which is a burning pain that prevents her from doing household chores and move around. Petitioner testified that she has not had any new accidents or incidents since June 28, 2019. Prior to June 28, 2019, Petitioner testified that she did not experience any pain in her right knee. Further, prior to June 28, 2019, Petitioner testified that she never sought medical treatment for her right knee.

Respondent has not offered any witness testimony, expert reports, or evidence of any kind that shows Petitioner's the prospective treatment, namely the arthroscopy of the right knee, is not reasonable and necessary due to the work injury of June 28, 2019.

It is evident from the medical records and witness testimony that Petitioner is a surgical candidate. This Arbitrator finds the testimony of Petitioner and Petitioner's treating physicians credible and finds that the

prospective treatment is reasonable and necessary. This Arbitrator holds Respondent liable for any and all outstanding medical charges to be incurred for this prospective medical treatment pursuant to the fee schedule.

(L), whether the Petitioner is entitled to Temporary Benefits pursuant to 19(b) of the Act, this Arbitrator finds the following:

Pursuant to the findings above, this Arbitrator finds the testimony of Petitioner and Petitioner's treating physicians credible and awards Petitioner TTD benefits for the period of August 28, 2019 through September 30, 2020, representing 57 weeks of TTD benefits. Further, this Arbitrator awards ongoing TTD benefits to the present pursuant to the Act.

As the medical records reflect and as Petitioner testified, Petitioner has not worked for Respondent since June 28, 2020 and has not worked anywhere since. However, it was not until August 28, 2020 when her doctor took her off work. Petitioner has been consistently treating through the date of this trial and has been consistently placed off work from August 28, 2019 through September 30, 2020. Further, Petitioner remains off work pending surgery as recommended by Dr. Foreman. To the date of this trial, Petitioner has yet to undergo surgery due to lack of authorization, and therefore remains off work. It is clear that Petitioner is unable to return to work given that she is recommended for surgery and taken off work by Dr. Foreman as evidenced by her work statuses (*see* Pet. Ex. 2, at 13-14, 20-21, 28-29, 37-38, 44-45, 49-50, and 53-54).

Respondent has not offered any witness testimony, expert reports, or evidence of any kind that contradicts Petitioner's work statuses or defends their position for not paying TTD benefits.

Therefore, this Arbitrator finds the testimony along with Petitioner's exhibits are credible and finds that Petitioner is entitled to TTD benefits from August 28, 2019 through September 30, 2020. This Arbitrator finds that Respondent is liable for all related time periods and orders Respondent to pay benefits representing 57 weeks.

The parties agree that the average weekly wage is $314.00. As evidenced above, Petitioner was married with no dependent children at the time of the accident. Therefore, Petitioner is at the statutory minimum TTD

rate of $253.00. Thus, this Arbitrator orders Respondent to pay $14,421.00 to Petitioner ($253.00 x 57 Weeks). Further, this Arbitrator awards ongoing TTD benefits to the present pursuant to the Act.

(M), whether penalties or fees should be imposed upon Respondent, this Arbitrator finds the following:

The Arbitrator declines to impose penalties and fees upon Respondent. It is well-settled that the imposition of penalties and attorneys' fees under Section 19(k) and Section 16, in particular, is discretionary. McMahan v. Industrial Comm'n, 183 Ill.2d 499, 515 (1998). The standard for awarding penalties and attorney fees under Sections 19(k) and 16 is higher than the standard for awarding penalties under Section 19(L). Id. It is not enough for the claimant to show that the employer simply failed, neglected, or refused to make payment or unreasonably delayed payment without good and just cause to award penalties under Sections 19(k) and 16. Both require a vexatious delay in payment. Vulcan Materials Co. v. Industrial Comm'n, 362 IllApp.3d 1147, 1150 (2005).

Respondent was not acting in bad faith by disputing this claim based on the causal connection between the injury and the Petitioner's current condition. Respondent acted in good faith in requesting the evidence deposition of Dr. Bush-Joseph and filing a Dedimus Potestatem (which was denied) seeking to clarify the opinions offered in the report of Dr. Bush-Joseph (Rx. 5 and 6).

Additionally, Respondent paid $3,148.47 in temporary total disability benefits. Respondent also made payment of various medical benefits while they investigated this claim. Respondent's Exhibit 1 shows consistent payment history in this case. Respondent's actions in delaying payments while they sought to clarify the opinion of Dr. Bush-Joseph were not unreasonable.

As to medical bills, most of the medical bills were paid, as shown in Respondent's Exhibit 1, and Petitioner does not itemize a claim for unpaid benefits. Respondent's failure to pay the unpaid medical bills was not in bad faith because the existence of unpaid medical bills was never told to Respondent. Additionally, 19(l) penalties are not appropriate. Section 19(l) provides that Petitioner must make a written demand for payment of benefits under Section 8(a) or 8(b). The evidence in this case is clear that this written demand was never made.

The Arbitrator concludes that the cumulative actions of Respondent were not unreasonable and do not prove a level of callousness required for an imposition of penalties and fees under Sections 19(K), 19(l) and 16.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC017641
Case Name	PEREZ,JAIME v. SONOCO ALLOYD
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0022
Number of Pages of Decision	25
Decision Issued By	Thomas Tyrrell, Commisisoner, Thomas Tyrrell, Commissioner

Petitioner Attorney	Gary Newland
Respondent Attorney	Dennis Noble

DATE FILED: 1/20/2022

/s/ Thomas Tyrrell, Commissioner

Signature

DISSENT

/s/ Thomas Tyrrell, Commissioner

Signature

22IWCC0022

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 Down (Nature & Extent)	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jaime Perez,

Petitioner,

vs. NO: 14 WC 17641

Sonoco Alloyd,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, medical bills, temporary total disability, penalties, and 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.

In the interest of efficiency, the Commission primarily relies on the Arbitrator's detailed recitation of facts. Petitioner has worked for Respondent for 30 years. Respondent produces blister cards that are found in packaging on products such as medicine, batteries, and similar products that hang from store shelves. On April 14, 2014, he was working as a packer in the pick and pack department. The blister cards are produced on large and heavy sheets. As a packer, Petitioner had to break the individual blister cards out of the sheets and pack them for shipping. Petitioner's job duties required the forceful and repetitive use of his hands, arms, wrists, and thumbs. On April 14, 2014, Petitioner developed pain first in his right hand and fingers while performing his job duties. He then developed the same pain in his left hand. Petitioner testified that it felt as if his hands and the tops of his fingers were burning.

Petitioner visited the company clinic later that day and was diagnosed with bilateral mild wrist sprains and de Quervain's tenosynovitis. Eventually, Dr. Freedberg, an orthopedic surgeon, diagnosed Petitioner with bilateral carpal tunnel syndrome with possible bilateral radial tunnel syndrome, bilateral thumb CMC degenerative joint disease, and bilateral elbow triceps tendinitis. A July 2014 EMG of the bilateral arms revealed evidence of moderate bilateral carpal tunnel syndrome involving sensory and motor fibers. Conservative treatment failed to resolve all of Petitioner's complaints, so Dr. Freedberg eventually recommended Petitioner undergo surgery. On February 16, 2015, Dr. Freedberg performed the following procedures: 1) left carpal tunnel

decompression; 2) release of Guyon's canal with a median nerve neurolysis; and, 3) left wrist release of the first dorsal compartment with extensor tendon repair. The post-operative diagnoses were left carpal tunnel syndrome and left de Quervain's syndrome. On April 10, 2015, Dr. Freedberg performed the following procedures: 1) right carpal tunnel decompression; 2) release of Guyon's canal with median nerve neurolysis; and, 3) release of the first dorsal compartment with repair of the abductor tendon. The post-operative diagnoses were right carpal tunnel syndrome and right de Quervain's syndrome with abductor tendon repair.

Petitioner attended physical therapy and work conditioning following the surgeries. The final work conditioning report in early November 2015 noted that Petitioner met five of the six identified long term goals. Petitioner was unable to lone-hand lift and carry 25 lbs. frequently. The therapist wrote that Petitioner "…continued to exhibit mild to moderately objective pain mannerisms and tightness for bilateral forearm and wrist musculature post UE exercises." (PX 8). Dr. Freedberg cleared Petitioner to return to work full duty on November 5, 2015, on a trial basis. Petitioner returned to work on December 21, 2015. Dr. Freedberg examined Petitioner on February 17, 2016. On that day, Petitioner complained of continued bilateral thumb pain and bilateral wrist weakness and grip. Petitioner reported that he was working with restrictions and no longer worked in the pick and pack department. Petitioner asked if the weakness and bilateral thumb pain would decrease with time; however, Dr. Freedberg did not address those concerns in the office visit note. Instead, he continued to allow Petitioner to work full duty and placed Petitioner at maximum medical improvement ("MMI").

Petitioner has not sought any additional treatment relating to this work injury since the February 2016 visit. He testified that when he returned to work in December 2015, Respondent no longer assigned him to the pick and pack department; instead, he primarily now works as a feeder in the coating department. Petitioner testified that this is a lighter duty position than that of a packer and it requires less use of his bilateral thumbs, hands, wrists, and elbows. Petitioner testified that he considers his current position to be light duty. Robert Urbanski, Respondent's witness, testified that when Petitioner returned to work in December 2015, Mr. Urbanski's supervisor told him to no longer assign Petitioner to the pack and pick line. Petitioner testified that he continues to have pain; however, his current pain differs from the initial pain he felt following the work incident. Petitioner testified that his pain increases at night and he occasionally takes Advil or Tylenol at night due to the pain.

The Arbitrator determined Petitioner met his burden of proving he sustained a 25% loss of use of both hands due to this work incident. Respectfully, the Commission views the evidence of permanent disability differently. Section 8(e)(9) of the Act states,

> "…if the accidental injury occurs on or after June 28, 2011…and if the accidental injury involves carpal tunnel syndrome due to repetitive or cumulative trauma, in which case the permanent partial disability shall not exceed 15% loss of use of the hand, except for cause shown by clear and convincing evidence and in which case the award shall not exceed 30% loss of use of the hand."

After carefully considering the totality of the evidence and analyzing the five factors pursuant to

Section 8.1b(b) of the Act, the Commission finds that Petitioner failed to show by clear and convincing evidence that there is cause to award a permanent partial disability award greater than 15% loss of use of either hand.

Petitioner underwent two surgeries and was diagnosed with bilateral carpal tunnel syndrome and bilateral de Quervain's syndrome following those surgeries. He also participated in extensive physical therapy and work conditioning. Petitioner last sought treatment relating to this work incident on February 17, 2016. During that final visit, he continued to complain of bilateral thumb pain and bilateral wrist weakness and grip. However, Dr. Freedberg placed Petitioner at MMI and released Petitioner to continue working without any restrictions.

Petitioner has continued to work full duty for Respondent since December 21, 2015. However, it is undisputed that Respondent unilaterally chose to no longer assign Petitioner to the pick and pack line. Petitioner credibly testified that unlike his original position as a packer, his current position does not require the repetitive and forceful use of his hands, thumbs, and wrists and involves lighter duty work. There is no evidence that this change in position affected Petitioner's earnings. While Petitioner continues to experience residual symptoms in his hands and wrists, these symptoms are not significant enough for Petitioner to seek additional medical treatment. Instead, Petitioner testified that he only takes over the counter pain medicine such as Tylenol and Advil occasionally at night. For the foregoing reasons, the Commission finds that Petitioner sustained a 15% loss of use of the left and right hands.

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 January 31, 2020, is modified as stated herein.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner temporary total disability benefits of **$601.55**/week for **74-2/7** weeks commencing **June 4, 2014,** through **November 5, 2015**, as provided in Section 8(b) of the Act. Respondent shall receive credit for **$6,403.20** for temporary total disability benefits it has already paid.

IT IS FURTHER ORDERED that Respondent shall pay reasonable and necessary medical services of **$177,037.93**, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner permanent partial disability benefits of **$541.39**/week for **57** weeks, because Petitioner's injuries caused a **15%** loss of use of the left hand and a **15%** loss of use of the right hand, as provided for in §8(e) 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.

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.

January 20, 2022

o: 11/23/21
TJT/jds
51

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

DISSENT

I respectfully dissent from the opinion of the majority and would affirm and adopt the Decision of the Arbitrator. After carefully considering the totality of the evidence, I believe Petitioner met his burden of proving the April 14, 2014, work incident caused him to sustain a 25% loss of use of both hands.

Over the past 30 years, Petitioner worked for Respondent primarily as a packer. Respondent produces blister cards that are found in packaging on products such as medicine, batteries, and other similar products that hang from store shelves. Petitioner's job as a packer required the forceful and repetitive use of both hands and arms, as well as the bilateral thumbs. On the date of accident, he began to feel burning and pain in both hands and fingers while working in the packer position. Petitioner eventually underwent bilateral carpal tunnel surgeries with release of the bilateral Guyon's canals and tendon repair.

I respectfully disagree with the majority's opinion that Petitioner only sustained a 15% loss of use of both of hands as a result of this work injury. Petitioner credibly testified that while he has not sought additional treatment relating to his injury, he continues to experience chronic pain in his bilateral hands, thumbs, fingers, wrists, and elbows. While the surgeries improved his symptoms, Petitioner credibly testified that he suffers from increased pain at night and occasionally takes Tylenol or Advil to lessen his chronic pain. The credible evidence corroborates Petitioner's testimony of ongoing symptoms relating to his repetitive trauma claim. While Dr. Freedberg, Petitioner's treating physician, did not prescribe permanent work restrictions, the final office visit note shows that Petitioner continued to complain of bilateral thumb pain as well as bilateral wrist and grip weakness. Furthermore, while Petitioner continues to work for Respondent, it is undisputed that Respondent no longer assigns Petitioner to work as a packer on the pick and pack line. Instead, Respondent has primarily assigned him to work as a feeder in the coating

department. This position requires much less intense and constant use of his hands and thumbs. Furthermore, the opinions and testimony of Dr. Alpert, Petitioner's Section 12 examiner, support a finding that Petitioner continues to suffer from significant and chronic symptoms several years after Dr. Freedberg placed Petitioner at MMI.

I believe the Arbitrator carefully weighed and evaluated the factors pursuant to Section 8.1b(b) of the Act and correctly determined that Petitioner met his burden of proving he sustained a loss of 25% loss of the use of his bilateral hands. While the 2011 Amendments to the Act limit the award of permanent partial disability for repetitive trauma injuries involving carpal tunnel syndrome to 15% loss of use of the hand, the Act allows an award of up to 30% loss of use of the hand in cases where cause is shown by clear and convincing evidence. After considering the totality of the evidence, I believe Petitioner met his burden of proving an entitlement to an award of permanent partial disability greater than 15% loss of use of the bilateral hands.

For the foregoing reasons, I would affirm and adopt the Decision of the Arbitrator in its entirety. Petitioner clearly met his burden of proving he sustained a 25% loss of use of both hands as a result of the April 14, 2014, injury.

/s/ *Thomas J. Tyrrell*
Thomas J. Tyrrell

22IWCC0022

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

PEREZ, JAIME
Employee/Petitioner

Case# **14WC017641**

SONOCO ALLOYD
Employer/Respondent

On 1/31/2020, 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 1.53% 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:

4963 NEWLAND & NEWLAND
MARY PAT DONOHUE
121 S WILKE AVE SUITE 301
ARLINGTON HTS, IL 60005

0000 NOBLE & ASSOCIATES
BRADLEY D MELZER
4355 WEAVER PKWY SUITE 340
WARRENVILLE, IL 60565

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

Jaime Perez
Employee/Petitioner
v.
Sonoco Alloyd
Employer/Respondent

Case # **14** WC **17641**

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 **Christine M. Ory**, Arbitrator of the Commission, in the city of **Wheaton**, on **November 19, 2019**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **April 14, 2014,** Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$49,920.64**; the average weekly wage was **$902.32**.

On the date of accident, Petitioner was **42** years of age, ***married*** with **3** dependent children.

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

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

To date, Respondent has paid **$6,403.20** in TTD and/or for maintenance benefits, and is entitled to a credit for any and all amounts paid

Respondent shall be given a credit of **$6,403.20** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$6,403.20.**

Respondent is entitled to a credit of **$7,231.26** under Section 8(j) of the Act.

ORDER

Medical Benefits

Respondent shall pay the sum of **$177,037.93** for medical bills in accordance with the fee schedule and §8 and §8.2, with credit to be given for any payments made directly by respondent, or pursuant to §8j.

Temporary Total Disability

Respondent shall pay Temporary Total Disability benefits from June 4, 2014 through November 5, 2015, or 74-2/7 weeks at the rate of $601.55.

Permanent Disability

Petitioner is entitled to 95 weeks at $541.39 per week as petitioner's permanent disability has resulted in 25% of both the right and the left hand (190 weeks) under § 8 (e) 9 of the Act.

Penalties and Attorneys' Fees

The claim for penalties and attorneys' fees are denied.

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.

Christine MOny

Signature of Arbitrator

January 29, 2020

Date

IC.ArbDec p. 2

JAN 31 2020

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jaime Perez	)	
Petitioner,	)	
vs.	)	**No. 14 WC 17641**
Sonoco Alloyd	)	
Respondent.	)	
	)	

ADDENDUM TO ARBITRATOR'S DECISION
FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This matter proceeded to hearing in Wheaton on November 19, 2019. The parties agree that on April 14, 2014, petitioner and the respondent were operating under the Illinois Worker's Compensation or Occupational Diseases Act and that their relationship was one of employee and employer.

At issue in this hearing is as follows:

1. Whether the petitioner sustained accidental injuries that arose out of and in the course of her employment.
2. Whether timely notice of the accident was given to respondent.
3. Whether petitioner's current condition of ill-being is causally connected to the claimed injury.
4. What is petitioner's average weekly wage?
5. Whether respondent is liable for medical bills.
6. Whether petitioner is entitled to temporary total disability.
7. The nature and extent of petitioner's injury.
8. Whether petitioner is entitled to penalties or attorneys' fees.

STATEMENT OF FACTS

The Petitioner does not speak English; his native language is Spanish, he testified with the assistance of Jonatan Azpilcueta, a certified interpreter, qualified to translate Spanish to English and English to Spanish. After being duly qualified and accepted by both parties, Mr. Azpilcueta served as an interpreter for the petitioner.

Petitioner, Jaime Perez, Testimony

Petitioner testified he is 47 years old. He has been married for 29 years, and his youngest child is 11 years old. He has been an employee of Respondent, Sonoco, for 30 years. Sonoco manufactures cardboard cards and boxes, including cardboard boxes for medicines and strong cardboard cards for batteries.

On April 14, 2014, Petitioner worked as a packer on the Pick and Pack Department line. He had to stand 8 to 10 hours per day and work with hard cardboard materials, including cardboard molds of cards, which he described as "40-by-28" slabs of cardboard. Petitioner testified that the slabs of cardboard were 3 to 3 ½ inches thick. He had to grab and break off these cardboard slabs with his fingers, thumbs, wrists and hands. Petitioner testified that he had to use a lot of pressure with his fingers to remove the cards from the molds and prevent them from falling. Petitioner used

his hands to move the cardboard cards up and turn them down so that he could pull them out. (T. 10-22)

Petitioner also testified that he had to use his arms to hold down a sheet or slab of the cardboard cards to break them off using his thumbs and fingers. He would put his whole forearm down to rest on either arm so that he could push down the cards with his hands and fingers in order to pull them out. He stated that he had to break off and pull out cards approximately 3 to 3 ½ inches thick using his hands and thumbs. After Petitioner pulled the cards out, he carried them between this thumbs and fingers to reach over a counter in front of him to pack the cardboard cards in a box. Petitioner testified that his packing job was his full-time job for 8 to 10 hours each day. He continuously grabbed cards, broke them off, and then reached over and in front of himself to pack them into a box. The cardboard cards were very hard, and he had to use a lot of force to break them off for packing. He continuously moved his hands up and down to remove the cards. Petitioner also said that he had to lean on his elbows to secure the stacks of cardboard cards to break them off. Petitioner testified that he had done packer work for 20 years. (T. 23-27)

Petitioner specifically testified that on the date of the accident of April 14, 2014, his job as a packer again required that he break cardboard cards down with his thumbs. He would put his arm down on the stack of cards so that they would not move as he used his hands and thumbs to raise up, pull down and break off the cards. Petitioner broke the cards off into groups either up or down with his hands and wrists. He thereafter had to again reach over and in front of himself to pack the cards. On April 14, 2014, while he was doing his packer job, the top of his fingers of his right hand started burning. Petitioner stopped using his right hand, but then he noticed the same symptoms on his left hand. Petitioner immediately reported his pain problems to the safety leader, Cesar Garza. Petitioner showed Mr. Garza that he had pain from his thumbs to his wrists on both hands. After Human Resources arrived, Petitioner filled out paperwork with Mr. Garza, and he then returned to finish his shift. When his shift was over, Petitioner spoke with the plant manager, Robert Urbanski, as well as Deborah Koester of Human Resources. Petitioner discussed with them the pain he was having in his hands and arms, and they asked him to contact them if he needed to go to the hospital. As Petitioner drove home from work that day, his pain increased to the point where he had to call Deborah because he needed a doctor. Petitioner drove back to Sonoco, and from there, Deborah drove him to Respondent's medical clinic, the Tyler Clinic. (T. 31-38)

Petitioner told the Tyler doctor on the accident date what his job had been that day, how long he had been doing it, and what his pain was. The doctor advised Petitioner to use ice every hour, to not press or use his hands, and to take Tylenol. The doctor also told Petitioner that he was not to use his fingers, thumbs or wrists. The doctor further told Petitioner not to grab or grasp using his thumbs at work. Thereafter, when Petitioner returned to work, Respondent gave Petitioner a new job of cleaning or sweeping. Petitioner returned to Tyler two more times, specifically on April 18 and 23 of 2014; the doctor continued the same treatment and work restrictions. When Petitioner did not feel any improvement, he decided to get treatment from a new doctor. (T. 38-41)

After being seen at the Tyler Clinic, Respondent never assigned a Nurse Case Manager to Petitioner, so on his own he went to see Dr. Gattas of the Nuestra Clinica (RNS Therapy). Petitioner first saw Dr. Gattas on June 4, 2014, and he told the doctor how long he had worked for Respondent and what his job was. He described his pain in his thumbs, wrists, arms, and elbows. Dr. Gattas kept Petitioner off work, gave him physical therapy, and referred him to Dr. Freedburg of Suburban Orthopedics. (T. 42-44) Petitioner first saw Dr. Freedburg on June 16, 2014, and Petitioner again described to this doctor what his job was, how long he had done it, and where his pain was. Dr. Freedburg ordered Petitioner an EMG/NCV test. Between June 2014 and January

2015, Petitioner was treated and authorized off work by Dr. Gattas and Dr. Freedburg. The physical therapy which Petitioner received at Nuestra Clinica with Dr. Gattas was ordered by Dr. Freedburg. Petitioner testified that all of his physical therapy was to his thumbs, hands, wrists, elbows and arms. Petitioner testified that Dr. Freedburg had him try physical therapy first, but eventually the doctor recommended carpal tunnel surgery. (T. 42-46) Petitioner had surgery with Dr. Freedburg for his left hand carpal tunnel syndrome and tendonitis on February 16, 2015, at the Ashton Center for Day Surgery. Dr. Freedburg then referred Petitioner back to Dr. Gattas for physical therapy. Petitioner had surgery by Dr. Freedberg for his right hand carpal tunnel syndrome and tendonitis on April 10, 2015. Dr. Freedburg again referred Petitioner back to Dr. Gattas for physical therapy. On July 16, 2015, Dr. Freedburg stopped Petitioner's physical therapy and ordered work-hardening for him with Dr. Luis Maldonado at Elite Physical Therapy (ASAP Physicians or Midwest Rehab). Petitioner testified that his work-conditioning was based on his job requirement that he work with both hands. Petitioner participated in work-hardening from 7/24/15, when Elite discharged him. Dr. Freedburg released Petitioner for full duty as of 11/5/15. He resumed working for Respondent on 12/21/15. Petitioner testified that from June 2014 and when he returned to work in December 2015, he did not receive any TTD or payment of his medical bills. (T. 47-51)

Petitioner stated that when he returned to work for Respondent, they did not assign him back to work as a packer. Instead, Petitioner was placed in a lighter duty job as a feeder in the Coating Department, which only required pushing cardboard into a machine. Petitioner admitted that he had been diagnosed with diabetes 8 years earlier. Petitioner testified that prior to the accident date, he had no activities or hobbies outside of work, such as woodworking, that bothered or used his hands. Petitioner stated that he liked his job, and he did not do anything with his hands outside of work. Petitioner also testified that before the accident date, he never had hand or arm surgery. (T. 51-53)

Petitioner testified regarding his overtime hours as reflected in Petitioner Exhibit #16, his Wage Statement Schedule. Petitioner made approximately $20 per hour, and his weekly pay was approximately $800. His Wage Statement Schedule showed his overtime hours, which ranged between 2 to 17 hours per week. Petitioner testified that overtime hours were posted every Wednesday. Overtime was mandatory, and employees could not ask for nor turn it down. Consequently, there were days before the accident date when Petitioner had to work 10-12 hour days always on the pick and pack line. (T. 53-56)

On April 17, 2019, Petitioner was examined by Dr. Joshua Alpert pursuant to his attorney's request. Petitioner's daughter was present to translate for him. Petitioner told Dr. Alpert what his job was, how long he had done it, and what had happened on 4/14/14. Petitioner had seen Dr. Michael Vender on 8/21/14 at Respondent's request. No interpreter was present, and Dr. Vender only saw Petitioner once. (T.56-57)

Petitioner testified that he currently has pain in his hands, thumbs, fingers, wrists, and elbows. Although the pain is not the same as before, he still needs Tylenol. His pain increases at night. (T. 57-58)

During cross-examination, Petitioner admitted that he had not treated for the injuries in question since 12/21/15. He only went to a gym when he had work-conditioning. Petitioner said that he has worked for 30 years for Respondent, and during 10 of those years, he worked in other positions, such as die cutting feeder, packing clerk, coating operator or cutting feeder. Although he was not always on the packing line, most of the time he worked only in that position (T. 59-64).

During further cross-examination, Petitioner stated that he was aware that when he went to the Tyler Medical Clinic on his accident date, he was diagnosed with DeQuervains's tenosynovitis. After being treated at Tyler, Petitioner returned to work the next day; he was placed in the die room, where he could not press on the pliers because of his pain. Respondent then had him clean and sweep. Petitioner admitted that between his first and second visits to Tyler, Respondent gave him breaks to put ice on his wrists. However, the ice packs and ibuprofen only helped for two hours. Petitioner admitted that on 4/18/14, he told Tyler that when he used scissors at work to cut a cord, it increased his pain; he was then moved to a different job with only cleaning. At that time, Petitioner could not sleep at night, and he had numbness as well as pain. (T. 64-74)

During additional cross-examination, Petitioner stated that in April 2014, he could not lift his arms up, and he had pain in his thumbs, fingers, wrists, hands, and elbows. Between 4/23/14 and 6/5/14, Petitioner did not see a doctor because Deborah asked him to wait until a safety coordinator came to talk to him. Petitioner went to a doctor anyway because his pain was more intense. When Petitioner went to Dr. Gattas in June 2014, he told the doctor that he had grabbed and stacked cards for 20-25 years. Petitioner told Dr. Gattas that he could not do even light duty because of his pain. Petitioner described for Dr. Gattas his shoulder, elbow and forearm pain. During further cross-examination, Petitioner was asked about his treatment at Tyler before his accident date, namely in March 2005. Petitioner admitted that he went to Tyler in 2005 because he had pain in his thumb and wrist after folding cardboard. Petitioner testified that Tyler told him that his finger pain was from his job, but his pain then passed away. He said that he did not really have treatment in 2005 with Tyler because he was just given Tylenol. On redirect, Petitioner repeated that on 4/14/14 he was a packer in the pick and pack line using his hands and thumbs all day. Petitioner testified again that he had done that job even before 4/14/14 anywhere from 8 to 12 hours using his hands, arms, wrists, and thumbs. The majority of each day was that job, which he had most of his time with Respondent. (T. 74-90)

Deborah Koester Tetimony

Deborah Koester testified on behalf of Respondent. She has worked for it for 48 years and is currently the Human Resources and Safety Coordinator. Deborah testified that after an employee is hurt, a manager brings the employee to her, and she asks the employee what happened and what his injuries were. She gives the employee a medical brochure with phone numbers, and she tells the employee that if he needs medical attention, he needs to call someone on the list. Deborah documents the injuries and any discussions she has with the employee. Deborah alleged that Petitioner said he was fine after the accident date. Deborah identified Respondent's Exhibit F as her documentation of Petitioner's injuries beginning on 4/14/14; she made the documentation allegedly contemporaneously with Petitioner's activities and conversations. Later this exhibit was not allowed into evidence because Deborah had not written the report herself. Deborah next identified Respondent's Exhibit E as the list of different positions Petitioner allegedly had with Respondent. According to Deborah, Petitioner has not complained any further to her about any pain. (T. 92-101; Rx. F; Rx. E)

During cross-examination, Deborah admitted that Respondent has never assigned Petitioner to work again as a packer on the pick and pack line since the accident date. Deborah admitted that since Petitioner returned to work, he has never been returned to any job with the constant use of his hands, thumbs, or wrists nor in a job where he has to force down his thumbs, hands or wrists. Deborah admitted that she was with Petitioner each time that he went to the Tyler Clinic, and she heard the doctor state that Petitioner could not repetitively grasp or grip forcefully

with his hands. She also heard Tyler say that he could not put pressure with resistance with his thumbs or use any kind of manual or power tools with his hands. Deborah confirmed that on the accident date, Petitioner was a packer on the pick and pack line. Deborah also confirmed that Petitioner had been a packer for months before the accident date. She admitted that at times he had to work up to 12 hour days with overtime using both hands, thumbs and extended arms. She further admitted that a pick and pack line worker has to use both hands to grasp and grab with their fingers and thumbs to get cards out of cardboard molds. The packer has to break off cards with his thumbs, hands, and fingers either up or down. Deborah conceded that on the accident date, Petitioner had reported to her and the plant manager that he had pain in his hands, wrists and forearm while picking cards. (T. 101-118)

Deborah also admitted that she recorded in writing what pain Petitioner reported to her on the accident date. Deborah testified that Petitioner told her that his pain was in his thumbs, wrists, hands, forearms and shoulders. Deborah admitted that the Tyler Medical Clinic was Respondent's clinic and that she drove Petitioner there for treatment. Deborah gave Petitioner ice and ibuprofen as instructed by Tyler. Deborah confirmed that Petitioner was off work from June 2014 to December 2015 and that he had 6 children. Deborah admitted that in April 2014, when Petitioner had to ice his wrists, he still needed to do so even though he had been taken off the pick and pack line. (T. 118-122)

Robert Urbanski Testimony

Robert Urbanski also testified on Respondent's behalf. He has been with Respondent for 9 years; he is the production manager and supervises the whole facility, including its workers. Robert stated that Respondent makes blister cards which it packs and ships to customers. These are cards used to hang products on a shelf such as L'Oréal makeup products or Duracell batteries. He testified that on the pick and pack line, sheets of paper come off a die cutter over to the packing line; blister cards are then picked out, and these blister cards range in size from 1 ½ inch by 1 inches or 1 ½ inch to 40 inches. In an eight-hour shift, employees get a 10-minute break and a 20-minute lunch, although there are allegedly breaks between each picking job. The number of pick and pack jobs could range from 1 to 10 jobs. After a picking line job is over, the line is cleaned of cards, floors swept, mats picked up, and new cases brought in. The time for setting up each job of picking ranges from 10 to 30 minutes. Robert stated that the size and width of cards varied, and he admitted that different hand motions are used throughout the day for picking the cards. Robert admitted that Deborah's report regarding Petitioner's situation was actually produced by both of them. (T. 125-141; Rx F)

On cross-examination, Robert admitted that on 4/14/14, Petitioner was a packer on the pick and pack line who reported to him that he had pain in his thumbs, hands, wrists, and arms. Robert clarified that the cardboard cards are strong cards and that these blister cards range from 10,000 to 24,000 thickness paper. Robert conceded that a packer works with strong paperboard and uses his thumbs, hands and wrists. Elbows at times are also used to secure the breaking off of cards. The packer must use his arms to lift, carry and place the cards that have been broken off to the middle of the counter for packing. Robert admitted that an employee has to repeatedly use his hands, fingers and thumbs so that the paperboard does not fall out as the employee carries the paperboard in his hands to be packed. He admitted that every handful of paperboard requires a different pull as the employee takes the card, pulls it out, and packs it. Robert admitted that since December 2015, he has not returned Petitioner to work as a packer because his boss told him not to put Petitioner back on the pick and pack line. Later, Robert admitted that Petitioner is no longer a

permanent packer on the pick and pack line. Robert also confirmed that now Petitioner does not have any full-time job requiring grasping, grabbing or pulling off cards. (T. 141-151)

Tyler Medical Records (PX.1)

These records indicate that on the accident date Petitioner reported to Tyler that he had pain in both wrists from his packer job. Petitioner demonstrated to the clinic the constant rotation of his wrist and downward ulnar deviation. He showed the staff how he used his thumbs to break down the cards against resistance. He told Tyler that he did these hand and finger movements repetitively throughout his shift and that he had been working overtime up to 12 hours a day. He denied any non-work related activity that caused him his condition. Tyler found that gripping caused Petitioner bilateral pain, and it diagnosed him with bilateral wrist sprains and deQuervain's tenosynovitis. Petitioner was advised to ice, take Ibuprofen, and wear elastic wrist supports. Tyler's work restrictions were no repetitive grasping or gripping with hands and no pressure against resistance with thumbs. Tyler records indicate that Debbie Koester was present during all exams, and she advised Tyler that its work limitations could be accommodated. Tyler notes dated 4/18/14 reveal that when Petitioner returned he reported that although he was working within his restrictions, when he tried to cut a cord with scissors, his pain increased. Tyler's diagnosis remained the same, and it still recommended ice, warm soaks, home exercises, and ibuprofen. Again Tyler restricted him from repetitive grasping, gripping forcibly, putting pressure against resistance with thumbs, and using manual or power tools with his hands. On 4/23/14, Tyler continued the same diagnosis and treatment recommendations. Tyler stated that if Petitioner had improved, he could return to work full duty on 5/1/14 and be discharged from its care. However, if Petitioner's symptoms persisted, he was to return for further care. Petitioner never treated with them after 4/23/14.

RNS Physical Therapy A/K/A Nuestra Clinica/Dr. Phillip Gattas Records (PX.2)

These records indicate Petitioner first treated with Dr. Gattas on 6/4/14. He told Dr. Gattas that on 4/14/14, he had to grab stacks of cards which came joined, snap them into sections, and then stack them to be packed. Petitioner told the doctor that he had to do this job all day for 25 years. On 4/14/14, he had pain, numbness and tingling in his thumbs, wrists, elbows and upper arms. It became so severe that he could not stand it any longer. Petitioner advised Dr. Gattas that he was taken to Respondent's doctor and placed on light duty, but the light duty aggravated his symptoms. Because his treatment with the company doctor did not help, Petitioner sought a second opinion with Dr. Gattas. The doctor diagnosed him with wrist tenosynovitis and pain in his elbows and upper extremities. Dr. Gattas recommended that Petitioner remain off work and receive physical therapy. Dr. Gattas wrote on 6/4/14 that Petitioner's injury was related to his repetitive work activities which culminated on 4/14/14. Dr. Gattas referred Petitioner that same month to an orthopedic surgeon, Dr. Freedberg. From June 2014 until July 21, 2015, Petitioner received physical therapy both before and after his hand surgeries with Dr. Freedberg. Petitioner's diagnoses were bilateral carpal tunnel syndrome, radial tunnel syndrome, and elbow triceps tendonitis, and his physical therapy was for Petitioner's thumbs, wrists, elbows and upper extremities. Dr. Freedberg kept Petitioner off throughout his physical therapy. Petitioner was discharged from physical therapy on 7/21/15, when Dr. Freedberg ordered work conditioning.

RNS Physical Therapy Bills (RX.3)

The medical bills of RNS Physical Therapy (also known as NuestraClinica) and Dr. Gattas in the amount of $36,192.05. These bills indicate that as part of his therapy, Petitioner's elbows were x-rayed, as well as his wrists, and he was given tennis elbow straps. (T. 158)

Ashton Center for Day Surgery Records and Bills (PX.4 & PX.5)

These records pertained to Petitioner's hand surgeries with Dr. Freedberg. His left hand surgery was performed on 2/16/15 for left carpal tunnel syndrome and deQuervain syndrome. The procedure was left carpal tunnel decompression with release of Guyon's canal and a median nerve neurolysis, along with a left wrist release of the first dorsal compartment with extensor tendon repair. On 4/10/15, Petitioner's right hand surgery was performed for right carpal tunnel syndrome and deQuervain syndrome with abductor tendon tear. He had a right carpal tunnel decompression, release of Guyon's canal and median nerve neurolysis along with a release of the first dorsal compartment with repair of the abductor tendon. (T. 159)

The bills from the Ashton Center for Day Surgery totaled $52,147.07 and from Oak Brook Anesthesiology totaled $1,875. (T.160)

Suburban Orthopaedics/Dr. Howard Freedberg Records and Bills (PX.6 & PX.7)

Petitioner began treatment with Dr. Freedberg beginning on 6/16/14. Dr. Freedberg wrote that Petitioner had reported the onset of his symptoms as on 4/14/14 while picking and packing cards. The doctor wrote that Petitioner's hand and arm pain was from overuse and repetitive work for 25 years. Petitioner reported no hobbies or sports. Petitioner reported pain in his thumbs and wrists, that he was dropping objects, and experiencing nighttime pain. He also reported throbbing bilateral elbow pain. Dr. Freedberg believed that Petitioner had bilateral carpal tunnel syndrome, bilateral radial tunnel, bilateral elbow triceps tendonitis, and bilateral thumb degenerative joint disease; Dr. Freedberg diagnosed Petitioner with these conditions consistently throughout his treatment, which ended on 2/7/16. Dr. Freedberg also consistently kept Petitioner off work until 11/5/15, after which Petitioner returned to work on 12/21/15.

Dr. Freedberg confirmed through an EMG on 7/29/14 that Petitioner had bilateral carpal tunnel syndrome. Both before and after his hand surgeries, Petitioner was given medication, hand splints and physical therapy. On 12/15/14, Dr. Freedberg had reviewed the report of Respondent's IME, Dr. Michael Vendor. Based on this report, Dr. Freedberg wrote: "I reviewed the IME from Dr. Vendor, I feel the patient's condition of ill-being is causally connected to the work accident. It appears Dr. Vendor has agreed with causation although it is not 100% clear." In January 2015, Dr. Freedberg reported that Petitioner's elbow pain was worse; his hand pain was so severe that he could not put on his shoes. At that time, Dr. Freedberg discontinued Petitioner's physical therapy because he had plateaued; Dr. Freedberg specifically stated that Petitioner had been receiving physical therapy and not chiropractic therapy. On 2/16/15, Petitioner had a left carpal tunnel surgery at the Ashton Center for left carpal tunnel syndrome and left deQuervain syndrome. Dr. Freedberg performed a left carpal tunnel decompression with release of Guyon's canal and a median nerve neurolysis and left wrist release 1st dorsal compartment with extensor tendon repair. Petitioner's post-operative treatment continued to be medication and physical therapy.

Additional medical notes from Dr. Freedberg in Px 6 reveal that Petitioner underwent his secondhand surgery at Ashton on 4/10/15 for his right hand. His diagnosis was right carpal tunnel decompression and DeQuervain's syndrome with abductor tendon tear. The surgery consisted of a right carpal tunnel decompression and release Guyon's canal and median nerve neurolysis and

release 1st dorsal compartment with repair of the abductor tendon. His post-operative treatment continued to be physical therapy and medication. On 7/16/15, Dr. Freedberg noted that Petitioner still reported elbow pain. Work conditioning was now ordered at Elite Physical Therapy. Work conditioning notes of 10/6/15 stated that Petitioner had a good attitude and pushed himself during therapy. As of 11/3/15, Petitioner had 61 work conditioning sessions for the lifting and bilateral reaching and grasping that he needed for his specific job. Elite discharged Petitioner from work conditioning on 11/3/15. On 11/5/15, Dr. Freedberg released Petitioner for full duty, and Petitioner returned to Respondent on 12/21/15. Dr. Freedberg notes state that upon his return to work, Petitioner resumed working 6-7 hours per day for up to 12 hours. On 2/17/16, Dr. Freedberg found Petitioner to be MMI; however, the doctor noted that Petitioner told him that although he worked in a different department, he was still experiencing pain. (T. 161)

The medical bills of Suburban Orthopedics totaled $42,727.31. (T. 162)

Elite Physical Therapy-Midwest Rehab/Dr. Luis Maldonado Records & Bills (PX.8 & PX. 9)

Petitioner's Exhibit #8 were the medical records of Elite Physical Therapy (Midwest Rehab) and Dr. Luis Maldonado. When Petitioner first went to Elite on 7/24/15, he reported that he had developed progressively worse symptoms in both forearms and wrists secondary to repetitively breaking off stacks of thick cardboard from molds. Even after Petitioner's physical therapy had stopped on 7/23/15, he reported to Elite that he had persistent bilateral forearm and wrist pain. Elite found that he could not reach bilaterally to any level and he could not grasp or handle on a constant basis. At that time, he could not even carry with one hand 25lbs nor frequently carry with two hands 35lbs. Petitioner's complaints of persistent pain in both forearms and wrists continued during work hardening through 8/7/15. On 10/6/25, he had still reported thumb and wrist pain. As on November 3, 2015, Elite found that Petitioner had plateaued. After work conditioning, Petitioner still could not meet his job specific goal of "1-hand lift/carry 25# frequently". Elite discharged Petitioner from work conditioning even though it was noted that he still complained of pain and numbness to his wrist and forearm. (T. 163)

The Elite Physical Therapy and Dr. Maldonado bills totaled $31,605.00 (T.164)

Prescription Partners Bills (PX.10)

The bills from Prescription Partners total $4,368.52. (T. 165)

ADCO/Suburban Orthopedic Prescriptions Bills (PX.11)

The prescriptions total $3,224.98. (T. 166)

Neuro Health/Dr. Alfredo Lopez EMG/NCV Report & Bill (PX.12)

Petitioner underwent an EMG/NCV on July 29, 2014. The bill for services rendered totaled $2,200.00 (TR.167)

Metro Health Solutions Bill (PX.13)

The Metro Health Solutions bill for prescriptions totals $2,698.00. (Tr. 168)

Dr. Joshua Alpert June 28, 2019 Deposition (PX.14) (Tr.169)

Dr. Joshua Alpert, board certified orthopaedic surgeon, testified via deposition in behalf of petitioner. Dr. Alpert testified that he reviewed Petitioner's medical records before he conducted a physical exam of him on April 17, 2019. Petitioner described for Dr. Alpert that he was a pick

and pack worker who at times worked 10-12 hour days picking and packing small cards. Petitioner explained that on the accident date he began to experience burning in both hands while working with heavy handfuls of paper. Petitioner demonstrated how he did breakdown work with a lot of repetitive flexion and extension activities. Petitioner told the doctor that his current complaints were constant ache in his hands with numbness and tingling in his fingers: Petitioner reported that he had trouble grasping objects with his fingers because they would get cramped, stuck and locked in their triggering. On the date of his exam, Dr. Alpert found that Petitioner had pain in his right wrist and fingers; Petitioner's left hand had pain in the fingers. (Px 14, 6-8)

Dr. Alpert further testified that his diagnoses for Petitioner were post-bilateral carpal tunnel releases, bilateral wrist deQuervains tenosynovitis, extensor tendon release; he also diagnosed Petitioner as currently having ongoing bilateral pain in his 3rd, 4th and 5th fingers. Dr. Alpert testified that all these diagnoses were causally related to Petitioner's work. He further stated that Petitioner's surgeries, physical therapy, work hardening and treatment with Dr. Freedberg were all reasonable, necessary and causally related to Petitioner's job. (Px 14, 9-13) Dr. Alpert reviewed Dr. Vender's IME report for Respondent. Dr. Alpert stated that according to Dr. Vender's own opinion as to what would cause carpal tunnel syndrome, given that Petitioner's work required forceful and exertional hand acts on a persistent basis, Petitioner's carpal tunnel syndrome was caused by the very acts that Dr. Vender stated would cause carpal tunnel syndrome. (14-16)

During cross-examination, Dr. Alpert stated that he has published a book on hand injuries, entitled, "Orthopedic Surgery-Oxford American Handbook of Surgery", which is used by hand surgeons. In 2014, he gave presentations on hand injuries to Rush University Medical Center, St. Joseph Hospital Occupational Health Department, and Advocate Good Shepherd Hospital. Dr. Alpert explained that DeQuervain's tenosynovitis is actually a wrist condition because it is a thumb extensor tendon that is irritated at the base of the thumb at the side of the wrist. Carpal tunnel syndrome is a wrist condition in a different area, where the nerve in the palm near the wrist becomes inflamed and irritated. (Px 14, pg 17-20) Dr. Alpert testified that when he examined Petitioner, he demonstrated for the doctor how he worked with heavy handfuls of paper, broke them down, and stacked them with a lot of flexion and extension activities. Petitioner's hands had to remain open half way with flexing and extending, which was a very clear cause of carpal tunnel syndrome. (23-25)

During further cross-examination and on redirect, Dr. Alpert stated that although Petitioner had diabetes, he was otherwise healthy as he did not exhibit significant signs of diabetes nor needed surgery or hospitalization. The doctor stated that just because a person is in the age range of 50 years, obese and diabetic (whether controlled or uncontrolled) does not mean that he will have carpal tunnel syndrome. (Px14, 36, 43) The doctor noted that Petitioner received physical therapy for his elbow pain and inflammatory tendinitis, and this diagnosis was completely separate from the carpal tunnel syndrome. (38-39) The doctor rendered his opinions based on Petitioner's medical records and his reports to his medical providers regarding how long he had worked with Respondent. (45-46) He reiterated at the end of his testimony that all of Petitioner's physical therapy and work hardening was reasonable and necessary, and the length of time that Petitioner was in therapy and work conditioning was reasonable because Petitioner had carpal tunnel syndrome in both hands and Petitioner had to return to work using his hands. (48-49)

Dr. Joshua Alpert April 17, 2019 Report (PX.15)

Dr. Alpert's report of April 17, 2019 to which he testified. (T. 170)

Wage Statement (PX.16)

The wage statement shows petitioner earned $800.40 per week, excluding overtime; and worked a total of 259.25 overtime hours. (T. 171)

Form 45/Employer's First Report of Injury (PX.17)

The Form 45, completed on April 16, 2014, stated that Petitioner reported his accident timely on April 14, 2014. Respondent stated on the form that Petitioner reported pain in both wrists as he was standing and picking. Respondent wrote both wrists were strained from pushing or pulling. (T. 172)

Original and Amended Application (PX.19)

The Amended Application and original application filed prior to trial, with the amendment only to the description of areas of physical injury. (174-175)

Petitions for Penalties and Attorneys' Fees (PX.20)

Petitioner asserted in these Petitions that Dr. Vender was not provided with an accurate description of Petitioner's job because his packing work was clearly a cause of his carpal tunnel syndrome and other medical conditions. (T. 176)

Reports of Dr. Michael Vender (RX. A)

Dr. Michael Vender prepared an original report and two addendum reports. (T. 178) Dr. Vender evaluated Petitioner only once, which was on 8/21/14. Dr. Vender's diagnosis was degenerative arthritis bilaterally in the thumbs and bilateral DeQuervain's stenosynovitis. Dr. Vender noted that Petitioner had pain and numbness at night which he stated could be consistent with carpal tunnel syndrome. Prior electro diagnostic studies were felt to be indicative of carpal tunnel syndrome. Dr. Vender noted that Petitioner had an increased body mass index and diabetes. However, the doctor stated that forceful and exertional activities performed regularly and persistently on a daily basis contribute to carpal tunnel syndrome. He believed that Petitioner had degenerative arthritis in his thumbs, but he also stated that work could aggravate this as well. He stated that thumb-intensive activities involving forceful pinching with the thumb contribute to carpal tunnel syndrome. He noted that Petitioner was not at MMI, and if he did not respond to conservative treatment, surgery would be necessary. MMI would then not be until up to 6 months after surgery. (RA 2-3) Attached to Dr. Vender's first IME report, which was dated 8/21/14, were hand-written notes indicating that Petitioner reported bilateral hand and elbow pain. Petitioner reported that he had repetitive motion of flexion and extension that developed into pain and burning bilateral wrists and elbows. Petitioner reported that the pain woke him up at night. He stated that he was a pick and pack worker for 25 years. (RA 4).

Dr. Vender wrote an additional IME report on 11/13/14. Dr. Vender stated that packing small cards allegedly would not cause Petitioner's hand problems. Dr. Vender reviewed a description of the packer job, and he wrote that it contained limited information regarding the job's physical demands. He stated that his review of this job description did not indicate persistent forceful use of hands or describe excessive use of thumb-pinching. He stated that assuming there was not persistent forceful use of hands or excessive use of thumb-pinching, the job description he reviewed would not contribute to Petitioner's hand conditions (RA 9-10). (T. 178) In Dr. Vender's final IME report of 10/21/19, he reiterated that his diagnosis for Petitioner was deQuervain's stenosing tenosynovitis. He wrote that this could occur secondary to Petitioner's

diabetes. Dr. Vender stated that he did not believe flexion and extension of wrists contributes to deQuervains disease or thumb degenerative arthritis. Dr. Vender further said: "I still have no information provided that would indicate that Mr. Perez performs unusually stressful activities involving the thumbs on a regular persistent basis". Dr. Vender disagreed that work-conditioning was necessary following Petitioner's surgeries on both hands. Dr. Vender did not believe that Petitioner performed unusually stressful activities, and the doctor also wrote that wrist flexion-extension does not cause carpal tunnel syndrome, deQuervain's disease or thumb arthritis. Dr. Vender wrote that he did not have any information in the records he reviewed that indicated Petitioner's work contributed to his medical conditions. (RA 11-13)

Sonoco Packer Job Description (RX. B)

The packer job is described as placing cards into corrugated boxes of approximately 2lbs depending on size of card and stack. Daily jobs include, but are not limited to, packing of product, segregating, identifying and stacking it. Physical demands are described as including lifting, carrying, pushing into a press, reaching, and pulling samples. Reaching and stretching is 20 inches with holding approximately 5lbs. This alleged job description states that there is stooping to place cases on a pallet, and in the summer, the heat can be as high as 100 degrees.

Tyler Medical Services Records (RX. C)

This exhibit was almost the same as Px 1 except that it included records for Petitioner's treatment from 9 years before this accident. These records indicate that 9 years before the accident date or on 3/30/2005, Petitioner reported to Tyler that while pulling cardboard at work, he twisted his right wrist. He reported no previous injury or non-work related activity to precipitate his pain. He was diagnosed with right deQuervain's tenosynovitis. He was given a thumb spica wrist splint for work, and he was advised to ice and take ibuprofen. Petitioner was restricted from using manual or power tools with his right hand. On 4/6/05, he worked restricted duty, was prescribed physical therapy, and he was still precluded from using manual or power tools. On 4/11/05, Petitioner reported that he had been experiencing right hand pain after he pulled on cardboard and twisted his wrist; he also reported that he pushed about 200 lbs. under metal and after squeezing his hands around some cardboard, he felt a pop on the side of his wrist. The diagnosis continued to be only right deQuervain's tenosynovitis. On 4/22/05, the clinic noted that Petitioner had completed his prescribed 4 sessions of physical therapy, he was to continue using his splint, and he was not authorized to work with power or manual tools. On 5/3/05, Petitioner reported that he had stopped using ibuprofen, but he still had to ice. Tyler released him to ease back into his normal job of working with up to 50 sheets of cards at a time. Petitioner returned to the clinic on 5/9/05. Petitioner denied having pain, numbness or tingling. He was advised to stop using his wrist brace, he was released for full duty, and he was discharged from Tyler's care.

Utilization Review November 13, 2018 Report by Dr. Vinson DiSanto, DO (RX. D)

Petitioner objected to the exhibit based on the report's failure to name the clinic that had its records reviewed. This document was a retrospective request to review 61 work-hardening sessions done 3 years earlier or from 7/27/15 to 11/3/15. The report did not certify the work-hardening; however, the report fails to name the actual clinic where the alleged non-certified work-hardening was done. (T. 181)

List of Petitioner's Jobs with Respondent (RX. E)

Petitioner objected to the exhibit by asserting it was not an accurate listing of Petitioner's jobs. Rx E indicates that Petitioner was hired in 1989 for the packing line. In 1994, he was second shift lead packing line. In 1999, he was a die cutting feeder. In 2006 he was a Packer. In 2010 he was a packing clerk. Between 2011-2012 he was a cutting operator and then a packing clerk. Between 2015 and 2017 or when he returned to work after his accident, he was a coating operator to cutting feeder. (182)

Report to File on Timeline of Petitioner's Injury (RX. F)

Petitioner objected to the exhibit on the basis of hearsay as well as that it was not an admissible past recollection recorded. Petitioner also objected and argued that the prejudicial value outweighed the probative. Further, Petitioner noted that the report was written by Deborah Koester but based on her conversations with Robert Urbanski. The report confirms that Petitioner reported his pain after picking cards on the accident date. The report concedes that Petitioner was taken to Tyler after reporting bilateral thumb, wrist, forearm and shoulder pain. Deborah wrote that Respondent allowed Petitioner to ice and take ibuprofen. In the days following the accident date, Deborah and Robert made sure that Petitioner did not strain his thumbs or wrists. Petitioner was allowed to sweep for his job, which did not use his thumbs. He periodically reported pain and that he felt as though he had needles all over. He reported that the ibuprofen did not help after 5 hours. Deborah also wrote that Respondent continued to keep Petitioner away from any unnecessary work which would cause stress on his thumbs or wrists. She also wrote that on 5/1/14 Petitioner reported that he also had pain in his arms. (183-184)

CONCLUSIONS OF LAW

The Arbitrator adopts the Finding of Facts in support of the Conclusions of Law.

C. With respect to the issue of whether an accident occurred that arose out of and in the course of petitioner's employment by respondent, the Arbitrator makes the following conclusions of law:

The Arbitrator finds, by a preponderance of the evidence, petitioner met his burden of proof that he sustained accidental injuries that arose out of and in the course of his employment with respondent on April 14, 2014.

Repetitive trauma injuries become compensable when they manifest themselves. The date when the injury manifested itself is when the manifestation takes place on a day when both the fact of the injury and its causal relationship to the job becomes apparent. *Concrete Structures of the Midwest v Industrial Commission*, 315 Ill.App.3d 596, 734 N.E. 2d 970 (1st Dist. 2000). Where an employee's pain is so intense that he must seek medical attention, that day can be considered the date of the accident. In the *Concrete Structures* case, the Court held that even if an employee suffers from a preexisting condition, upon a showing that the job aggravated or accelerated the medical problem, a petitioner is entitled to benefits. The employee need only prove that some act or phase of his job was a causative factor, not the sole or principal cause. The date when an employee becomes aware of his condition and its clear relationship to his job, such as when he continues to work until his physical structure collapses, can be considered his date of accident. *Durand v Industrial Commission*, 224 Ill.2d 53, 862 N.E.2d 918 (2006).

Here, based on the testimony of Petitioner, Robert Urbanski and Deborah Koester, it is clear that on April 14, 2014, while working as a packer, Petitioner experienced pain in his thumbs, wrists, hands, elbows and arms so severe that he had to immediately report his pain to Respondent. On this date, his pain after work was so extreme that he needed medical treatment by the end of his shift.

Respondent's Human Resources manager, Deborah Koester had to drive Petitioner to Respondent's medical clinic, where Petitioner told the clinic what his packer work was and how it caused him bilateral thumb and hand pain earlier that day. The Tyler Clinic then diagnosed him on the accident date with bilateral wrist sprains and deQuervains tenosynovitis. Beginning on April 14, 2014, Respondent's own medical clinic restricted Petitioner from his packing job with the restrictions that he was not to perform any hand grasping or gripping, not use any pressure with his thumbs, and not use any power or manual tools. Respondent placed Petitioner in a light duty job after April 14, 2014, and it has never returned Petitioner to work as a packer. The medical records of Dr. Gattas, Dr. Freedberg Dr. Maldonado, Dr. Alpert, and even Dr. Vender all confirm that Petitioner consistently reported that on April 14, 2014, he had severe bilateral thumb, hand, wrist, elbow and arm pain after using his arms, hands and thumbs repetitively in an up and down manner to grasp, pull off and pack cards on the pick and pack line.

For the aforementioned reasons, the Arbitrator finds Petitioner proved he sustained accidental injuries that arose out of and in the course of his employment with Respondent, in according with the law, on April 14, 2014.

E. With respect to the issue of whether petitioner gave timely notice of the accident, the Arbitrator makes the following conclusions of law:

Petitioner testified that on April 14, 2014, his work activities had caused his hand and arm pain to become so severe that he had to stop working and report his injuries to the safety leader. Deborah Koester, of Respondent's Human Resources, and Robert Urbanski, Respondent's plant manager, confirmed that on this accident date, Petitioner also reported to them that his work had caused him hand and wrist pain. On that same day, Deborah Koester had to take Petitioner for medical treatment. This fact was confirmed by Respondent's own exhibit, Respondent's Exhibit F.

Accordingly, the Arbitrator finds petitioner provided timely notice of the accident within the provisions of the Act.

F. With respect to the issue of whether the petitioner's condition of ill-being is related to the injury, the Arbitrator makes the following conclusions of law:

In both his testimony and his statements to his medical providers, Petitioner consistently reported that his bilateral thumb, finger, wrist, forearm, elbow and upper extremity pain all were a result of his work as a packer on April 14, 2014. The medical records of Dr. Gattas of RNS Physical Therapy, Dr. Freedberg of Suburban Orthopedics, and Dr. Maldonado of Elite Physical Therapy all state that Petitioner's repetitive hand and arm work on the accident date caused his

bilateral carpal tunnel syndrome, bilateral radial tunnel syndrome, bilateral elbow triceps tendonitis, and bilateral deQuervains syndrome. Dr. Alpert's testimony confirms these medical findings as well. Work hardening records at the time of Petitioner's discharge noted that Petitioner still reported pain in those areas. At Dr. Freedburg's last appointment with Petitioner, he also noted that Petitioner reported continued pain even though he was working in a different department for Respondent.

Dr. Alpert testified that when he examined Petitioner on April 19, 2014, Petitioner complained about constant aching in his hands with numbness and tingling in his fingers. Petitioner reported that he had trouble grasping objects with his fingers because they got cramped, stuck and locked. Dr. Alpert found that Petitioner continued to have hand and finger pain. Moreover, at trial Petitioner testified that he has continued pain, which increases at night; Petitioner continues to take Tylenol.

Dr. Vender's IME reports are not sufficient to rebut the preponderance of the evidence here that Petitioner's current diagnoses are due to his work on 4/14/14 in view of the extensive evidence as to causal connection in the treating medical records and Dr. Alpert's testimony. First, both Dr. Freedberg and Dr. Alpert reviewed Dr. Vender's definition of what causes carpal tunnel syndrome, and Dr. Freedberg and Dr. Alpert confirmed that under Dr. Vender's own criteria for what causes carpal tunnel syndrome, Petitioner's job on the accident date clearly caused his carpal tunnel syndrome.

More importantly, Respondent did not provider Dr. Vender with a complete and accurate description of Petitioner's job. Dr. Vender's first IME report of 8/14 contained his statement that carpal tunnel syndrome can be caused by forceful and exertional hand activities performed regularly and daily, including intensive activities with forceful thumb pinching. But in Dr. Vender's second IME report of 11/14, he wrote that the job description given to him by Respondent for Petitioner's packer job had limited information on his job's physical demands. Dr. Vender wrote that the job description given to him by Respondent did not show persistent forceful use of hands or excessive thumb pinching, and therefore, this job description led Dr. Vender to conclude that Petitioner's packer job did not cause his carpal tunnel syndrome. As recently as 10/19, Dr. Vender wrote in his final IME report that Respondent still had not provided him with any information that Petitioner performed unusually stressful activities involving his thumbs on a persistent basis for carpal tunnel syndrome to have developed. (Rx A) Given that Dr. Vender's opinions were clearly based on a job description provided by Respondent that was inaccurate, incomplete and essentially false, Dr. Vender's opinions are insufficient to rebut the preponderance of the evidence here.

Based upon Petitioner's testimony and the medical records taken as a whole, including Dr. Alpert's testimony, the Arbitrator finds Petitioner's current condition of ill-being is causally related to the work accident of April 14, 2014.

G. With respect to the issue of petitioner's earnings, the Arbitrator makes the following conclusions of law:

Deborah Koester confirmed Petitioner often worked overtime or 10 to 12 hour days. Petitioner testified that each Wednesday over-time hours were posted. He stated that overtime was mandatory and not voluntary; overtime could not be requested nor turned down. Respondent did not present any evidence to rebut Petitioner's testimony that overtime was mandatory.

At the beginning of trial, both sides had stipulated that Petitioner had a base AWW for a 40-hour work week of $802.07; this is equivalent to an hourly wage of $20.05. Petitioner asserted that with the mandatory overtime, Petitioner's AWW should be increased to $911.84. However, Petitioner's Wage Statement Schedule, Px 16, lists Petitioner's overtime for the 52 weeks before the accident date. Petitioner worked 258.25 overtime hours or 5 hours per week. 5 hours of overtime at the straight hourly wage of $20.05 equals an overtime of $100.25 per week. Consequently, Petitioner's correct AWW is $902.32 ($802.07 forty-hour week plus the overtime $100.25 per week).

Accordingly, the Arbitrator finds petitioner's average weekly wage in the year pre-dating the accident, as calculated pursuant to §10 of the Act, was $902.32

J. With respect to the issue regarding medical bills, the Arbitrator makes the following conclusions of law:

The Arbitrator, having determined petitioner sustained injuries to his hands, wrists and elbows that were caused by the work accident of April 14, 2014, and in reliance of the treating physicians records, and the opinion of Dr. Alpert, awards the following medical expenses to be paid in accordance with the fee schedule and pursuant to §8 and §8.2 of the Act, with credit to be given for any payment made directly by respondent or in accordance with §8 j of the Act:

$36,192.05 RNS Physical Therapy (AKA Nuestra Clinica) (06/04/2014 to 07/23/2015)
$52,147.07 Ashton Center for Day Surgery (02/16/2015 & 04/10/2015)
$1,875.00 Oak Brook Anesthesiology (02/16/2015 & 04/10/2015)
$42,727.31 Suburban Orthopaedics (06/16/2014 to 0/2016)
$31,605.00 Elite Physical Therapy/Dr. Maldonado (07/24/2015 to 11/03/2015)
$4,368.52 Prescription Partners (06/16/2014 to 02/17/2016)
$3,224.98 ADCO Prescriptions (0724/2015 to 11/03/2015)
$2,200.00 Dr. Alfredo Lopez (07/29/2014)
$2,698.00 Metro Health Solution Prescriptions (08/07/2014)

The Arbitrator makes this finding despite the Utilization Review, the facility was not identified; and despite the opinion of Dr. Vender as his opinion was based on incomplete information as to petitioner's job with respondent.

K. With respect to the Arbitrator's decision with regard to TTD, the Arbitrator makes the following conclusions of law:

Petitioner claims temporary total disability for the period from June 4, 2014 to December 21, 2015. However, petitioner testified, and Dr. Freedberg's records reflect, that Dr. Freedberg released petitioner to return to work full duty as of November 5, 2015. There was no explanation for petitioner not returning to work until December 21, 2015.

The Arbitrator, having determined petitioner's condition of ill-being involving his hands, wrist and arms were caused by the work accident of April 14, 2014, and as this condition resulted in his temporary total disability from June 4, 2014 only to November 5, 2015, awards TTD for said period, which is 74-2/7 weeks @ $601.55 per week.

L. With respect to the Arbitrator's decision with regard to the nature and extent of petitioner's injury, the Arbitrator makes the following conclusions of law:

Petitioner sustained bilateral carpal tunnel syndrome, radial tunnel syndrome and elbow triceps tendonitis, as well as DeQuervain's syndrome. There was no objective evidence petitioner had ongoing problems relative to his elbows.

Pursuant to §8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:

With regard to subsection (i) of §8.1b (b) the Arbitrator notes that there was no permanent partial disability impairment rating provided. Therefore, the Arbitrator cannot give any weight to this factor.

With regard to (ii) of §8.1b (b) the occupation of the injured employee, the Arbitrator notes petitioner was employed as a packer, which required constant use of his hands and arms. Therefore, the Arbitrator gives more weight to this factor.

With regard to (iii) of §8.1b (b) the age of the employee at the time of the injury was 42 years of age. Therefore, the Arbitrator gives some weight to this factor.

With regard to (iv) of §8.1b (b) the employee's future earning capacity, the Arbitrator notes petitioner did not return to work as a packer, although he had been released to return to work without restrictions. There was no evidence suggesting petitioner's earning capacity was reduced as a result of the work injuries. Therefore, the Arbitrator, gives no weight to this factor.

With regard to (v) of §8.1b (b) evidence of disability corroborated by the treating medical records, Dr. Gattas wrote in June 4, 2014 that Petitioner had reported to him pain, numbness and tingling in his thumbs, hands, wrists, elbows and upper arms. His diagnoses were bilateral carpal tunnel syndrome, radial tunnel syndrome, and elbow triceps tendonitis. Dr. Gattas' physical therapy both before and after each hand surgery was for Petitioner's thumbs, hands, elbows and arms. He required wrist splints throughout his therapy. When Petitioner first saw Dr. Freedburg his pain complaints in different areas remained the same. Dr. Freedburg's diagnoses were bilateral carpal tunnel syndrome, bilateral elbow triceps tendonitis and bilateral deQuervains syndrome. Both of Dr. Freedburg's surgeries for each hand were carpal tunnel releases and a release of the Guyon's canal and median nerve neurolysis of the first dorsal compartment. However, the left hand surgery included an extensor tendon repair, and the right hand surgery required a repair of the abduction tendon. Therefore, the Arbitrator gives some weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds petitioner had both bilateral carpal tunnel syndrome and DeQuervain's syndrome which caused permanent partial disability to the extent of 25% of both the right and left hand pursuant to § 8 (e) 9 of the Act.

M. With respect to the issue of the Arbitrator's decision with regard to penalties and attorneys' fees, the Arbitrator makes the following conclusions of law:

Although Dr. Vender's opinion was not sufficient to defeat petitioner's claim, Dr. Vender's opinion is sufficient to defeat petitioner's claim for penalties and attorneys' fees.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC025641
Case Name	COBEN-CHANNELL, KADI v. WEISS MEMORIAL HOSPITAL
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0023
Number of Pages of Decision	17
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Richard Victor
Respondent Attorney	Susan Walsh

DATE FILED: 1/21/2022

/s/ Thomas Tyrrell, Commissioner

Signature

22IWCC0023

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

Kadi Coben-Channell,

Petitioner,

vs. NO: 16 WC 025641

Weiss Memorial Hospital,

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 causation, medical expenses, temporary total disability ("TTD"), and permanent partial disability ("PPD"), 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 thereof.

As it pertains to the issue of causal connection, the Arbitrator did not make any findings as to Petitioner's claimed mental health condition. Petitioner had significant struggles with her mental health prior to the accident. The record does not contain any causal connection opinion to suggest that her pre-existing condition was aggravated or exacerbated by the work-related accident. When she started treatment with Metropolitan Family Services in October 2016, there is no mention of any work injury. References to the work injury, more specifically benefit denials, appear in these records in May, August, and October 2017. Such references are not sufficient to prove causal connection. Thus, the Commission finds that Petitioner failed to prove any mental health condition as it relates to this accident.

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 June 15, 2020, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED that Respondent shall pay to Petitioner temporary total disability benefits of $485.08/week for 44-3/7 weeks, commencing July 20, 2016 through March 5, 2017, and from May 23, 2017 through August 14, 2017, as provided in Section 8(b) of the Act. Respondent shall receive a credit for temporary total disability benefits previously paid to

Petitioner in the amount of $18,780.30.

IT IS FURTHER ORDERED that Respondent shall pay reasonable and necessary medical expenses of $488.82, subject to §8(a)/§8.2 of the Act.

IT IS FURTHER ORDERED that Respondent pay to Petitioner the sum of $436.57 per week for a period of 51.25 weeks, as provided in § 8(e) of the Act, for the reason that the injury sustained caused the loss of use of 25% of the right hand.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $25,700.00. 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.

January 21, 2022

o: 12/21/2021
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
NOTICE OF ARBITRATOR DECISION
CORRECTED

COBEN-CHANNELL, KADI Case# **16WC025641**
Employee/Petitioner

WEISS MEMORIAL HOSPITAL
Employer/Respondent

On 6/15/2020, 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 0.18% 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:

1920 BRISKMAN BRISKMAN & GREENBERG
RICHARD VICTOR
351 W HUBBARD ST SUITE 1810
CHICAGO, IL 60654

0766 HENNESSY & ROACH PC
SUSAN WALSH
140 S DEARBORN ST SUITE 700
CHICAGO, IL 60603

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION - CORRECTED

Kadi Coben-Channell
Employee/Petitioner

v.

Weiss Memorial Hospital
Employer/Respondent

Case # **16** WC **25641**

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 **Christopher A. Harris**, Arbitrator of the Commission, in the city of **Chicago**, on **February 20, 2020**. After reviewing all 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 **July 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 partially*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**37,836.24**; the average weekly wage was $**727.62**

On the date of accident, Petitioner was **32** years of age, ***single*** with **2** dependent children.

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

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

Respondent shall be given a credit of $**18,780.30** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**18,780.30**.

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

ORDER

The Arbitrator finds that the only injury causally connected to the work accident was the right hand. All other medical bills pertaining to Petitioner's right hand causally related to the July 13, 2016 work injury have been previously paid for by Respondent with the exception of those stated *infra*.

Respondent shall pay additional reasonable and necessary medical services of Midland Orthopedic Associates in the amount of $120.82 and Advocate Health and Hospital in the amount of $368.00, as provided in Section 8(a) of the Act and consistent with the medical fee schedule.

Respondent shall pay Petitioner temporary total disability benefits of $485.08 per week for 44 3/7 weeks commencing July 20, 2016 through March 5, 2017 and May 23, 2017 through August 14, 2017, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $18,780.30 for TTD benefits paid during that same period.

Respondent shall pay Petitioner the sum of $436.57 / week for a period of 51.25 weeks as provided in Section 8(e) of the Act, because the injuries sustained caused 25% loss of use of the right hand.

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

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

Signature of Arbitrator

6/14/20
Date

JUN 15 2020

FINDINGS OF FACT

Petitioner, Kadi Coben-Channel ("Petitioner") worked for Weiss Memorial Hospital ("Respondent"). She was a patient care technician whose duties were to perform ADL's ("activities for daily living") for patients and assist nurses in various tasks in the facility. (Trans. of Hearing dated February 20, 2020 at 7). On July 13, 2016, Petitioner was assisting a heavy-set patient to disconnect a heart monitor. The patient turned to her side while holding onto the bed rail, could no longer maintain her grip, and then fell back onto Petitioner's right hand and arm. (Id. at 8). Petitioner testified her right-hand hyperextended past her wrist underneath the patient, as her right hand up to her right elbow was beneath the patient. (Id.). Petitioner testified that she felt immediate pain in her right wrist and said pain would shoot up into her right shoulder. (Id. at 9).

Following the incident in question, Petitioner was evaluated in the emergency room at Weiss Memorial Hospital ("Weiss") by Dr. Tam Thai M.D. (Id. at 10). Petitioner complained of pain and swelling in the right wrist. (Pet. Ex. 1 at 2)[1]. Upon examination, she had mild to moderate joint pain with movement of the dorsum of the right wrist. (Id.). She was moderately tender to palpation over the dorsum of the right wrist with mild to moderate swelling. (Id.). There was no palpable effusion over the dorsum, and no sign of contusion or evidence of hematoma. (Id.). The remainder of the wrist exam was normal. (Id.). X-rays of the right wrist were negative. (Id. at 13). The primary diagnosis was sprain of the right wrist. (Id. at 2). She was discharged and advised to follow up with her primary care physician. (Id. at 3). Further, she was advised to avoid any heavy lifting. (Id.). She was prescribed Motrin for pain and told to ice the affected area. (Id).

Petitioner sought treatment with her primary care physician, Dr. Farooq Mohammed, M.D. ("Dr. Mohammed") of Advocate Medical Group ("Advocate") on July 14, 2016. (Pet. Ex. 2 at 47-50). Upon examination of her right wrist, she had mild to moderate range of motion and restriction. (Id. at 49). There was no swelling, redness or increased temperature and radial pulse was normal. (Id.). The exam of her left hand and other joints, upper and lower, were normal. (Id. at 50). Dr. Mohammed assessed Petitioner as having a right-hand sprain, authorized her off work and referred her to an orthopedic specialist for a follow-up. (Id. at 42; Trans. at 11).

Petitioner was referred for orthopedic consultation at Midland Orthopedic Associates ("Midland") where she was seen by Dr. William Heller ("Dr. Heller") on July 19, 2016. (Pet. Ex. 3 at 14). Dr. Heller documented the same mechanism of injury as stated during her visit to Weiss. (Id.). Upon examination, Petitioner localized her symptoms to the distal ulna. (Id.). She had mild swelling and was guarded against motion. (Id.). She did eventually allow active and passive flexion/extension to 130 degrees. (Id.). The hook of hamate was not tender, and the distal radial ulnar joint was stable. (Id.). Dr. Heller did not detect evidence of TFCC pain or popping/swelling. (Id.). Petitioner had no complaints of numbness or paresthesias in her digits and she had normal digital flexion/extension. (Id). Notably, Petitioner did not show evidence of ulnar neuritis or neuropathy, and there was no loss of sensation. (Id.).

X-rays taken during the visit revealed a slight ulnar negative variance but were otherwise normal. (Id.). Dr. Heller modified the diagnoses to reflect that the injury was a right wrist sprain with subluxating extensor carpal ulnaris ("ECU") tendon. (Id.). He further indicated that her type of condition often responded to conservative measures, but sometimes required surgical stabilization. (Id.). She was placed in a short-arm fiberglass immobilization cast. (Id.). If she

[1] Petitioner's exhibits were not presented with page numbers or otherwise bates labeled. For purposes of clarity, the Arbitrator refers to a page number counting from the first page of the marked exhibit.

continued to experience painful subluxation, the doctor would consider surgical treatment. (Id.) She was released to light-duty work with no use of the right upper extremity. (Id.).

On August 2, 2016, Petitioner reported to Dr. Padmaja Gutti, M.D. ("Dr. Gutti") at Advocate complaining of migraines. (Pet. Ex. 2. At 39). Petitioner specifically stated that her neck pain was occasional and radiated from the base of her head to the top of her head. (Id.). This issue was noted to have existed for many years. (Id.). No reference to the July 13th accident or the wrist sprain were present in Dr. Gutti's notes of the visit. (Id. at 39-41).

On August 23, 2016, Dr. Heller provided a work status report on Petitioner's condition. (Pet. Ex. 3 at 11-12). This work status report reflected a diagnosis of tendinitis of right-hand extensor tendon in the wrist, and restricted Petitioner from use of the right upper extremity. (Id. at 4). An MRI of Petitioner's right wrist was performed on August 26, 2016 and reflected a small volar radiocarpal ganglion cyst, with an otherwise intact wrist/joint. (Pet. Ex. 3 at 9-10)

Petitioner returned to Dr. Heller for a follow-up on August 30, 2016. (Pet. Ex. 3 at 7). Upon reviewing the August 26th MRI, Dr. Heller assessed Petitioner as having persistent painful ECU subluxation after a work-related injury, with no additional pathology present.[2] (Id.). Dr. Heller prescribed an ECU stabilization surgery and advised Petitioner to remain on light duty with no use of the right upper extremity. (Id.). Therapy would begin one-month post-operation. (Id.).

Petitioner returned to Dr. Mohammed on September 8, 2016 for a follow-up of the orthopedic referral. (Pet. Ex. 2 at 30). Dr. Mohammed confirmed that Petitioner's surgery was ordered and changed Petitioner's medication from acetaminophen to acetaminophen with codeine. (Id. at 33).

Petitioner was sent to Dr. Charles Carroll IV ("Dr. Carroll") for an evaluation pursuant to Section 12 of the Act on September 14, 2016. (Pet. Ex. 4 at 45-47). Upon examination, Petitioner had full range of motion with her right shoulder. (Id. at 46). The upper examination was benign, with the biceps and triceps intact. (Id.). Petitioner's elbow examination showed full motion with no radial median or ulnar compression, and with no instability found. (Id.). Petitioner did not show evidence of ulnar neuritis or neuropathy, and there was no loss of sensation. (Id.).

Dr. Carroll documented the same mechanism of injury and diagnosed extensor carpi ulnaris and subluxation secondary to tendon sheath tear as a result of the work accident and prescribed a surgical reconstruction. (Id.). Recovery would consist of at least six weeks of therapy and possibly work conditioning. (Id.). Dr. Carroll also opined that Petitioner's wrist injury was related to the work injury she sustained on July 13, 2016. (Id.). Petitioner was released to return to work with no use of the right hand. (Id.). Repeat x-rays revealed no evidence of diffuse arthropathy. (Id. at 39). There was noted to be a focal deformity of the scaphoid neck, smoothly marginated in nature, suggesting old trauma. (Id.).

Petitioner stopped treatment with Dr. Heller and began treating with Dr. Carroll and returned for re-evaluation on September 23, 2016. (Id. at 48-50). Petitioner continued to complain of pain at the ulnar dorsal wrist with subluxation and wrist motion. (Id. at 47). She made no indication of elbow or shoulder pain. (Id. at 48). No numbness or tingling was noted, and function had remained the same. (Id.). No elbow or shoulder pain was discussed. (Id.). Dr. Carroll released her to light duty work with the left hand only. (Id.).

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[2] Petitioner includes in her records from Midland two unsigned account information documents purporting to indicate a diagnosis of lateral epicondylitis of the right elbow given on August 23 and August 30, 2016. (Pet. Ex 3 at 4-5). These documents are unsigned by the doctor and there is no reference to this diagnosis listed in Dr. Heller's signed reports from those respective dates. (Id. at 8, 11).

Petitioner consulted with Dr. Carroll again on November 4, 2016, where he noted Petitioner's progressive pain in her right shoulder originating from her wrist. (Id. at 51-53). Petitioner also began complaining of some right neck pain as well. (Id. at 51). Upon examination, the right shoulder had near full motion. (Id.). No instability was noted but there appeared to be impingement or thoracic outlet syndrome. (Id.). The rotator cuff and deltoid strength were less than normal, and with crepitus in motion. (Id.). The right elbow showed full range of motion with medial and lateral epicondyles, radial medial, and ulnar nerves all intact. (Id.). Further, provocative testing for compressive neuropathy was negative. (Id. at 52-53). Examination of the wrist revealed full range of motion, with no carpal instability found. (Id. at 53).

Petitioner had her third follow-up with Dr. Carroll on November 16, 2016 to examine her shoulder. (Id. at 54-56). Upon examination, Dr. Carroll diagnosed Petitioner with impingement syndrome of the right shoulder. (Id. at 55).

On November 17, 2016, Dr. Carroll performed a surgical repair of the extensor tendon sheath of the right wrist. (Id. at 57-58). The surgery consisted of extensor carpiulnaris tenosynovectomy and release; stabilization of extensor carpulnaris with reconstruction of sub-sheath, compartment-sheath and reticular flap reconstruction. (Id.).[3] A long arm splint was applied. (Id.). Petitioner also began a course of post-operative physical therapy. (Pet. Ex. 4). Repeat X-rays performed on November 28, 2016 revealed normal bony alignment. (Id. at 63). There was no acute or healing fracture. (Id.). There was no bony destructive process. (Trans. at 13; Pet. Ex. 7).

Petitioner testified her right elbow and right shoulder pain grew progressively worse following her surgery. (Trans. at 26). At a post-operative follow-up with Dr. Carroll on November 28, 2016, Petitioner's wrist was noted to have full motion with a stable carpus, with the ulnar wrist benign. (Pet. Ex. 4 at 53). Dr. Carroll also noted that Petitioner should return on December 12th for a follow-up of the right shoulder, which at that time he noted, "was not part of the claim". (Id. at 54). At the follow-up visit on December 12, 2016, Petitioner was noted to be improving, with improved motion and function with no new numbness or tingling. (Id. at 55). These post-operative records made no reference to the state of Petitioner's back. At a follow-up appointment on December 19, 2016, Dr. Carroll began noting his discussions with Petitioner as to ulnar neuritis for the first time, but also noted Petitioner's improvements in pain and function despite elbow sensitivity. (Id. at 66-67).

At subsequent follow-ups on January 9 and January 16, 2017, Petitioner's improvement was noted and reflected less shoulder pain, the absence of tingling and numbness with greater function in the wrist. (Id. at 82, 87). At Petitioner's follow-up appointments on February 6 and February 27, 2017, it was noted that Petitioner had intermittent pain with rotation and motion above the shoulder, with no neck pain. (Id. at 94, 103-104).

At a follow-up visit on April 3, 2017, Dr. Carroll diagnosed Petitioner with right cubital tunnel syndrome due to Petitioner's ulnar nerve symptoms at the elbow, which had become more prominent. (Id. at 125). Petitioner was sent for an EMG, performed on April 4, 2017, which showed ulnar nerve compression. (Id. at 128). On May 15, 2017, Dr. Carroll prescribed a right ulnar nerve release. (Id. at 130).

Dr. Carrol referred Petitioner to Dr. Irene Semenov ("Dr. Semenov") for consultation, who saw Petitioner on May 16, 2017. (Id. at 132). Dr. Semenov confirmed the presence of ulnar neuropathy at the right wrist and right elbow. (Id. at 134). There was no evidence of motor weakness, but there were sensory deficits consistent with an ulnar nerve distribution. (Id.).

[3] The surgical operative report from the November 17, 2016 procedure was not submitted into evidence.

Petitioner was seen by Dr. Carroll on June 12, 2017 and on July 17, 2017. (Id. at 135, 138). Dr. Carroll noted Petitioner's ulnar nerve symptom and placed work restriction on the Petitioner. (Id.). Petitioner was not at MMI for the wrist as of the July 17th date. (Id. at 140).

Due to Dr. Carroll's opinion that the right elbow could have been causally related to the July 13, 2016 accident, a second Section 12 examination was performed on Petitioner by Dr. Guido Marra, M.D. ("Dr. Marra") on July 11, 2017. (Resp. Ex. 1, Dep. Ex. 2)[4]. In conjunction with his evaluation, he reviewed medical records from Weiss Memorial Hospital, Dr. Heller and Dr. Carroll, and performed his own physical examination. (Id.) His examination of the Petitioner's shoulder revealed full range of motion. (Id.). He also performed provocative tests of the rotator cuff, specifically the NEER test, Hawkins test and painful ARC. (Id.). Petitioner's AC joint was evaluated with palpation and a crossover test, her biceps tendon was evaluated with a Speed's test and her labrum was evaluated with the O'Brien's test. (Id.). All tests performed came back normal. (Id.). He did note that Petitioner had a positive Tinel's phenomenon over the ulnar nerve. (Id.). Her elbow flexion test was positive, and she had no medial or lateral epicondylar tenderness. (Id.).

Dr. Marra diagnosed Petitioner with ulnar neuropathy of the right arm, and that based upon the medical records provided, the right ulnar neuropathy was unrelated to the work injury of July 13, 2016. (Id.). The basis of the opinion was that Petitioner described her initial injury as her wrist being hyper-extended – consistent with the emergency room records from Weiss and records from Dr. Carroll and Dr. Heller. (Id.). According to Dr. Marra's review of the records, there was a significant period between the initial injury and her complaints of elbow pain. (Id.). Dr. Marra agreed with the recommendation for an ulnar nerve transposition/decompression procedure based upon her current symptomology; but maintained that her current complaints were not related to the work injury. (Id).

On August 20, 2017, Dr. Carroll drafted a report concerning Petitioner's current condition. (Pet. Ex. 5). In recounting his interactions with the Petitioner, he noted that Petitioner had had shoulder pain prior to the November 16, 2016 surgery. (Id.). Dr. Carroll's report acknowledged that there was some continued pain in her wrist, but that the new prominent issue was Petitioner's medial elbow pain and the related diagnosis of right ulnar neuritis. (Id.). Dr. Carroll stated that Petitioner would require a release and possible transposition of the ulnar nerve at the right elbow. (Id.). It was determined that Petitioner could not return to full duty because of her elbow neuritis and that ulnar nerve transposition surgery would be required. (Id.). Dr. Carroll also opined that the ulnar neuritis might be related to the injury of July 13, 2016. (Id.). Dr. Carroll's report indicated that Petitioner had been at MMI for her wrist. (Id.).

Dr. Marra authored a second report on December 21, 2017 following his review of Dr. Carroll's causation opinion written on August 20, 2017. (See. Resp. Ex. 1, Dep. Ex. 3). Dr. Marra specifically disagreed with Dr. Carroll's opinion that Petitioner's ulnar neuritis was related to the original injury, and that her elbow symptoms were not as prominent at the time of her examination on September 14, 2016. (Id.). Dr. Marra concluded that if an individual injured his/her nerve at the time of the accident, he/she would have had numbness, tingling and sensitivity at the nerve, and that it would not have manifested months after to the injury. (Id.). Dr. Marra understood Petitioner to be at MMI as per Dr. Carroll's office report dated August 14, 2017. (Id.).

Petitioner testified she continued to see Dr. Mohammed at Advocate Medical through 2017, 2018 and 2019, and that she complained of ongoing pain to her right elbow, right shoulder,

[4] Arbitrator notes that Resp. Ex. 1, Dep. Ex. 2 is a three-page document and that the second page was not submitted into evidence.

neck, and back. (Trans. at 11, 17). Petitioner was referred for pain management, first with Nurse Practitioner Carlene Kaucky on March 7, 2018, and then with Dr. Ring on May 8, 2019. (Trans. at 16). Petitioner continued to see Dr. Ring through June 22, 2019 for her pain, but discontinued treatment. (Pet. Ex. 7).

Due to Petitioner's need for right elbow surgery, Petitioner sought treatment with Dr. Steven Chandler ("Dr. Chandler") of South Chicago Orthopedic Specialists on December 11, 2017. (Pet. Ex. 9A). Dr. Chandler diagnosed right cubital tunnel syndrome and ulnar neuritis due to wear and tear from compensating for pain in other areas of her body. (Id. at 5). On February 5, 2018, Dr. Chandler prescribed a right ulnar nerve decompression, which he performed on February 23, 2018. (Id. at 10, 38, 39). Petitioner was sent for physical therapy to ATI, from March 27, 2018 to June 19, 2018, and September 7, 2018 to October 9, 2018. (Pet. Ex. 8). On June 21, 2018, Dr. Chandler diagnosed Petitioner with complex regional pain syndrome. (Pet. Ex. 9A at 84). Petitioner continued to see Dr. Chandler through May 7, 2019, placing Petitioner at maximum medical improvement and recommended pain management. (Id.). On October 17, 2018, Dr. Chandler opined that Petitioner was not able to return to work as a nurse, was not able to push, pull, lift, type, or carry with her right arm, and with limited use of her right arm. (Id. at 88).

The evidence deposition of Dr. Chandler took place on November 11, 2019. (Pet. Ex. 10). Dr. Chandler testified that he disagreed with Dr. Marra regarding causation of Petitioner's right elbow condition to her work injury. (Id. at 14-17). Dr. Chandler testified that based on his experience as an orthopedic surgeon, the mechanism of Petitioner's accident, her resulting wrist injury and required surgery, masked her elbow symptoms which grew progressively worse, Petitioner's right elbow condition, CRPS, and resulting work status were causally related to her July 13, 2016 work injury. (Id.). Dr. Chandler testified that his opinions were supported by a lack of any elbow symptoms prior to the accident, and further supported by the opinions of Dr. Carroll. (Id. at 16). Dr. Chandler testified that Petitioner's elbow condition was growing worse, was a permanent condition, and limited Petitioner's potential of returning to work. (Id. at 11).

The evidence deposition of Dr. Marra took place on January 10, 2020. (Resp. Ex. 1). Dr. Marra testified that the mechanism of injury itself is not a common cause of a nerve injury; it is usually more direct compression of a nerve. (Id. at 13). He testified that if Petitioner's arm was twisted in some way and she reported immediate symptoms in her elbow, that would change his opinion. (Id.). Also, he noted that there was no direct trauma to the elbow. (Id.). Dr. Marra testified that the major problem he had with Dr. Carroll's and Dr. Chandler's opinions of causation was that there was no documentation of problems with the elbow until months post-accident with an injury mechanism that would not correlate to an injury of the ulnar nerve. (Id. at 18-20). If there was an injury to the right elbow, Petitioner would have experienced symptoms immediately following the incident. (Id.).

Petitioner testified that she also sought treatment at Metropolitan Family Services ("Metropolitan") for anxiety and depression, which she testified, worsened after the July 13, 2016 accident. (Pet. Ex. 6). Petitioner had previously been treating for anxiety and depression as early as August 2015. (Id.; Trans. at 15, 43, 46, 48). Petitioner testified that her depression and anxiety were aggravated as a consequence of her pain and symptoms following the work accident, including her inability to work, inability to care for her child, frustration with financial problems, past psychological issues, recent deaths in her immediate family, and marital problems. (Pet. Ex. 6 at 19, 23, 29, 37, 41). Petitioner was prescribed Latuda, Xanax and Trazodone by Dr. Franchot Givens, M.D at Metropolitan. (Id. at 9).

Petitioner testified that she was off work and received TTD benefits through March 5, 2017, when she returned to work for Respondent with restrictions of no use of her right arm. (Trans. at 21). Petitioner testified that despite her pain growing worse, she continued to work until May 22, 2017, when Respondent no longer offered such work to her due to her disinclination to sign additional documents from her employer. (Id. at 22). Petitioner testified she has not worked since May 23, 2017, and due to her continuing symptoms feels unable to work. (Id. at 23).

Petitioner testified she continues to experience pain and weakness in her right wrist and elbow, as well as pain in her right shoulder, the right side of her neck, and has pain radiating down both legs. (Id. at 17, 25, 30). Petitioner testified the pain is aggravated by standing, sitting, walking, lifting objects, and reaching overhead with her right arm. (Id. at 26-27). Petitioner testified she experiences this pain while engaging in activities such as driving, combing her hair, typing, pushing, or pulling shopping carts. (Id. at 26-28). Petitioner testified the pain is constant and varies in intensity with activity and depending on the weather. (Id.). Petitioner testified she takes tramadol and ibuprofen as prescribed by Dr. Mohammed. (Id. at 29).

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact as applied by Conclusions of Law which immediately follow:

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

The Arbitrator repeats the findings set forth as set forth fully herein.

The Arbitrator notes that there is no dispute between the parties that Petitioner injured her right hand/wrist at work on July 13, 2016. The affected conditions remaining at dispute between the parties involve alleged injuries to Petitioner's elbow, right shoulder, neck, and back. For the foregoing reasons, the Arbitrator finds that the Petitioner's current condition of ill-being related to her right shoulder, right elbow, neck, and back are not causally related to the injury which took place on July 13, 2016.

Right Elbow

Petitioner's testimony is not credible in seeking to causally connect alleged injuries to Petitioner's right elbow to the work injury on July 13, 2016. Petitioner testified that her right elbow pain had been present since the July 13, 2016 accident, and had become progressively worse since that date. (Trans. at 9, 14). Yet, the medical records in the time contemporaneous with the accident and in the months following do not reflect injury to the elbow stemming from the July 13, 2017 work injury.

First, the Weiss emergency room records from the date of the injury make no mention that Petitioner sustained any injury to her elbow. (Pet. Ex. 1 at 2-7). At her Section 12 examination before Dr. Carroll on September 14, 2016, Petitioner had full range of motion of the right elbow with no ulnar nerve compression or instability found. (Pet. Ex. 4 at 46). Dr. Carroll again saw Petitioner on September 23, 2016 where he noted; "Right exam shows full motion. Each elbow stable. Medial and lateral epicondyles intact. Radial, median and ulnar nerves intact". (Id. at 49). Provocative testing for compressive neuropathy was negative for radial, median and ulnar nerve

at the elbow. (Id. at 49). This diagnosis pertaining to Petitioner's elbow remained the same after Petitioner's November 4, November 16, and December 12, 2016 visits to Dr. Carroll. (Id. at 52-53, 55, 72). The evidentiary record reflects that Petitioner began complaining of right elbow sensitivity on December 19, 2016 and was ultimately diagnosed with right elbow neuritis on April 4, 2017. (Pet. Ex. 5).

Dr. Chandler testified that Petitioner stated that she had pain in her elbow from "the start". (Pet. Ex. 10 at 16). In an effort to explain the lack of documentation in the medical records as to the existence of any elbow symptoms, Dr. Chandler testified that to a "high degree of medical certainty", if Petitioner was having a significant amount of wrist pain, she may not have noticed the elbow pain. (Id. at 17). Dr. Marra, in responding to Dr. Chandler's opinion, asserted that where a person has ulnar neuritis, the symptom would be numbness, and that if the July 13th injury caused the elbow numbness it would have manifested itself immediately, and not months later as the records reflect. (Resp. Ex. 1 at 18-20).

The Arbitrator agrees with Dr. Marra's conclusion and disagrees with Dr. Chandler's explanation that the elbow pain was masked by the wrist pain. The record in evidence reflects that Petitioner was assiduously aware of the various pain she was in relative to the accident and made frequent visits to many doctors between July 13 and December 19, 2016. Despite numerous tests to the allegedly affected elbow, Petitioner did not complain of numbness or pain in the months before the onset of said pain. Lastly, there was no evidence provided that the November 17, 2019 surgery caused the eventual ulnar neuritis diagnoses in April 2017.

Right Shoulder

Petitioner failed to prove a causal connection between the present condition of her right shoulder and the work injury. Specifically, Petitioner's testimony is not credible insofar as it purports to link Petitioner's current state of her right shoulder to the work injury on July 13, 2016.

Petitioner testified that her right shoulder pain had been present since the July 13, 2016 accident, and had grown progressively worse. (Trans. at 9, 14). However, the Weiss emergency room records from the date of the injury make no mention that Petitioner had sustained any injury to her shoulder. (Pet. Ex. 1 at 2-7).

At her Section 12 examination before Dr. Carroll on September 14, 2016, Petitioner had full range of motion of the right shoulder. (Pet. Ex. 4 at 46). Dr. Carroll again saw Petitioner on September 23, 2016 where she made no complaint of shoulder pain. (Id. at 48). Upon examination of her shoulder again, Dr. Carroll again noted that the right shoulder had full motion, no instability, impingement or thoracic outlet syndrome. (Id. 49). Further, rotator cuff and deltoid strength were normal. (Id.).

The record reflects that Petitioner presented with pain and loss of function of the right shoulder to Dr. Carroll for the first time on November 4, 2016. (Id. at 51). An x-ray of the shoulder was taken and showed no acute fracture or subluxation – with no changes when compared to the x-ray from Dr. Carroll's examination on September 14, 2016. (Id. at 40). Upon review of the x-ray, Dr. Carroll again concluded that the shoulder showed full motion, no instability or impingement. (Id. at 52). Dr. Carroll notes Petitioner's worsening shoulder pain on December 12, 2016, when the diagnosis is made of impingement syndrome of the right shoulder. (Id. at 71).

The Petitioner testified that the shoulder injury occurred from the accident and made no argument that her ECU surgery exacerbated any alleged injury to her surgery. The Arbitrator notes that Petitioner's ECU surgery did not take place until November 17, 2016 and that Petitioner's

shoulder complaints predate said surgery. Given the thorough examinations performed on her right shoulder by her physicians between July 13 and November 4, 2016 and the resulting lack of evidence indicating that any shoulder impingement existed in the period immediately following the work injury, the Arbitrator concludes that any injury to Petitioner's right shoulder is not causally connected to the July 13, 2016 work injury.

Neck

Petitioner failed to prove a causal connection between the present condition of her neck and the work injury. Specifically, Petitioner's testimony is not credible as it relates to her stated pain in the neck.

Petitioner did not complain of her neck pain during her emergency room visit on July 13, 2016. The first reference to Petitioner's neck pain is in her visit to Dr. Gutti at Advocate Medical Group on August 2, 2016. (Pet. Ex. 2 at 39-41). The purpose of that visit however was not related to the injury, but due to migraines she had previously been experiencing. (Id. at 39). Petitioner specifically stated that the neck pain was occasional and radiated from her neck, then to the base of her head to the top of her head. (Id.). This issue was noted to have existed for many years. (Id.). Petitioner again reported occasional neck pain at a follow-up appointment with Dr. Chandler on November 28, 2018, but in conjunction with another migraine. (Pet. Ex. 7 at 92). On November 4, 2016, Petitioner complained of right-sided neck pain to Dr. Carroll, but it is unclear if there is a delineation between its relation to the work injury or to prior migraines predating the injury. (Pet. Ex. 4 at 51).

At trial, Petitioner testified that her neck symptoms did not start until after she had begun to see Dr. Ring. (Trans. at 49-50). Additionally, Dr. Chandler offered no testimony at deposition relative to Petitioner's neck. While Dr. Chandler did mention in a letter dated May 7, 2019 that Petitioner's pain ran from the "whole right upper extremity extending into the shoulder and neck", he also testified on November 11, 2019 that he could not specifically recall which of Petitioner's records he reviewed from her treatment with Dr. Carroll. (Pet. Ex. 10 at 22-23). Dr. Chandler could also not recall having seen any records from Advocate Medical Group. (Id. at 23).

The Arbitrator finds that Dr. Chandler did not credibly opine as to the causation or circumstances surrounding Petitioner's neck pain, and that any indication of neck pain is related to medical issues unrelated to the July 13, 2016 work injury.

Back

There was insufficient evidence presented linking the alleged injuries to Petitioner's back and the date of injury. Petitioner testified that when she was trying to free herself from the patient who had rolled on to her arm, she suffered a pinched nerve in her back which has caused her severe pain radiating throughout her back and lower extremities. (Trans. at 17, 25, 30). The medical records at the time of the accident made no reference to Petitioner receiving a back injury or suffering back pain due to the July 13th injury – with all records focusing on the wrist strain. Further, there is no contemporaneous record that Petitioner made complaints about her back around the time of the accident.

The first iterations of Petitioner's back pain do not make an appearance in Petitioner's medical history entered into evidence until January 15, 2019, when Dr. Chandler notes that Petitioner, "now has low back pain" and added lumbar strain to his diagnoses on January 15, 2019.

(Pet. Ex. 9A at 89). Dr. Mohammed further notes the chronic upper and lower back problems on June 19, 2019. (Pet Ex. 7 at 197). Dr. Chandler offered no testimony as to Petitioner's condition of her back and its relationship to the date of injury. (See Pet. Ex. 6).

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

The Arbitrator repeats the findings set forth in support of (F) as set if forth fully herein.

The parties have stipulated that the right hand/wrist condition was causally related to the July 13, 2016 accident. Respondent has paid all relevant medical bills pursuant to that stipulation. (See Arb. Ex. 1; *compare* Pet. Ex. 3 at 3; Pet. Ex. 4 at 3-29). At trial, Petitioner presented additional medical billing records related to the unstipulated injuries discussed in Section (F) *supra*. Upon review, these medical records are related to injuries, alleged or otherwise, which the Arbitrator has found to not be causally connected to the July 13, 2016 injury, with two exceptions. The Arbitrator therefore finds Respondent responsible for payment of the following additional medical bills pursuant to the fee schedule or as otherwise negotiated:

1. Midland Orthopedic Associates (Pet. Ex. 3)	$120.82
2. Advocate Health and Hospital (Pet. Ex. 12; Pet. Ex. 2 at 30-34, 43-51)	$368.00
Total Additional Medical Bills Payable:	**$488.82**

The Arbitrator finds the additional billed charges to be reasonable, necessary, and causally related to Petitioner's right wrist/hand injury dated July 13, 2016 and arising out of her work activities with Respondent. Respondent shall receive a credit for any and all amounts previously paid pursuant to Section 8(j) of the Act.

K. TTD Benefits

The Arbitrator repeats the findings set forth in support of (F) and (J) as if set forth fully herein.

Dr. Carroll, in a report to Petitioner's counsel dated August 20, 2017, wrote that Petitioner was, "released to full use of her wrist on 6/12/17 and was released at MMI just recently on 7/17". (Pet. Ex. 5 at 1). Dr. Carroll reaffirmed that Petitioner was released to return to her job as it relates to her wrist. (Id. at 2). However, in reviewing Dr. Carroll's medical notes from July 17, 2017, Dr. Carroll stated that Petitioner was, "[N]ot at MMI for wrist and still under my care". (Pet. Ex. 4 at 140).

Dr. Marra's letter of December 21, 2017 to Respondent's counsel, indicated that he was, "provided an office note dated 8/14/17. On that date, Ms. Coben presented to Dr. Carroll for right wrist pain. It was noted that she had attended therapy as discussed...There were no restrictions with regard to her wrist. It was noted that she was at MMI for wrist care." (Resp. Ex. 1 at 10; Resp. Ex. 1, Dep. Ex. 3 at 1). The Arbitrator notes that Petitioner's Exhibit 4 purporting to contain

the medical records of Dr. Carroll had an end date of August 4, 2017 and did not include the August 14, 2017 office note referenced by Dr. Marra and Dr. Carroll. (Pet. Ex. 4 at 31; Resp. Ex. 1 at 10). Since Dr. Marra provided testimony that he reviewed the office note indicating that Petitioner was at MMI as of August 14, 2017, and Dr. Carroll is clear in his letter of August 20, 2017 that Petitioner was at MMI, the Arbitrator hereby adopts that MMI date of August 14, 2017.

The Arbitrator finds that Petitioner was temporarily and totally disabled from July 20, 2016 through March 5, 2017 and May 23, 2017 through August 14, 2017 - a total of $485.08 per week for a total of 44 3/7 weeks. Petitioner testified that she received TTD benefits from July 20, 2016 through March 5, 2017. (Arb. Ex 1; Trans. at 21). The parties stipulated that Respondent is entitled to a credit in the amount of $18,780.30 for the amounts previously paid pertaining to this TTD period. (Arb. Ex. 1).

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

The Arbitrator repeats the findings set forth in support of (F), (J) and (K) as if set forth fully herein.

As Petitioner's accident occurred on July 13, 2016, §8.1b applies. 820 ILCS 305/8.1b(b) of the Act requires consideration of five factors in determining permanent partial disability:

1. The reported level of impairment pursuant to section (a);
2. The occupation of the injured employee;
3. The age of the employee at the time of the injury;
4. The employee's future earning capacity; and
5. Evidence of disability corroborated by the treating medical records.

The statute provides that no single factor shall be the sole determinate of disability. The statute requires a written order explaining the relevance and weight of any factors used in addition to the level of impairment as reported by the physician. (Id).

1. Reported level of impairment:

Neither party submitted a §8.1b(a) impairment report. As an impairment report is not a prerequisite to an award of permanent partial disability benefits, the Arbitrator will assess Petitioner's permanent disability based upon the remaining enumerated factors. *See Corn Belt Energy Corp. v. Illinois Workers' Compensation* Commission, 2016 IL App. (3d) 150311WC.

2. Petitioner's occupation:

Petitioner was employed as a patient care technician for the Respondent. After the right wrist ECU stabilization and subluxation of extensor tendon was performed, Petitioner was given a full duty release relative to her wrist. Dr. Chandler has stated that Petitioner has "very limited potential for returning to work". (Pet. Ex. 10 at Dep. Ex. 2). The Arbitrator notes that Petitioner's medical issues listed in Dr. Chandler's report appear to be derived to symptoms or injuries not causally related to the July 13, 2016 accident as discussed in Section (F) *supra*. The Arbitrator assigns this factor significant weight.

3. Petitioner's age at the time of injury:

Petitioner was 32 years old at the time of the accident. Due to Petitioner's young age, the Arbitrator gives some weight to this factor.

4. Petitioner's future earning capacity:

There was no evidence presented as to Petitioner's future earnings capacity. Therefore, the Arbitrator gives no weight to this factor.

5. Evidence of disability corroborated by the medical records:

Petitioner testified that she was able to return to work with restrictions after being discharged from Dr. Carroll's care for her wrist and was only unable to continue working because of her belief that further work could have hampered her medical improvement. (Trans. at 22-23). Petitioner testified that she is right-hand dominant but writes solely with her left hand. (Trans. at 39-40). Petitioner testified that she continues to have tingling and numbness from her fingers through her arm, and that she has difficulties performing daily activities such as getting dressed, driving, combing her hair, typing, and lifting objects. (Id. at 26-27). Petitioner continues to take tramadol and ibuprofen for pain as prescribed by Dr. Mohammed. (Trans. at 29, 66). The Arbitrator notes that some of these impediments and restrictions appear to be related to symptoms or injuries not causally related to the July 13, 2016 accident as discussed in Section (F) *supra*. Taking into account the full breadth of Petitioner's injuries – whether causally related or not casually related to the July 17, 2016 work injury - Dr. Ring acknowledged that as late as June 12, 2019, Petitioner was able to return to work. (Pet. Ex. 7 at 194-195). The Arbitrator assigns this factor significant weight.

Considering these factors as a whole pursuant to Section 8.1(b) of the Act, the Arbitrator finds that the Petitioner sustained accidental injuries that caused 25% loss of the use of her right hand.

Signed: _____ 6/12/20
SIGNATURE OF ARBITRATOR DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC026112
Case Name	LYNCH, BRENDEN v. BURKE BEVERAGE, INC.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remanded Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0024
Number of Pages of Decision	29
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Peter Bobber
Respondent Attorney	Brad Antonacci

DATE FILED: 1/21/2022

/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

Brenden Lynch,

Petitioner,

vs. NO: 19 WC 26112

Burke Beverage, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 7, 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 $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.

January 21, 2022

MP:yl
o 1/20/22
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	19WC026112
Case Name	LYNCH, BRENDEN v. BURKE BEVERAGE, INC.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	26
Decision Issued By	David Kane, Arbitrator

Petitioner Attorney	Peter Bobber
Respondent Attorney	Brad Antonacci

DATE FILED: 6/7/2021

INTEREST RATE FOR THE WEEK OF JUNE 1, 2021 0.03%

/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)
- ☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

BRENDEN LYNCH
Employee/Petitioner

v.

BURKE BEVERAGE, INC.
Employer/Respondent

Case # **19** WC **26112**

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 **David Kane**, Arbitrator of the Commission, in the city of **Chicago**, on **May 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. ☐ 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, **1/21/2017**, 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 $**55,185.55**; the average weekly wage was $**1,080.51**.

On the date of accident, Petitioner was **36** years of age, ***single*** with **1** dependent child.

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

Respondent shall be given a credit of $**5,865.87** for TTD, $**378.48** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**6,244.35**.

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

ORDER

Respondent shall pay Petitioner $**8,001.00** for necessary medical services, pursuant to the medical fee schedule as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $**720.34**/week for **96 6/7ths** weeks, commencing **11/7/2017 through 1/2/2018 and 8/22/2019 through 5/3/2021;** as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner temporary partial disability benefits of $**165.59**/week for **2 2/7ths** weeks, commencing **2/12/2018** through **2/28/2018**, as provided in Section 8(b) of the Act.

Respondent shall authorize the lumbar fusion surgery and the reasonable and necessary associated medical care as prescribed by Dr. Rinella.

Respondent shall pay to Petitioner penalties of $**14,360.49**, as provided in Section 16 of the Act; $**35,901.27**, 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.

David A. Kane

Signature of Arbitrator

JUNE 7, 2021

ICArbDec19(b)

BRENDEN LYNCH v. BURKE BEVERAGE, INC.

19 WC 26112

Addendum to Arbitrator's 19(b) Decision

I. STATEMENT OF FACTS

Petitioner was born on June 23, 1980, is engaged to be married and has two children. He started work with respondent in 2010 after successfully completing a pre-employment physical respondent required. Respondent operates as a beer distributor.

Petitioner's first job title with respondent was Part-Time Merchandiser for which he was paid $150 per day and he held that position for one year. This job entailed working on weekends and going into various chain stores like Walmart or Jewel, for example, and you stock beer from the back store room and stocking shelves and various displays.

Full-Time Merchandiser was petitioner's next job with respondent. This job was a full-time entry level sales position for which he was paid a salary of $28,000 per year and the job duties were the same as the Part-Time Merchandiser, but the work was performed on a fulltime basis. Petitioner's third job title with respondent was On Premise Salesman from 2013-2018. He was paid $55,000-$60,000 per year with salary and bonuses. His job duties included servicing about 110 different accounts including restaurants, bars and dancing venues by ordering all of the beer for those entities as well as point-of-sale signs, advertising, decorating for various holidays like St. Patrick's Day, for example. The On-Premise Salesman job was physically

much easier than the merchandiser job because bars take 10-20 cases of beer a week and they stock their own coolers so the On-Premise Salesman is not required to do any stocking and the beer would be delivered to the location by the union delivery drivers.

Petitioner's final job title with respondent was Off-Premise Chain Salesman, a position he held from October, 2018 through July, 2019. That position paid a base salary of $48,000 and he anticipated that with commissions and bonuses, he was on track to earn $80,000. That job's physical requirements were similar to that of the merchandiser job- stocking shelves and building displays, rotating stock and filling the cooler with beer from the stockroom. On average, in the winter, when beer sales were slower, he would physically handle 1500-2000 cases of beer per week. However, in the summer, he would average handling up to 5000 cases of beer per week. Cases of beer each weigh 20-30 pounds, depending on the number of units per case and whether the beer was in cans or bottles. Delivery drivers would stock what they could of their order onto the shelves while petitioner would be responsible to go the various stores on non-delivery days to stock the shelves and coolers with back stock from the stores' storeroom utilizing a hand truck or cart depending on what the store had available to transport the cases of beer. In May of 2019, there was a change in respondent's policy which now prevented merchandisers from coming in on the weekends to stock the shelves. This resulted in petitioner having to do more stocking than usual early in the week as the shelves would be empty and he would have to perform more stocking than before.

Respondent's job description for the Off-Premise Chain Sales Consultant indicates that the salesman must be able to lift up to 55 pound cases of beer frequently and must be able to lift and handle 160 pound ½ barrels of beer. This job description also indicated that the job "…involved strenuous work requiring sitting, driving, stooping, bending, kneeling, pivot twisting, lifting, carrying, pushing and pulling and balancing."

During his tenure as an Off-Premise Chain Salesman/ Consultant, petitioner's sales were up 17% compared to his predecessor. This represented about 17 additional truckloads of beer sales. Petitioner's job performance was so exceptional that he was maxing out his bonuses and he was making more money than he ever had with respondent previously. Additionally, respondent rewarded petitioner for his efforts with various sales bonus incentives including when he won the contest among all salesman to sell the most Miller beer during a given time period for which he received tickets on the 50 yard line to the Chicago Bears' January, 2019 playoff game.

Prior to working for respondent, petitioner never suffered an injury to his low back, he never required medical treatment to his low back and he never missed any time from any job due to any problem with his low back.

In 2012, while working as a Merchandiser, petitioner injured his low back while working for respondent. He was building a Corona Beer display when he was utilizing a faulty pallet jack to pull pallets of beer from one side of the store to the other when he noticed what he initially

believed to be a pulled hamstring but later required surgery to his low back. On December 17, 2012, Dr. Anthony Rinella performed a microdisectomy at L5 and S1 on the right. Following recovery from the surgery, petitioner returned to full duty work for respondent and felt pretty good. Dr. Rinella returned petitioner to full duty work on March 15, 2013. Petitioner did not file a claim at the IWCC for this injury, did not hire an attorney to represent him and he did not seek or obtain any type of settlement for that claim because he believed his career with respondent would be cut short.

Between 2012 and January 21, 2017, petitioner did not suffer any further work accident or any other injury to his low back.

On Saturday, January 21, 2017, petitioner was on call during the weekend. On that day, an account ordered some kegs of beer. Petitioner had to go to the warehouse and manually get the kegs from the cooler, roll them across the floor and load them into the back of his transport van with no assistive device. While transporting the second keg of the order, petitioner propped one edge of the keg on the van's bumper to utilize it as leverage so he could then lift the bottom of the keg off the floor and hoist it into the van. Kegs of beer weigh 155 pounds and at that time, petitioner weighed approximately 175 pounds. While lifting the keg, petitioner felt a pop in his low back and felt sciatic pain into his right leg. Due to his prior experience with his low back injury in 2012, petitioner immediately knew he had injured his low back. Petitioner reported the accident the same day it happened. On the following Monday, two days after the accident, respondent directed petitioner to obtain treatment at a company clinic. At that

time, petitioner noticed sciatic pain and calf spasms in his right lower extremity and his toes would “curl up.”

Next, petitioner sought further care with Dr. Rinella. Dr. Rinella first saw petitioner on February 8, 2017 at which time he noted a consistent history of the January 21, 2017 work accident and diagnosed L5-S1 radiculopathy secondary to a new work-related L5-S1 disc herniation. Petitioner then underwent conservative care, including injections by Dr. Malhorta. Petitioner noted only limited relief but the pain and symptoms returned after three to four weeks following the injections. Ultimately, Dr. Rinella performed surgery on November 7, 2017 which included a revised L5-S1 microdisectomy. Following recuperation from the surgery, petitioner returned to restricted, light duty work on January 3, 2018 per Dr. Rinella’s order.

When off work while recovering from the surgery, respondent paid petitioner TTD benefits, and when he returned to restricted work, when he worked limited hours, respondent paid TPD benefits. Upon returning to work, petitioner noticed that this surgery was as successful as his prior surgery as he was still experiencing pain. At this time, petitioner was performing the On-Premise Salesman job which was the least physical of all of his jobs he held while working for respondent. Petitioner was last seen in Dr. Rinella’s office in 2018 on March 14, 2018 at which time he was still dealing with back pain because his only other option was to obtain a spinal fusion. On that date, Dr. Rinella’s office noted that petitioner was improved but is still sore and has pain radiating into the right leg after moving beer yesterday. At that time, petitioner was provided a prescription for an

anti-inflammatory medication and was told he may have episodic flare-ups which may require further medical care.

Petitioner testified that when he returned to work at the On-Premise Salesman job in 2018, he did mention increased back pain to Pat Fitzgerald, respondent's human resources representative/safety manager, in passing as he would "get flare ups all the time", but he did not pursue a new claim or further treatment at that time.

Petitioner continued working through 2018 and in October of that year he commenced his new job as an Off-Premise Chain Salesman. Upon commencing that job, petitioner noticed he would have pain occasionally but since it was the winter, he was not required to handle too many cases of beer and he addressed his pain with icing his back and wearing a compression brace and he was able to tolerate his pain. However, as the volume of beer sales increased in the spring and early summer of 2019, his back was bothering him more and more. He continued to ice his back regularly. With the Memorial Day and Fourth of July holidays, there were significant sales including 30 packs of beer for $9.99, and on those weeks, petitioner was moving thousands of thirty-pound 30 packs alone. This is when he noticed his low back getting particularly bad.

Petitioner last worked for respondent on July 18, 2019. He was laid off at that time. He then returned to Dr. Rinella's office for further care on August 22, 2019. Then, he noticed the symptoms were getting worse –the spasming was constant, the sciatic was almost now constant and he had mid to lower back pain. The office note from that

date indicated that as time progressed petitioner's symptoms have increased to the point where it is affecting his sleep and he is very sore after having to move a lot of cases of beer.

Petitioner testified that he needed to get his back fixed so he could be able to pass a physical for a new employer to be able to continue his career. After a lumbar MRI revealed a herniated disc at L5-S1 with annular tearing and bilateral neural foraminal stenosis, Dr. Rinella recommended petitioner undergo a lumbar fusion surgery on the right at L5-S1. Petitioner wishes to undergo the surgery but he has not done so because respondent has not authorized it and petitioner has no other means to pay for the surgery.

Petitioner did not file a claim for the 2017 undisputed work accident until after respondent terminated his employment.

At respondent's request, petitioner underwent a Section12 examination by Dr. Avi Bernstein on February 10, 2020. Dr. Bernstein, finding no symptom magnification or exaggerating, opined that petitioner suffers from recurrent and progressive sever low back pain, for which treatment would include an anterior lumbar interbody spinal fusion at L5-S1 as his spine was healthy outside of the L5-S1 level.

Since last working for respondent on July of 2019 through the present, petitioner noticed his symptoms continue to worsen. His spasming is so bad that sleeping is very difficult and you can visually see the right calf spasming which it does "24/7."

Since August 22, 2019, Dr. Rinella has kept petitioner off work or issued restrictions on his ability to work. Respondent has not paid petitioner any TTD benefits or medical care during this time. Presently, Dr. Rinella continues to prescribe the fusion surgery.

Petitioner identified Petitioner's Exhibit 12 as the two medical bills he has received in connection with the treatment he has undergone for his back which to his knowledge remain outstanding. The bills associated with the 2017 surgery were paid by respondent.

Since the January 21, 2017 work accident, petitioner suffered no new injury to his low back. Presently, he noticed the low pain is regressing. His right calf spasming and the sciatic pain, which he described as a deep hamstring pain, are continuous. This back injury has impacted his ability to teach his son golf as he cannot swing a golf club. He can no longer play sports or exercise and his physical relationship with his fiancé has deteriorated due to his back pain. Petitioner's symptoms are preventing him from pursing another successful career.

In order to address his symptoms, petitioner ices his back, lays down, does light stretching and walks about half a mile per day to stretch it out. Generally, he is very cautious as to what he does so as to not exacerbate his symptoms. Additionally, he takes Norco and Flexeril daily as prescribed by Dr. Rinella.

John Baranowsky, respondent's sales manager for chain stores since 2014, testified at hearing. He was petitioner's direct boss from

October, 2018 through July of 2019. He estimated that Off-Premise Chain Salesman (which is also known as an Off-Premise Chain Sales Consultant) would spend about half of his work time stocking beer and the other half doing inventory and ordering. He testified that petitioner never complained about his back to him. Mr. Baranowsky did not notice any change in petitioner's job performance during this time and did not notice petitioner exhibit any signs of pain in his back. He further testified that petitioner did not report any new work accident during this time. He did ride along with petitioner on his route on occasion and he did witness petitioner take off his compression belt at times. Baranowsky offered no testimony contradicting petitioner's testimony as to petitioner's job performance as the Off-Premise Chain Salesman. Further, Baranowsky offered no testimony contradicting petitioner's testimony as to the number of cases of beer petitioner was required to lift, move and stock as an Off-Premise Chain Salesman.

Respondent's representative took a recorded statement of petitioner on September 2, 2019. Petitioner indicated that 60-70% of his work time would be spent stocking cases of beer and building displays. Consistent with his testimony at hearing, petitioner testified to his chronic low back pain since his back surgeries and his increasing back pain and right calf spasming once he took the job moving more cases of beer. He also indicated that following his second back surgery, the one in 2017, he did not have a great result and he continued with symptoms at that time.

II. CONCLUSIONS OF LAW

In support of the Arbitrator's decision relating to (F), IS THE PETITIONER'S CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, the Arbitrator finds the following:

Petitioner never had any treatment or injury to his low back prior to working for respondent. Respondent required petitioner to undergo a pre-employment physical after which they allowed him to commence employment. Petitioner first injured his low back while working as a merchandiser for respondent in March of 2012. He was setting up a Corona beer display in a Jewel when he felt pain in his low back and right leg while moving beer utilizing a faulty pallet jack. He first saw Dr. Rinella on November 15, 2012 and then Dr. Rinella performed an L5-S1 right-sided microdisectomy on December 17, 2012. Less than eight weeks following surgery, petitioner had returned to work full duty. He did return to Dr. Rinella on September 6, 2013 complaining of mid thoracic pain and right calf pain, but Dr. Rinella did not restrict his work and petitioner did not return for follow-up care.

Petitioner then continued working full duty for the remainder of 2013 and continued doing so uneventfully for the next three years – 2014, 2015 and 2016. He then suffered his undisputed accident on Saturday, January 21, 2017 when he felt a pop in his low back while lifting a keg of beer weighing 155-160 pounds into the back of a transport van. Petitioner reported the accident promptly, and respondent directed him to the company clinic on Monday, January 23, 2017. The Arbitrator notes that the parties stipulated to the January 21, 2017 work accident. Although the original Application for Adjustment of claim filed on September 6, 2019 for this claim indicated

a date of accident of “2/4/17,” the Arbitrator notes that the Commission’s file reflects that on September 24, 2020, an Amended Application for Adjustment of Claim was filed in this matter which corrected the date of accident to January 21, 2017.

Petitioner then came under the care of Dr. Rinella on February 8, 2017. After noting a consistent history of the work accident, Dr. Rinella noted lumbar back pain radiating into the posterior right thigh and frank pain causing right calf cramping. Petitioner underwent conservative care including therapy, epidural steroid injections performed by Dr. Malhorta, pain medications including Norco and restricted work, but since his symptoms persisted, Dr. Rinella ultimately performed a surgical revision of the L5-S1 microdisectomy on November 7, 2017. Dr. Rinella opined this surgery was necessitated as result of petitioner’s keg lifting work accident. Similarly, Dr. Bernstein does not relate the need for his surgery to anything other than petitioner’s 2017 keg lifting incident.

Post-operatively, petitioner noted improvement in his back pain and right leg symptoms, but he had not improved as much as he had from the 2012 surgery. At the March 14, 2018 office visit with Jason Welsh, Dr. Rinllea’s physician assistant, petitioner noted that even though he was still working in a light duty capacity, he had moved a few cases of beer and that made him sore with increased symptoms down his left leg. PA Welsh indicated that although petitioner may continue to experience episodic flare-ups which could require further treatment, petitioner could return to full duty work. Upon returning to full duty work in the On-Premise Salesman role, the least physically

demanding of the four jobs petitioner held with respondent, petitioner noted continued symptoms in his low back and right leg especially when he exerted himself. He mentioned his back issues to Pat Fitzgerald, respondent's safety manager, during this time, but did not report a new injury, consistent with PA Welsh's council that he would likely experience episodic flare-ups.

Petitioner then was promoted to the job as an On-Premise Chain Salesman in October of 2018. This job was much more physically demanding than his prior job as he was now required to lift many cases of beer – taking them from stores' storerooms and stocking them on stores' shelves. The Arbitrator notes that although John Baranowsky, petitioner's manager from October 2018 through July, 2019, testified that 50% of petitioner's work time would be spent stocking shelves, he did not rebut or challenge petitioner's testimony that in the winter months, petitioner was required to lift 1,000–2,000 cases of beer per week, but as the spring and summer arrived, that total would increase to about 5,000 cases per week.

During the summer of 2019, especially around the weeks leading up to the Memorial Day and Fourth of July holidays, when beer sales peaked, petitioner noted increased pain in his low back and into his right leg.

Despite increasing sales over 17% compared to his predecessor, maxing out his sales bonuses and winning sales-based contests among fellow sales people, respondent laid petitioner off in July 2019. The Arbitrator notes that Baranowsky did not refute how successful

petitioner was with his job performance as an Off-Premise Chain Salesman. Following respondent's termination of petitioner's employment, petitioner then decided to return to Dr. Rinella for more care to his back so he could hopefully get his back improved so he would be able to pass a physical and continue his career with a new employer.

Petitioner saw PA Welsh on August 22, 2019 when he noted that as time progressed since his 2017 surgery, his pain has returned as progressed. Specifically, petitioner noted that over the past two months, his symptoms increased and now his sleep was impacted. The Arbitrator notes that during the recorded statement of petitioner on September 4, 2019, petitioner was entirely consistent with his testimony at the May 3, 2021 19(b) hearing and was entirely consistent with Dr. Rinella's office notes.

The Arbitrator notes that petitioner did not file a workers' compensation claim until September 6, 2019, several months after respondent terminated his employment.

Following an MRI on September 10, 2019, Dr. Rinella diagnosed a herniated disc at L5-S1 with lumbar radiculopathy into the right leg for which he recommended a right trasforamninal lumbar interbody fusion at L5-S1.

Dr. Rinella opined that "my recommendation for an L5-S1 fusion is consistent with a work-related injury on 1/21/2017." He went on to note that "[petitioner] did everything possible to avoid a fusion

procedure in the treatment gap between March of 2018 and August of 2019," but given his "very rigorous" work as a beer salesman, the fusion surgery ultimately became necessary. Dr. Rinella went on to note that the need for the fusion surgery is directly related to the January 2017 work-related injury. Dr. Rinella most recently examined petitioner on April 29, 2021 at which time he continued to note petitioner's increasing symptoms and continued prescribing the lumbar fusion surgery.

Dr. Bernstein, respondent's Section 12 examiner, examined petitioner on February 10, 2020. Dr. Bernstein, finding no evidence of symptom magnification or malingering, agreed with Dr. Rinella's diagnosis and treatment recommendation of the lumbar fusion. As to causation, Dr. Bernstein opined that the "… current condition of the lumbar disk is a combination of his two prior lumbar microdiskectomy surgeries as well as progressive physical activity and additional degenerative changes and stressors to the lumbar spine…." Dr. Bernstein testified that the "progressive physical activity" would include petitioner's work activities.

The Arbitrator notes that the causation opinions of Drs. Rinella and Bernstein are consistent to the extent that they both opine that petitioner's present complaints and the present need for the fusion surgery, is causally related, at least in part, to petitioner's undisputed January 21, 2017 work accident and the resulting second microdiskectomy surgery which was performed on November 7, 2017.

More specifically, the Arbitrator notes the general consistency between the testimony of Drs. Rinella and Bernstein. As to diagnosis, Dr. Rinella testified that petitioner's current diagnosis is "…right L5 radiculopathy due to pressure anteriorly from a most-likely recurrent disc herniation as well as loss of foraminal height or vertical narrowing on that nerve root." Similarly, Dr. Bernstein diagnosed "…discogenic low back pain and right lower extremity sciatica due to the L5-S1 level." As to causation, Dr. Rinella testified that the January, 21, 2017 work accident "…led to a second discectomy which advanced the degenerative process, loss of height and recurrent pressure on the nerve that thus far has failed conservative management." Similarly, Dr. Bernstein opined that petitioner's present condition is caused by "… a combination of his disk surgeries in the past and progressive change at the L5-S1 level." Dr. Bernstein went on to opine that the 2017 recurrent disc herniation at L5-S1 and the subsequent surgery in November of 2017 was partially responsible for causing the current need for the fusion surgery. The Arbitrator also finds it noteworthy that both Drs. Rinella and Bernstein noted that other than the L5-S1 level, the other levels of petitioner's spine were pristine with no signs of degeneration in this otherwise healthy, relatively-young petitioner.

The Arbitrator notes that petitioner never claimed a new accident or new injury in 2019. Respondent argues that petitioner did suffer a new accident in the summer of 2019 which petitioner never reported to respondent. The Arbitrator finds this argument is a "red herring" as there is no testimony, exhibit, medical evidence or documentary evidence supporting in any way that petitioner suffered any new injury in 2019. The record is clear that petitioner claimed an increase in his

symptoms in 2019 concurrent with the physical requirements of his job increasing.

Being persuaded by petitioner's credible testimony as well as the consistent opinions of Dr. Rinella, petitioner's treating surgeon as well as Dr, Bernstein, respondent's Section 12 examiner, who are both board-certified orthopedic spinal surgeons, the Arbitrator finds that there being no evidence to the contrary, petitioner's current condition of ill-being involving his low back, which involves a recurrent disk herniation at L5-S1, is causally related to petitioner's January 21, 2017 work accident.

In support of the Arbitrator's decision relating to (J) WHAT MEDICAL BENEFITS ARE DUE PETITIONER, the Arbitrator finds the following:

Given the Arbitrator's above findings as to causal connection, the Arbitrator notes that on Arbitrator's Exhibit 1, respondent objected to only to liability for outstanding medical bills contained in Petitioner's Exhibit 12.

Petitioner identified Petitioner's Exhibit 12 as the outstanding, related bills of which he is aware to date.

The Arbitrator notes that Dr. Rinella opined that petitioner's medical treatment to his low back has been reasonable and medically necessary, and Dr. Bernstein, respondent's IME, offered no opinion to the contrary.

Given, the above, the Arbitrator finds petitioner's treatment to date for his low back since his undisputed January 21, 2017 work accident to be reasonable and medically necessary. As such, the Arbitrator orders respondent to pay petitioner for the outstanding medical bills of Illinois Spine & Scoliosis Center ($2,243.00) and Oak Brook Imaging ($6,676.00), subject to reduction to the Medical Fee Schedule per Section 8.2 of the Act.

In support of the Arbitrator's decision relating to (K) IS PETITIONER ENTITLED TO PROSPECTIVE SURGERY/MEDICAL CARE, the Arbitrator finds the following:

The Arbitrator notes that petitioner testified credibly as to his progressive disabling symptoms involving his low back and right leg and that he wished to undergo the proposed lumbar fusion surgery in order to be able to be productive and return to work as well as to be able to do activities with his kids and his fiancé. Dr. Rinella, petitioner's treating surgeon, opined without rebuttal that a lumbar fusion at L5-S1 is medically necessary to address petitioner's recurrent disc herniation as well as the loss of foraminal height or vertical narrowing on that nerve root. More specifically, Dr. Rinella testified that with the third time around with a recurrent disc herniation, it is typically recommended to fuse the bones together rather than perform further discectomies.

Similarly, Dr. Bernstein, respondent's Section 12 examiner, opined that petitioner is suffering from diskogenic low back pain at L5-S1 and he is a good candidate for a spinal fusion.

Given the Arbitrator's findings as to causal connection; petitioner's credible testimony as to his current symptoms; the opinions of Drs. Rinella and Bernstein; and the complete absence of any evidence to the contrary, the Arbitrator orders respondent to authorize the lumbar fusion surgery that Dr. Rinella prescribed as well as the other reasonable medical care incident thereto.

In support of the Arbitrator's decision relating to (L) WHAT TEMPORARY BENEFITS ARE DUE PETITIONER, the Arbitrator finds the following:

Given the Arbitrator's above decision as to causal connection, the Arbitrator notes that respondent disputed petitioner's entitlement to any TTD or TPD.

Following petitioner's November 7, 2017 surgery, Dr. Rinella kept petitioner off work from the date of the surgery through January 2, 2018. Petitioner testified that respondent paid him TTD benefits during this time which is confirmed by respondent's payment ledger. The Arbitrator notes that despite disputing this period of TTD on Arbitrator's Exhibit 1, respondent proffered absolutely no defense or basis for dispute of this period of TTD.

Thereafter, Dr. Rinella restricted petitioner's work from January 2, 2018 through March 14, 2018. Petitioner testified that during this period of light duty which respondent provided him accommodating work, with limited hours at times, he was paid TPD benefits compensating him for his lost hours of work. Respondent's payment ledger confirms its payment of TPD benefits during the period in question totaling $378.48. The Arbitrator noted that despite disputing this period of TTD on Arbitrator's Exhibit 1, respondent proffered absolutely no defense or basis for dispute of this period of TPD.

Lastly, petitioner testified that since August 22, 2019, Dr. Rinella has either kept him off work or restricted his ability to work through the present. Dr. Rinella's office notes and testimony confirm petitioner's testimony in this regard. The Arbitrator notes that Dr. Bernstein, respondent's Section12 examiner, did not offer any opinion as to petitioner's ability to work from August 22, 2019 through the present.

Given the absence of any evidence to the contrary, and the Arbitrator's findings as to causal connection, the Arbitrator finds that the credible, persuasive evidence in the record supports that petitioner was temporarily totally disabled from November 7, 2017 through January 2, 2018 and August 22, 2019 through 5/3/2021 the date of the hearing, totaling 96 6/7ths weeks to date, and petitioner was temporarily partially disabled from January 3, 2018 through March 14, 2018, for which is entitled to $378.48 in TPD benefits which respondent previously paid and is entitled to credit for same.

In support of the Arbitrator's decision relating to (M) SHOULD PENALTIES OR FEES BE IMPOSED UPON RESPONDENT, the Arbitrator finds the following:

The Arbitrator notes that petitioner filed a Petition for Penalties and Attorney's Fees in this matter, and respondent filed its response thereto (RX11). Respondent does not dispute petitioner's January 21, 2017 work accident. Further, the Arbitrator notes that respondent paid TTD, PTD and medical benefits on the claim in 2017 and 2018. The Arbitrator also finds that given the gap in petitioner's treatment from March of 2018 through August of 2019, the respondent initially had a reasonable basis to dispute the claim and demand further proof of causal connection. Petitioner subsequently tendered such proof in the form of Dr. Rinella's office notes and his December 5, 2019 narrative report.

Respondent then obtained its Section 12 exam with Dr. Bernstein in February, 2020, approximately 5 months after the claim was filed. Dr. Bernstein's February 10, 2020 IME report validated petitioner's present complaints, confirmed his need for the prescribed lumbar fusion surgery, and clearly related the need for that surgery to petitioner's prior back surgeries as well as his progressive physical work activity.

Once respondent obtained its Section 12 report dated February 10, 2020, the Arbitrator finds respondent no longer possessed a reasonable basis to deny the claim and deny authorization for petitioner's lumbar fusion surgery. Further, the Arbitrator notes that

respondent offered no evidence that it ever complied with Commission Rule 9110.70 which requires it to provide petitioner a written explanation for denial of its liability.

The Arbitrator notes that since respondent has denied payment of TTD, medical bills and authorization of the lumbar fusion surgery, with no reasonable basis, petitioner has suffered undue hardship living without TTD benefits and enduring increasing debilitating back pain and right leg symptoms which could have been addressed and minimized over a year ago when it received Dr. Bernstein's February 10, 2020 IME report. In addition to being forced to endure over an additional year of physical pain and suffering needlessly, petitioner also has had his personal life strained and endured financial stress for over a year and he has been forced to put his career aspirations on hold as he has awaited authorization for surgery.

Given the unreasonable delay in authorization of the lumbar fusion surgery and failure to pay TTD and medical bills with no reasonable basis, the Arbitrator orders respondent to pay petitioner the following penalties/attorney's fees:

-Section 19(l) maximum penalties of $10,000 since 448 (more than the 333.33 maximum days at $30/day) days elapsed between Dr. Bernstein's February 10, 2020 IME report and the May 3, 2021 hearing date;

-Section 19(k) penalties totaling $35,901.27, representing 50% of the accrued and unpaid TTD (88 4/7ths weeks from 8/22/2019 through 5/3/2021, x $720.34 per week = $63,801.43 x 50% =

$31,900.77), and 50% of the unpaid medical ($8,001.00 x 50% = $4,000.50).

-Section 16 attorney's fees totaling $14,360.49 representing 20% of the unpaid TTD ($63,801.43 x 20% = $12,760.29) and 20% of the unpaid medical bills ($8,001.00 x 20% = $1,600.20).

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC035822
Case Name	LILLA, CHARLES A v. VILLAGE OF SCHAUMBURG
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0025
Number of Pages of Decision	20
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Jennifer Kelly
Respondent Attorney	Kisa Sthankiya

DATE FILED: 1/21/2022

/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

Charles A. Lilla,

Petitioner,

vs. NO: 12 WC 35822

Village of Schaumburg,

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 issues of accident, occupational disease, temporary total disability, causal connection, permanent partial disability, and medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

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

Under Section 19(f)(2), 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 Circuit Court.

January 21, 2022

/s/ *Marc Parker*
Marc Parker

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

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

MP:yl
o 1/20/22
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ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC035822
Case Name	LILLA, CHARLES v. VILLAGE OF SCHAUMBURG
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Molly Mason, Arbitrator

Petitioner Attorney	Douglas Colby
Respondent Attorney	Robert Ulrich

DATE FILED: 6/1/2021

INTEREST RATE FOR THE WEEK OF MAY 25, 2021 0.03%

/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

Charles Lilla
Employee/Petitioner

v.

Village of Schaumburg
Employer/Respondent

Case # **12** WC **35822**

Consolidated cases: **D/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 **Molly Mason**, Arbitrator of the Commission, in the city of **Chicago**, on **04/20/2021**. 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 **May 20, 2012**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**82,607.72**; the average weekly wage was $**1,588.61**.

On the date of accident, Petitioner was **53** years of age, ***married*** with **3** dependent children.

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

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services. PX 7.

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

The Arbitrator determines that the Petitioner's psychological condition, including but not limited to post traumatic stress disorder, and resulting loss of trade are causally related to his cumulative work duties and the work accident of May 20, 2012.

Respondent shall pay Petitioner the amount of $807.00 as reimbursement for the payments he made to Margaret Hahn, APN/CNS, Maria Estrada, M.D. and Steven Wodka, Psy.D. for treatment rendered after the May 20, 2012 accident. PX 7.

Respondent shall pay Petitioner temporary total disability benefits of $1,059.07/week for 26-4/7 weeks, from 06-01-2012 through 12-03-2012, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $695.78/week for 75 weeks, because the injuries sustained caused 15% loss of use of a 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.

Molly C Mason

Signature of Arbitrator

JUNE 1, 2021

Charles Lilla v. Village of Schaumburg
12 WC 35822

Summary of Disputed Issues

Petitioner, a longtime firefighter/paramedic with a 1983 degree in plant and soil science, claims he developed post-traumatic stress disorder after unsuccessfully attempting to resuscitate an elderly burn victim on May 20, 2012. Petitioner had undergone psychological treatment for work-related anxiety and stress prior to this date. Following additional treatment, and after Respondent declined to offer an accommodated position, Petitioner retired from Respondent in November 2012. He began a new campus gardener job at the University of Wisconsin in early December 2012. He testified his symptoms improved after he started this job. He discontinued psychological treatment in January 2013.

The disputed issues include accident, causal connection, out of pocket medical expenses, temporary total disability and nature and extent. Petitioner expressly waived any Section 8(d-1) claim for wage differential benefits. Instead, he indicated he was seeking permanency benefits under Section 8(d)2.

Arbitrator's Findings of Fact

Petitioner testified he goes by the name "Chuck." He was born on March 2, 1959. He lives in Edgerton, Wisconsin.

Petitioner testified he began working for Respondent on May 2, 1992. He attended the fire academy for eight weeks and then began working as a firefighter. After two and a half years, Respondent sent him to paramedic school. He attended this school for one year and then began working as both a firefighter and paramedic. He worked a rotating schedule consisting of 24 hours "on" and 48 hours "off." As a firefighter, he responded to alarm and fire calls. As a paramedic, he dealt with ill and injured people and provided life support. He and his co-workers transported individuals to three hospitals in the Schaumburg area. EMS calls were much more common than fire calls. T. 10-12.

Petitioner acknowledged experiencing stress and anxiety prior to May 20, 2012. He identified a work-related event as the "beginning of things" for him in terms of the onset of symptoms such as sleeplessness, sleeping too much, low energy and anger. He responded to a call from a woman who had miscarried. At that point, he and his wife were going through fertility treatment. His wife had gotten pregnant but had miscarried. When he responded to the call, he encountered a woman who was bleeding heavily. She told him there was "some stuff" in her toilet. He went into the bathroom and pulled a "tiny baby" out of the toilet. At some later point, he responded to a call where he encountered a naked 11-year-old boy who had bruises all over his body. Someone indicated that the boy had fallen but it turned out he had been severely beaten. He managed to resuscitate the boy but the boy was brain dead. At another point, he responded to an early morning residential fire. Initially, there was some

uncertainty as to whether any victims were inside the house. Then he and his co-workers found the bodies of four high schoolers. The bodies were stacked on top of one another and the rib cages were visible due to the severity of the burns.

Petitioner testified that, in approximately 2010, a co-worker noticed he was struggling and suggested he seek care via the Employee Assistance Program, or EAP. He went to Workplace Solutions where he participated in a few counseling sessions with Rebecca Litz. T. 10-11. Records in PX 1 reflect that he first contacted Litz on October 15, 2010 and complained of "significant family stressors as well as work stress." At the initial assessment, Litz noted that Petitioner and his wife had been "wanting to come to counseling for over a year to address anger issues." She also noted that she and Petitioner discussed "job burnout and family issues." She recommended that Petitioner talk to his doctor and "try yoga and assertive communication." PX 1. Petitioner next saw Litz on October 28, 2010, at which time they again discussed family issues and "assertive communication." Petitioner saw Litz again on November 9 and 30, 2010, with Litz noting that anger was causing "bodily feelings" and that Petitioner expressed "disappointment with his mother-in-law." PX 1.

Petitioner resumed care with Litz on December 19, 2011. In her note of that date, Litz indicated that Petitioner reported "significant anxiety and burnout related to his job" and was "frustrated with lack of ability to get off the ambulance." She also noted that Petitioner was concerned about parenting because he lacked energy when he got home at night. She indicated that Petitioner "would like to retire in May." At the next visit, on December 28, 2011, Litz referred Petitioner to another counselor, Lou Gallagher, for "EMDR" [Eye Movement Desensitization and Reprocessing] and/or hypnotherapy sessions. PX 1.

Records in PX 3 reflect that Petitioner attended two sessions with Lou Gallagher. At the first session, on January 18, 2012, Gallagher educated Petitioner about "EMDR," a technique "designed to desensitize triggers that induce trauma and anxiety" and enhance "coping skills." At the second session, on February 2, 2012, Gallagher employed hypnotherapy to reduce anxiety and provided Petitioner with an audial CD that he could use on his own. In a report dated August 26, 2012, Gallagher indicated that, at the time of the two sessions, Petitioner was "experiencing significant anxiety regarding his responsibilities as a firefighter/paramedic." He also indicated that Petitioner's anxiety "made it very difficult" for him to think clearly and make decisions rapidly. He did not find Petitioner fit to perform his job, "not only for his wellbeing but also for the wellbeing of the patients he serves." Given the duration of Petitioner's employment, he did not believe that the anxiety would subside. He opined that the "safest solution" was to transfer Petitioner to a "less stressful" position. PX 3.

Following his two sessions with Gallagher, Petitioner returned to Litz on April 20, 2012. Litz indicated that Petitioner "processed emotions related to recent happening at fire house." She also indicated that Petitioner was scheduled to see his doctor later that day and was "open to medication." PX 1.

Records in PX 4 reflect that Petitioner saw Carrie Dahl, PA-C, at Mercy Health on April 20, 2012. Petitioner indicated he had been experiencing anxiety-related symptoms, including sweating, racing thoughts and difficulty concentrating, for about a year, with those symptoms having progressively worsened during the preceding two weeks. Dahl noted that Petitioner had derived some benefit from counseling but was now "unable to control" his symptoms "due to the increased stress at work." She indicated that Petitioner denied suicidal and homicidal ideation. She started him on Zoloft and indicated he should stay off work for two weeks and undergo counseling. PX 4.

On April 23, 2012, Dahl completed and signed paperwork relating to Petitioner's request for time off pursuant to the Family Medical Leave Act. She indicated that Petitioner was suffering from "severe anxiety" and was "unable to perform all duties" until May 6, 2012, due to his condition. She also indicated she advised Petitioner to continue with counseling. PX 4.

On May 2, 2012, Petitioner called Litz. He reported improved sleep and appetite but indicated he was still experiencing anxiety and did not feel ready to resume working. Petitioner also indicated he had an appointment to see Maggie Hahn at Personal Growth for a medication review and status check. PX 1.

Records in PX 2 reflect that Petitioner saw Maggie Hahn, a nurse practitioner, on May 2, 2012. Hahn noted that Petitioner worked as a paramedic and firefighter, complained of anxiety for the last four to five years and had recently started taking Zoloft. She also noted a referral from Litz. She indicated that Petitioner specifically complained of sweating, difficulty making decisions, decreased concentration and motivation, a tendency to procrastinate and irritability at home. She described Petitioner as having seen a lot of "very, very traumatic scenes" in his work and experiencing job-related stress and burnout. She further noted that Petitioner's mother had died a couple of years earlier and had lived with Petitioner for four months before her death. She indicated that Petitioner was "currently on FMLA due to his anxiety symptoms and inability to work" and was "looking for a new job," albeit with some difficulty. She described Petitioner as "eligible to retire" but needing income due to his three children. She indicated that Petitioner seemed to be "very sensitive to the relationships he has with his superiors and co-workers."

Hahn diagnosed "acute stress disorder" and indicated that depressive disorder and generalized anxiety disorder needed to be ruled out. She directed Petitioner to remain off work and continue taking Zoloft. She felt that Petitioner was "too tremulous, anxious and depressed" to resume working, despite slight improvement from the Zoloft, and that he needed "more time before returning to the high stress environment of being a paramedic." She directed Petitioner to return in four weeks. PX 2.

Petitioner testified he still felt anxious when he returned to work on May 16, 2012 but had to work for financial reasons. He reported to work as usual on May 20, 2012 and learned he would be a "driver" rather than "rider" that day. He testified this increased his anxiety because a "driver" has less control of the scene. He and several co-workers, including a trainee,

responded to a residential fire call that day. When they arrived at the scene, they encountered Hoffman Estates paramedics who were administering CPR to an elderly individual. Petitioner testified that the individual was in a wheelchair and had sustained burns over 60 to 70% of his body. He had no hair and was not breathing. He was swollen and his airway was compromised. He and his co-workers took over. They began administering CPR. They also shocked the victim and administered medication. Their efforts were unsuccessful. They stayed at the scene for a while, during the investigation by Hoffman Estates police officers, and then transported the victim's body to the morgue. The body was in the back of the ambulance.

Petitioner testified that this particular call was "very difficult" for him, even though he realized that resuscitation efforts are not always successful. Afterward, he felt helpless and had difficulty sleeping and functioning. He did not feel capable of resuming his job.

Petitioner returned to Litz on June 1, 2012. Litz indicated that Petitioner was "still on FMLA due to traumatic call." She and Petitioner discussed the events of May 20, 2012, with Petitioner indicating he was unable to do "what was expected because the pt. was already dead." They also discussed the following job options going forward: "1. Fire only; 2. Dif[ferent] job in Village; 3. Retiring; and 4) change to ? tech resolution HAZMAT." Litz described Petitioner as "ok with any of" these options. PX 1.

Petitioner returned to Hahn on June 5, 2012. Petitioner reported that his appetite and sleep were slowly improving but that he had not been able to resume working "due to his anxiety and stress response." Hahn noted that Petitioner was still undergoing counseling "at the EAP" and that the counselor was "going to set up a meeting with him with human resources to see if they can offer him any other options in terms of working." She indicated that, otherwise, Petitioner "will probably have to make the decision to retire and look for another job." She increased the Zoloft dosage and recommended that Petitioner return in eight weeks. PX 2.

On August 17, 2012, Dr. Van Beek of Mercy Milton Family Practice issued a note indicating he was treating Petitioner and felt "it would be best for [Petitioner] to refrain from paramedic duties." Dr. Van Beek went on to say that Petitioner "would, however, be able to perform his usual fire fighting duties." PX 4.

Petitioner saw Hahn again on August 21, 2012. In her note of that date, Hahn indicated that Petitioner's anxiety was still "quite high" and that his job situation was "still not resolved." She noted that he "has been on short-term disability for some time due to symptoms of PTSD" and that he had asked to be reassigned to a different job. She indicated that Petitioner was having difficulty concentrating and sleeping and that his anxiety had worsened after Respondent asked him to provide medical information about his work status. She continued the Zoloft and recommended that Petitioner return in twelve weeks. PX 2.

On the same day, August 21, 2012, Hahn wrote to Respondent's human resources director, Patricia Hoppenstedt, and indicated she had seen Petitioner on three occasions. She

diagnosed Petitioner with "chronic post-traumatic stress disorder." She noted that Petitioner had been exposed to "multiple traumatic events in which he experienced, witnessed or was confronted with an event or events that involved actual or threatened death or serious injury to himself or others" and that "his response involved intense fear, helplessness and horror." She indicated that Petitioner's symptoms (including difficulty sleeping, irritability, anger and difficulty concentrating) had persisted for more than one month and had impaired his occupational, social and family functioning. She then responded to various questions, indicating that Petitioner's condition resulted in a "freeze" response and impacted his ability to work as a firefighter and paramedic. She did not believe that Petitioner was currently able to perform several essential functions of his job, specifically responding to ill or injured persons, rescuing trapped or threatened individuals and administering emergency medical care. She indicated there was "no clear duration expected for chronic post-traumatic stress disorder" and that Petitioner's condition would "certainly worsen" if he was re-exposed to more trauma. She was unable to imagine any accommodations that would enable Petitioner to function as a firefighter/paramedic but indicated Petitioner should be able to function well in a job that did not involve witnessing deaths, injuries or other crisis situations. She recommended that Petitioner continue with individual therapy and medication management. PX 2.

On September 12, 2012, Patricia Hoppenstedt wrote to Petitioner, responding to Petitioner's request for an extension of his leave of absence. Hoppenstedt indicated that, although Petitioner had exhausted his FMLA leave time, Respondent would extend an approved leave of absence to allow him to submit additional information from his family physician, Dr. Van Beek. Hoppenstedt stated that two providers, Hahn and Gallagher, had indicated that Petitioner could not perform the essential functions of either the firefighter or paramedic job but that Dr. Van Beek had indicated, without explanation, that, while Petitioner could not work as a paramedic, he might be able to perform the firefighter job. Hoppenstedt asked Petitioner to provide Dr. Van Beek with the firefighter job description and explain why Petitioner was unable to perform the duties of a paramedic but was, at least potentially, able to work as a firefighter. RX 2.

Petitioner called Hahn on September 15, 2012 and indicated he had been having a "very difficult time" because human resources "did not really want to accept" the letter Hahn had written since she was not a physician. Petitioner complained of increased depression and told Hahn he felt was would "just like to kind of walk away from his family and have time alone because he does not think that he is doing well for them." Petitioner denied suicidal ideation. Hahn increased the Zoloft dosage and indicated Petitioner could obtain a second opinion from a psychiatrist. Hahn also indicated she would be happy to discuss her credentials with human resources. PX 2.

Petitioner identified a document in PX 6 as a letter he received from Patricia Hoppenstedt, Respondent's director of human resources. The letter is dated September 28, 2012. In this letter, Hoppenstedt indicated that, based on the opinions of Hahn, Gallagher and Dr. Van Beek, Respondent had determined that Petitioner was "not able to perform [his] job duties as a Firefighter/Paramedic." Hoppenstedt noted that, while Dr. Van Beek had opined

that Petitioner could work as a firefighter but not as a paramedic, he had deferred to Petitioner's therapists when asked to explain that opinion. Hoppenstedt indicated that the essential duties of both jobs overlapped in that firefighters, like paramedics, are required to rescue trapped and threatened persons and administer basic and emergency medical care. Hoppenstedt further noted that Respondent's "no re-hire practice" prohibited pension-eligible employees like Petitioner from applying for paid positions with Respondent. Hoppenstedt indicated that Petitioner could apply for his regular service pension or a disability pension. She noted that, while Petitioner had exhausted his FMLA leave time, Respondent would consider him to be on an approved leave for two more weeks to give him time to decide what to do.

On October 2, 2012, Petitioner underwent an evaluation by Maria Estrada, M.D., a psychiatrist. In her report of the same date, Dr. Estrada noted that Petitioner was seeking a second opinion and had received a letter from his employer the previous day, indicating he "should retire." Dr. Estrada noted that Petitioner had been a paramedic for 17 ½ years and had started experiencing anxiety attacks five years earlier. Specifically, she noted that Petitioner had dealt with a person experiencing a miscarriage, a child who had been beaten to death and a person who had suffered fatal burns. She indicated that, despite therapy and medication, Petitioner was still experiencing anxiety, as well as depression, but had improved since starting Zoloft. She noted a past history of molestation but indicated that Petitioner did not feel this was currently an issue.

Dr. Estrada described Petitioner as having an "anxious and sad" affect but responding appropriately to questions. She noted that Petitioner was concerned about the financial ramifications of retirement. She indicated that he denied current flashbacks, hypervigilance or pervasive obsessive thought processes. She diagnosed panic disorder without agoraphobia, post-traumatic stress disorder and depressive disorder, NOS. She recommended that Petitioner continue medication management and therapy with Hahn. PX 2.

Petitioner testified he decided to retire after receiving Hoppenstedt's letter and considering his options. While he had previously considered retiring and had mentioned to Respondent that he wanted a less stressful job, he did not initiate the retirement process prior to the accident of May 20, 2012. He only initiated the process after learning that Respondent would not offer him an alternative job. He started working for the University of Wisconsin at Whitewater on December 4, 2012. He denied receiving temporary total disability benefits between the accident and December 4, 2012. The job at the University of Wisconsin involved gardening, snow collection and garbage disposal. After he started the job, his anxiety lessened and he felt more relaxed. He felt less need for therapy and discontinued treatment in January 2013.

Petitioner returned to Steve Wodka, Psy.D., on January 8, 2013. Wodka noted that Petitioner seemed "less depressed" and was "pleased with new job" but was still "struggling with racing thoughts interfering with sleep." He explained "guided visual imagery to help improve anxiety" and directed Petitioner to return in three weeks. PX 2.

Petitioner also saw Margaret Hahn, APN, CNS, on January 8, 2013. Hahn noted that Petitioner had retired from Respondent and was now a landscaper at the University of Wisconsin. She also noted that Petitioner was "feeling quite happy" about his job change and sleeping better. She indicated that Petitioner denied any flashbacks or nightmares but reported occasionally thinking about "something from the old job." She described Petitioner's affect as "much brighter." After Petitioner inquired about discontinuing Zoloft, she recommended that he wait until spring so that he could better assess his improvement. She noted that Petitioner was still reporting some difficulty with concentration and occasional irritability. She directed Petitioner to return in five months. PX 2.

At Respondent's request, Petitioner underwent a Section 12 examination by Dr. Lahmeyer, a clinical professor of psychology at the Chicago Medical School, on January 16, 2013. In connection with the examination, Petitioner underwent psychological testing by Daniel Lilie, Ph.D., the same day. In his report of January 31, 2013 (RX 4), Dr. Lahmeyer indicated he reviewed a letter from Respondent's counsel, a "timeline and letter" from Petitioner and records from Litz, Gallagher, Hahn and Estrada in connection with the examination. [The Arbitrator notes that Petitioner's "timeline and letter" are not in evidence.]

Dr. Lahmeyer indicated that Petitioner described the events of May 20, 2012 to him. Specifically, Petitioner reported responding to a fire call and being unable to revive a 92-year-old man who was unresponsive and burned over most of his body. Petitioner described feeling "very emotional" for about a week after this event but indicated he had since "moved on" and was "not troubled with thoughts of the incident unless someone started talking about it." According to Dr. Lahmeyer, Petitioner "denied nightmares, flashbacks, intrusive thoughts about the incident or any problems specifically in functioning that he had not had prior to the incident." The doctor noted that Petitioner "stopped working on May 22 because he felt he could no longer perform adequately as a paramedic." He also noted that Petitioner reported benefit from counseling and medication and had started a new, full-time job as a campus gardener in December 2012. He described Petitioner as enjoying this job very much.

Dr. Lahmeyer noted that Petitioner described his anxiety as having started four or five years earlier. Petitioner related having been transported to an Emergency Room with chest pain in January of 2008, at which point his mother was dying. In hindsight, Petitioner attributed this Emergency Room visit to anxiety. Petitioner also related that, around the same time, he began to notice increased anxiety when responding to serious trauma cases at work. Petitioner felt he was developing "paramedic burnout" and talked with the EMS coordinator, "who he felt minimized the seriousness of his concerns." Petitioner also related that, at a co-worker's recommendation, he sought evaluation at EAP in October 2010 and saw Litz until December 2010. Petitioner indicated that he made several requests to leave the paramedic program in 2011 but was unsuccessful. He expressed anger at a deputy chief, who had said something about him needing treatment in front of a civilian and, on a separate occasion, in front of co-workers. Petitioner recalled the chief telling him he could not leave the paramedic program and should "seriously consider retiring." Petitioner indicated he decided to pursue more counseling rather than retire. He resumed seeing Litz and also saw Gallagher, who provided

him with relaxation tapes. During this time he was experiencing periodic anxiety attacks, difficulty sleeping, overeating and loss of pleasure in various activities. He later started taking Zoloft, as recommended by his primary care physician, and noticed some benefit from this medication. He denied seeking care on May 20, 2012 and indicated he stopped working two days later. He recalled meeting with the head of human resources in November 2012 and being told he could not work as a firefighter "because he had PTSD." He then resigned from Respondent, effective December 12, 2012, and began his new gardener job on December 4, 2012. According to Dr. Lahmeyer, Petitioner described life as "really good" since he changed jobs. Petitioner denied having any symptoms interfering with work but acknowledged experiencing some anger episodes at home. Petitioner reported resuming his previous social life and sleeping 7.5 hours per night. Petitioner also reported a prior stressful period eight years earlier, when his mother lived with him and his family for four months before she died. Petitioner also indicated he had been twice sexually molested by an older cousin when he was a child. He indicated he informed his mother of this when he was an adult, with the revelation causing significant family conflict.

With respect to the MMPI-II testing [RX 3], Dr. Lahmeyer indicated that Petitioner endorsed numerous items consistent with mild depression. Based on the test results, Petitioner "would qualify for the diagnosis of dysthymic disorder."

Dr. Lahmeyer indicated that Petitioner was oriented and displayed no thought disorder or signs of psychosis. Petitioner said he was anxious during the interview and had some difficulty providing a history. He "displayed anger and significant anxiety when he recalled that a deputy chief had said he needed psychological treatment while in the presence of co-workers and on another occasion in front of a 'civilian.'" He denied suicidal or homicidal ideation.

Dr. Lahmeyer reached the following diagnoses: "Axis 1, anxiety disorder NOS in remission"; no Axis II disorders, Axis III, "history of lumbar disc disease"; and Axis IV, "psychosocial stress, moderate due to job stress and length of medical leave." He did not view Petitioner as suffering from posttraumatic stress disorder. Although Petitioner met one of the DSM-IV criteria for Category A of this disorder, since he had experienced or witnessed an event that involved actual or threatened death or serious injury, and while he had experienced anxiety after several such events, he "did not describe intense fear, helplessness or horror." In fact, he had continued to work after all of these incidents and did not require emergency intervention. Furthermore, his symptoms were mild and not persistent, based on his own reporting, and he denied experiencing nightmares or flashbacks. Dr. Lahmeyer also noted that Petitioner "described numerous traumatic events [including the events of May 20, 2012] without any change in his emotional state" and that Petitioner's sleep problems had resolved. Dr. Lahmeyer did note, however, that Petitioner met three criteria of Category D in that he was still experiencing outbursts of anger, hypervigilance and an exaggerated startle response. RX 4, p. 9.

With respect to causation, Dr. Lahmeyer opined that "the work trauma appears to have contributed to [Petitioner's] anxiety and depression." As for work capacity, the doctor

concluded that, while Petitioner's symptoms made it more difficult for him to enjoy his work, they did not prevent him from performing his job functions. While the doctor felt Petitioner continued to have "mild residual symptoms of anxiety," he also felt Petitioner was "functioning normally." He saw no need for additional psychotherapy but recommended that Petitioner continue taking Zoloft "for several more months." RX 4.

Petitioner testified he no longer watches much television. Certain sounds make him feel anxious. He copes with his ongoing symptoms by praying, coloring, going on retreats, eating well, walking and gardening.

Under cross-examination, Petitioner reiterated that he targeted three specific events prior to the accident of May 20, 2012. The first event was the call involving the woman who had miscarried. This call took place in approximately 2000. By that time, his wife had finished fertility-related care. She had gotten pregnant on her own but had miscarried. The second event involved the 11-year-old boy who was beaten to death. Petitioner did not recall when this event occurred. The third involved the teenagers who died in a fire. Petitioner did not recall when this fire occurred. He did not complete an accident report in connection with any of these events. Nor did he seek medical treatment or lose time from work. With respect to the events of May 20, 2012, Petitioner acknowledged that the elderly fire victim died before he and his crew arrived at the scene. PX 5, the incident report concerning this victim, reflects that a trainee, Adam, assessed the victim and administered CPR and that Petitioner conducted an airway test. The victim's pulse was zero and his oxygen saturation was 24% when Petitioner and his crew arrived. Normal oxygen saturation is 95 to 100%. Realistically, the victim was "flattening" when Petitioner and his crew arrived. Regardless, his job required him to do whatever he could. Paramedics, acting on their own, do not decide when resuscitative efforts should be discontinued. Doctors make that decision.

Petitioner acknowledged that, in September 2012, he told Respondent he was willing to resume working but solely as a firefighter, not a paramedic. During his discussions with Respondent, he was told he was "running out of time" and needed to make a decision. He filed his Application for Adjustment of Claim on October 16, 2012. In September 2012, Respondent did not test him for fitness for duty or have him evaluated by a doctor. Respondent was asking him to supply information and he was supplying it. He never completed an accident report in connection with the events of May 20, 2012.

Petitioner acknowledged obtaining a college degree in horticulture. He originally wanted to pursue that line of work. He told Respondent's examiner that fire service was not his desired occupation. He became a firefighter because his father-in-law and two brothers-in-law were firefighters and suggested he apply. Respondent originally hired him as a firefighter. Respondent later sent him to EMT school. He told Respondent's examiner that he got "burned out" by the EMT job. He also told the examiner that his anxiety started in 2007. This is the year his mother lived with him before going in to hospice care for congestive heart failure. On May 2, 2012, he told Hahn he had been experiencing anxiety for four or five years and was looking for a new job. He always had his resume updated. He interviewed for jobs before May 2, 2012.

In 2011, he told Litz he was considering retiring in May 2012. He might have looked for work between December 2011 and May 2012. He was "always looking." When he saw Respondent's examiner, he completed various questionnaires. None of his providers asked him to do this. His three children were born in 1996, 2000 and 2003. His oldest child had behavioral issues. She slammed doors and was argumentative. In December 2012, he told Dr. Estrada about his daughter's behavior. He also told Dr. Estrada he had been molested as a child.

On redirect, Petitioner testified that the incident involving the miscarried baby stuck with him but he continued working. He was not advised to complete an incident report every time he experienced a traumatic event. His chief would ask him and his co-workers how they felt but there was no expectation that they would file reports concerning their reactions. At one point, his paramedic supervisor told him "you don't go on enough runs to experience burnout." The events he mentioned are the not the only anxiety-producing events he experienced on the job. The fact that the elderly burn victim was already technically dead did not reduce his anxiety since paramedics are trained to "bring people back," if possible. He discussed his situation with Litz and Respondent's human resources director. He provided Respondent with the records it requested. Respondent never gave him the chance to return to work solely as a firefighter.

Arbitrator's Credibility Assessment

Petitioner was a thoughtful, somewhat subdued witness. The fact that he worked for Respondent for twenty years weighs in his favor, credibility-wise. His testimony concerning his reaction to several work events, including the events of May 20, 2012, was detailed and believable. Also believable was his testimony (on redirect) concerning his interaction with the chief and his paramedic supervisor. The Arbitrator gleaned from this testimony that the supervisor, in particular, was dismissive of Petitioner's complaint that he felt he was experiencing paramedic "burnout." While it is true that Petitioner did not file formal incident reports in connection with the traumatic experiences he described, it also appears he was not encouraged to do so.

Petitioner's providers took his complaints seriously and noted no signs of malingering. Respondent's examiner, Dr. Lahmeyer, disagreed with the diagnosis of posttraumatic stress disorder but conceded that the work accident "contributed to [Petitioner's] anxiety and depression." He took no issue with the treatment that took place prior to his examination and recommended that Petitioner continue taking Zoloft for several more months. RX 4.

Arbitrator's Conclusions of Law

<u>Did Petitioner sustain an accident on May 20, 2012 arising out of and in the course of his employment?</u>

The Arbitrator finds that Petitioner sustained a compensable work accident on May 20, 2012 and met the elements of proof necessary to establish a "mental-mental" claim. In so

finding, the Arbitrator relies on relevant case law as well as Petitioner's credible testimony and the incident report (PX 5).

In Pathfinder Co. v. Industrial Commission, 62 Ill.2d 556 (1976), the Illinois Supreme Court held that an employee who "suffers a sudden, severe emotional shock traceable to a definite time, place and cause which causes psychological injury or harm has suffered an accident within the meaning of the Act, though no physical trauma or injury was sustained." The claimant in Pathfinder was a factory employee who fainted and later developed psychological problems after pulling his co-worker's severed hand from a machine. In the instant case, Petitioner, in his role as a paramedic, encountered an elderly burn victim at the scene of a fire and participated in resuscitative efforts which ultimately proved unsuccessful. The incident report (to which Respondent did not object, T. 85) bears out Petitioner's detailed description of the scene as it reflects the victim was "wheelchair bound" and had "been in the fire" for an "unknown amount of time." Petitioner explained that, because the victim was "definitely sitting up" in the inferno, he "took a lot in." T. 17-18. Burns, blistering and "charring" were evident on the victim's face, in his airway and on many parts of his body. PX 5. Petitioner reacted to the victim's inability to do anything to extricate himself from the fire as much as he did to his own inability to bring him back to life.

Respondent maintains that, based on the incident report, most of the resuscitative effort was made by a trainee, Adam Brand, and that Petitioner's involvement was minimal. In fact, the incident report identifies Petitioner as one of three caregivers. Regardless of Petitioner's precise activities at the scene, it was because he was a paramedic that he encountered the burn victim. The accident clearly arose out of his employment. As for his reaction, the Appellate Court in Diaz v. IWCC, 2013 IL App (2d) 120294WC clarified that "whether a worker has suffered the type of emotional shock sufficient to warrant recovery should be determined by an objective, reasonable-person standard, rather than a subjective standard that takes into account the claimant's occupation and training." The shock that Petitioner experienced in confronting the brutal demise of a person trapped in a wheelchair was "the reaction of a person of normal sensibilities," Pathfinder, 62 Ill.2d at 567. There is no requirement that Petitioner prove the incident was "of significantly greater proportion or dimension" than that to which he was typically exposed on the job.

Did Petitioner establish a causal connection between the accident of May 20, 2012 and his current claimed condition of ill-being?

The Arbitrator finds that the accident of May 20, 2012, in combination with previous work stressors and other factors, caused Petitioner's psychological condition of ill-being. The Arbitrator views Petitioner's encounter with the elderly burn victim as a culminating event. Petitioner had been undergoing treatment for anxiety for more than a year before this encounter and had only resumed working a few days earlier. The encounter tipped him over the edge, prompting him and his medical providers to question his ability to safely continue working as a paramedic. The Arbitrator notes that, under Illinois law, a claimant need only show that a work accident was a cause of his condition. He need not establish that the accident

was the only, or even a significant, cause. Nor is he required to eliminate all other contributing causes. Sisbro, Inc. v. Industrial Commission, 207 Ill.2d 193, 205 (2003).

In finding that Petitioner established causation, the Arbitrator relies on Petitioner's credible testimony, the pre- and post-accident treatment records and Dr. Lahmeyer's report of January 31, 2013. While Dr. Lahmeyer concluded that Petitioner did not meet all of the diagnostic criteria for post-traumatic stress disorder, he found that the trauma of May 20, 2012 "appears to have contributed to [Petitioner's] anxiety and depression." RX 4.

Is Petitioner entitled to reasonable and necessary medical expenses?

Petitioner seeks reimbursement of out of pocket expenses totaling $1,046.00. These claimed expenses include Lou Gallagher's charges of $239.00 for two EMDR sessions conducted before the accident and credit card payments totaling $807.00 Petitioner made to Margaret Hahn, Dr. Estrada and Steven Wodka for treatment rendered after the accident. PX 7. The Arbitrator declines to award the claimed $239.00. This charge relates to care rendered before the May 20, 2012 accident. Additionally, while Petitioner testified he paid Gallagher's bill (T. 46), he did not introduce documentary evidence of payment. The Arbitrator directs Respondent to reimburse Petitioner for the $807.00 in payments he made in connection with treatment rendered after the accident. The Arbitrator finds this treatment reasonable and necessary, as well as successful. Petitioner had a favorable response to counseling and Zoloft. Moreover, Dr. Lahmeyer, Respondent's examiner, expressed no criticism of Petitioner's treatment in his report of January 31, 2013. In fact, Dr. Lahmeyer recommended that Petitioner continue Zoloft for several more months. RX 4.

Is Petitioner entitled to temporary total disability benefits?

Petitioner claims he was temporarily totally disabled from May 21, 2012 through December 4, 2012. Respondent disputes this claim, based on its accident and causation defenses, and paid no temporary total disability benefits. Arb Exh 1. The Arbitrator has found in Petitioner's favor on the issues of accident and causation. The Arbitrator finds that Petitioner was temporarily totally disabled from June 1, 2012 (the first date of treatment after the May 20, 2012 accident) through December 3, 2012 (the day before Petitioner started his job at the University of Wisconsin). This is a period of 26 4/7 weeks. The Arbitrator declines to award benefits from May 21, 2012 through May 31, 2012, as requested by Petitioner. While Petitioner told Respondent's examiner that he stopped working on May 22nd (RX 4), there is no evidence indicating he sought psychological care until June 1st. PX 1.

The Arbitrator recognizes that Respondent's examiner, Dr. Lahmeyer, saw "no evidence that [Petitioner] was unable to work" despite his symptoms. The Arbitrator assigns little weight to this opinion. Dr. Lahmeyer did not examine Petitioner until January 31, 2013. As of this date, Petitioner had been at his new campus gardener job almost two months. While Petitioner's anxiety had improved, he was still exhibiting outbursts of anger, hypervigilance and an exaggerated startle response, according to Dr. Lahmeyer. RX 4, p. 9. In the Arbitrator's

view, Dr. Lahmeyer gave insufficient consideration to the negative impact such behaviors could have on Petitioner's ability to perform his job with Respondent.

What is the nature and extent of the injury?

Because the accident occurred after September 1, 2011, the Arbitrator looks to Section 8.1b of the Act for guidance in assessing permanency. That section sets forth five factors to be considered in determining the nature and extent of an injury, with no single factor predominating. The Arbitrator gives no weight to the first factor, i.e., an AMA Guides impairment rating, since neither party offered such a rating into evidence. The Arbitrator gives some weight to the second and third factors, Petitioner's age at the time of the occurrence and occupation. Petitioner was a 53-year-old firefighter and paramedic as of the May 20, 2012 accident. By the time of that accident, he had pursued two public service careers for many years yet was not near traditional retirement age. He had been considering retirement prior to the accident but did not begin the process until Respondent declined to provide an accommodated position. The Arbitrator also assigns weight to the fourth factor, earning capacity. There is no evidence suggesting Petitioner took a pay cut when he started working at the University of Wisconsin. As for the fifth and final factor, evidence of disability corroborated by the treatment records, the Arbitrator notes the opinions of Margaret Hahn, APN, CNS and Dr. Estrada.

The Arbitrator has also considered the somewhat unusual facts that distinguish this case from others. Specifically, the Arbitrator has given thought to the dual nature of Petitioner's employment with Respondent and Respondent's assertion that Petitioner "fell" into that employment. In responding to Petitioner's request for accommodation, and his "last ditch" request to return to work solely as a firefighter, Hoppenstedt asserted that firefighters are not in any way exempt from the stressful duties of paramedics. While it is clear that the essential duties of both jobs overlap, a person working solely as a firefighter might respond to fire or alarm calls where no citizen's health is threatened while a paramedic, by definition, is rendering aid to ill or injured humans. T. 11-12. The Arbitrator can accept that Petitioner might have felt capable of continuing to work as a firefighter despite his anxiety, given that some of his runs would not have required him to save anyone's life. As for Respondent's argument that Petitioner defaulted to public service despite his degree in plant and soil science and thus did not really lose a trade, the Arbitrator notes that the word "trade" does not appear anywhere in Section 8(d)2. Instead, the legislature used the term "usual and customary line of employment." As a young man, Petitioner might have dreamt of becoming a soil scientist but his "usual and customary line of employment" was, in fact, firefighter/paramedic. He pursued that line of employment for twenty years and was willing to continue, so long as he could function solely as a firefighter. The notion that public service was not his top career choice does not render his loss insignificant.

On the other hand, the Arbitrator notes that, following his retirement from public service, Petitioner ended up in a job he likes and is well suited for. The Arbitrator also notes

that Petitioner last underwent treatment for his claimed condition more than eight years before the hearing.

Having considered the foregoing, the Arbitrator finds that Petitioner established permanency equivalent to 15% loss of use of the person as a whole, representing 75 weeks of benefits under Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC025369
Case Name	NAVERRETE, JAMIE v. PROFESSIONAL TRANSPORATION AND CLIMATE PROS INC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0026
Number of Pages of Decision	16
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Joel Block
Respondent Attorney	Christopher Tomczyk

DATE FILED: 1/21/2022

/s/Carolyn Doherty, 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

Jamie Naverrete,
Petitioner,

vs. NO: 16 WC 25369

Professional Transportation and Climate Pros, 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, temporary total disability, permanent partial disability, and medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 14, 2020, is hereby affirmed and adopted.

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

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

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

January 21, 2022

o 01/20/22
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
NOTICE OF ARBITRATOR DECISION

22IWCC0026

NAVERRETE, JAMIE
Employee/Petitioner

Case# **16WC025369**

PROFESSIONAL TRANSPORATION AND CLIMATE PROS INC
Employer/Respondent

On 4/14/2020, 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 0.29% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0222 GOLDBERG WEISMAN & CAIRO LTD
JOEL BLOCK
ONE E WACKER DR SUITE 3900
CHICAGO, IL 60601

0445 EVANS & DIXON LLC
CHRIS TOMCZYK
303 W MADISON ST SUITE 1900
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF DuPage)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jaime Navarrete
Employee/Petitioner

v.

Professional Transportation and Climate Pros, Inc.
Employer/Respondent

Case # **16** WC **25369**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen J. Friedman**, Arbitrator of the Commission, in the city of **Wheaton**, on **February 5, 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. [x] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [ ] What was the date of the accident?
E. [ ] Was timely notice of the accident given to Respondent?
F. [x] Is Petitioner's current condition of ill-being causally related to the injury?
G. [ ] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [ ] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [x] What temporary benefits are in dispute?
[ ] TPD [x] Maintenance [x] TTD
L. [x] What is the nature and extent of the injury?
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On **June 30, 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 **$94,328.00**; the average weekly wage was **$1,814.00**.

On the date of accident, Petitioner was **60** 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 **$67,641.08** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$67,641.08**.

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, pursuant to the medical fee schedule, of $444.00 to Hinsdale Orthopedics, $4,944.07 to ATI, $27,461.60 to Pain Treatment Centers, and $345.00 to G &T Orthopedics, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $1,209.33/week for 85 5/7 weeks, commencing August 1, 2016 through March 23, 2018, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $67,641.08 for temporary total disability benefits that have been paid. Petitioner claim for Maintenance benefits is denied.

Respondent shall pay Petitioner permanent partial disability benefits of $755.22/week for 250 weeks, because the injuries sustained caused the 50% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner the benefits that have accrued from June 30, 2016 through February 5, 2020, 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

April 9, 2020
Date

APR 14 2020

Statement of Facts

Petitioner Jaime Navarrete testified that on June 30, 2016, he was employed by Respondent Professional Transportation and Climate Pros, Inc. as a carpenter. He testified his job duties involved all types of carpentry. On June 30, 2016, while taking chicken wires out of a room, he stepped on a piece of chicken wire, slipped and fell onto his left knee and hurt his knee and back. He gave notice of injury to his supervisor and continued working. Petitioner testified that he did not receive medical treatment right away. He waited about a month to do so. He testified that the pain became worse, and he was told by his foreman to see a doctor.

Petitioner was seen at Ingalls Memorial Hospital Emergency Room on July 29, 2016 with primary complaints of knee pain, which radiated into his lower back (PX 1). Petitioner gave a consistent accident history of tripping on chicken wire a month ago and bumping his knee. Petitioner also reported pain in his left hip and low back. X-rays of his hip and left knee showed no acute findings, only mild degenerative joint disease. Petitioner reported mild urinary incontinence. A lumbar MRI reported multilevel disc degeneration and spondylosis with mild spinal stenosis at L2-3 and L3-4. The MRI noted status post-fusion from L3-4 through L5-S1 (PX 1).

Petitioner followed up with Occupational Health Centers on August 1, 2016 (PX 2). At that time, Petitioner was diagnosed with a lumbar strain and contusion of the left knee. Petitioner was given a knee sleeve and cane and referred for physical therapy. Petitioner was restricted to sedentary work (PX 2). The therapist notes improvement through August 24, 2016, but continued complaints. Petitioner had increased spasticity and difficulty achieving 90 degrees of knee flexion (PX 2). Petitioner continued useing the knee sleeve and cane. He was referred to see Dr. Kevin Tu.

Petitioner saw Dr. Tu on August 24, 2016 with complaints of low back and left knee pain (PX 2). Petitioner reported minimal improvement in therapy. He complained of pain in the lower back that radiates down to his left lower extremity. He reported a history of lumbar back surgery. On examination of the back, Dr. Tu noted tenderness over the paraspinal muscles, limited range of motion and positive left straight leg raising. The left knee had limited motion with joint line tenderness and effusion. Dr. Tu referred Petitioner to Dr. Salehi for his lumbar spine and ordered an MRI of the knee. The September 27, 2016 MRI noted a Grade III tear of the posterior horn of the medial meniscus (PX 3). On October 5, 2016, Dr. Tu felt the MRI showed a traumatic complex posterior horn tear of the medial meniscus, which was unstable. Petitioner was set for an arthroscopic medial meniscectomy of the knee (PX 2).

Petitioner was seen by Dr. Sean Salehi on October 21, 2016 (PX. 2). Petitioner gave a consistent history of injury. He reported a lumbar fusion 10 years prior with hardware removal a year later. He stated he was doing well with no residual complaints. Petitioner continued to complain of 7/10 pain in the back. Dr. Salehi diagnosed Petitioner as having lumbar disc disease at L3, 4, 5 and S1. Dr. Salehi stated Petitioner had an aggravation of his lumbar disc disease. The majority of Petitioner's symptoms were in the left knee, and he would be proceeding with the left knee treatment. Dr. Salehi indicated Petitioner would follow up as needed (PX 2).

Petitioner underwent left knee arthroscopic partial medial meniscectomy, synovectomy, and chondroplasty on November 18, 2016. Petitioner began therapy at ATI Physical Therapy on November 20, 2016 with complaints of pain of movement and walking and all activities (PX 6). Dr. Tu notes on December 14, 2016 that Petitioner is still on crutches and unable to straighten out his knee. On January 11, 2017, Petitioner was still unable to straighten his knee. Dr. Tu recommended an additional MRI (PX 2). The MRI performed on January 19, 2017

demonstrated effusion and a tear in the posterior horn of the medial meniscus (PX 3). On January 21, 2017, Dr. Tu read the MRI as showing effusion and post-operative changes. He recommended continued aggressive physical therapy and administered a cortisone injection. He noted that if the symptoms persist a repeat arthroscopy with manipulation would be considered (PX 2). Due to continued difficulty with range of motion and extension, Petitioner underwent an arthroscopic revision on April 7, 2017. Dr. Tu noted that they were able to get full range of motion without any manipulation under the anesthesia. He noted a recurrent tear and synovium impinging the medial compartment on full extension (PX 2). On April 12, 2017, Dr. Tu ordered resumption of physical therapy. On June 28, 2017, Dr. Tu noted that Petitioner plateaued in his treatment and is not progressing in physical therapy. He states that it is not clear why patient is unable to fully bend his knee, as we were able to do so during the surgery well. There is no mechanical blockage. He recommended a functional capacity evaluation to establish permanent restrictions (PX 2). Petitioner was discharged from therapy at ATI on July 3, 2017. They note Petitioner's regular job was in in Medical PDL. Petitioner has continued impairments. He is to be transitioned to FCE (PX 4).

Petitioner sought a second opinion from Dr. Patel at Hinsdale Orthopedic for his continued complaints of knee pain on July 6, 2017 (PX 5). It is noted that the consultation was requested by Victor Herrera, attorney. Dr. Patel commented that he did not see a mechanical cause for Petitioner's lack of motion and recommended a cortisone injection for pain. He did not believe surgical intervention would help. Due to current complaints of back pain, Petitioner was referred to a spine specialist (PX 6).

Petitioner saw Dr. Burgess on July 26, 2017 for his pain in the low back into the left leg (PX 6). Petitioner complained of 10/10 pain, 50% back and 50% leg, along with numbness, tingling and weakness. He related a history of back surgery with the most recent being in 2013, He reported he did very well following surgery and was pain free leading to this work injury. Dr. Burgess reviewed the x-rays and MRI as showing disc space narrowing and disc bulging at L3-S1 and the laminotomy defect from L3-S1. His impression was acute low back pain with left leg radiculopathy. He recommended physical therapy and a referral to a pain specialist (PX 6). Petitioner had further therapy at ATI from July 28, 2017 through September 5, 2017 without improvement (PX 7). Petitioner saw Dr. Abusharif at Pain Treatment Center on August 14, 2017. He diagnosed lumbar radiculopathy and recommended a series of 3 transforaminal epidural steroid injections (PX 5).

Petitioner was examined by Dr. Thomas Gleason at Respondent's request on August 15, 2017 (RX 2). Petitioner was noted to have low back and left knee pain, not improved at all since the time of his injury. After examination and review of records and diagnostics, Dr. Gleason diagnosed post-surgical left knee and post prior lumbar fusion of the low back. He opined that Petitioner was at maximum medical improvement and in need of no further treatment. He was capable of full-time work in the light to medium category, restricted due to his prior lumbar fusion (RX 2).

Petitioner underwent the first of the series of 3 epidural steroid injections to the low back by Dr. Abusharif on August 21, 2017 (PX 5). Petitioner saw Dr. Templin on September 7, 2017 with complaints of back and left leg pain (PX 6). On examination, Dr. Templin noted he has difficulty moving his left knee. Straight leg raising is negative. He has pain on flexion and more so on extension. Dr. Templin reviewed the MRI and noted a small disc bulge at L3-4 and a posterior fusion at least through L4 and potentially extending to L3-4. He states it looks like there is a pars fracture at L3 with edema and moderate foraminal stenosis. He recommended a CT scan to evaluate an L3 spondylolisthesis (PX 6). Petitioner had the second and third epidural steroid injections at L4-5 on September 11, 2017 and September 25, 2017 (PX 5).

Petitioner underwent a Function Capacity Evaluation on September 30, 2017 at ATI (PX 7). The job of a carpenter is listed as Medium. Petitioner reported he was required to lift tools and materials weighing over 100 pounds and had to squat, kneel, crawl, and climb ladders and scaffolds. The study was noted as Valid and demonstrated capacity at the modified light physical demand level (PX 7).

On October 4, 2017, Dr. Templin again requested the CT scan. Dr. Templin noted the FCE and that Petitioner's capability is below his job as a carpenter. He took Petitioner off work pending the CT scan (PX 6). The CT scan performed on December 18, 2017 reported no fractures or dislocations seen. There is multilevel spondylosis with posterior osteophyte endplate spurring and facet arthropathy contributing to canal/foraminal stenosis, spondylolisthesis of L5, disc desiccation and suggestion of congenital fusion of the posterior elements of the L3-S1 vertebral bodies (PX 5). On December 22, 2017, Dr. Templin reviewed the CT scan and stated he saw evidence of a bilateral pars fracture with moderate foraminal stenosis. He recommended an L3 pars injection (PX 6).

Petitioner saw Dr. Abusharif on January 22, 2018 (PX 5). He noted the earlier injections provided no improvement. Petitioner underwent L3/L4 facet injections bilaterally on February 7, 2018 (PX 5). Petitioner saw Dr. Templin on February 8, 2018. He continued to use a cane. Dr. Templin recommended surgery consisting of a lateral fusion with posterior instrumentation at L3-4.

Petitioner saw Dr. Tu on February 8, 2018. Dr. Tu noted Petitioner had been given permanent restrictions in October 2017 for the left knee. Petitioner still reported pain and difficulty with range of motion. Dr. Tu advised Petitioner to continue activities per the September 20, 2017 Function Capacity Evaluation. He found Petitioner at Maximum Medical Improvement for the left knee (PX 4).

Petitioner last saw Dr. Templin on March 23, 2018 with continued low back and left knee pain. Physical examination noted motor strength is well preserved. Petitioner walked with a cane but can ambulate without it. Straight leg raising was negative. He had significant pain with extension of the lumbar spine and minimal pain with flexion to about 60 degrees. He has tenderness to palpation. Dr. Templin assessed an L3-4 non-union with a pars defect with positive diagnostic block with continued low back pain. The treatment option was to undergo surgery. Dr. Templin stated that if Petitioner opts against it, he would be at maximum medical improvement and was able to work at his previous restrictions per the FCE (PX 6).

Dr. Gleason testified by evidence deposition taken November 27, 2018 (RX 2). He is a board-certified orthopedic surgeon. He examined Petitioner on August 15, 2017. He testified to the history of accident and treatment provided by Petitioner. He noted Petitioner was in physical therapy and scheduled for a lumbar injection. He was seeing Dr. Templin. Dr. Tu had ordered an FCE. Petitioner complained of low back pain and pain running down the left leg. He also complained of left knee pain. Physical examination noted he used a cane. He walked with a non-antalgic gait with the cane. There was sharp diffuse pain over the low back without spasm, tenseness or asymmetry. There were complaints of pain with even gentle palpation. Dr. Gleason noted the positive straight leg raising was inconsistent with the Britton test which was negative. He noted inconsistent give away weakness on left-sided strength testing. Dr. Gleason reviewed the MRI studies of the low back and left knee, noting a degenerative tear of the posterior horn of the medial meniscus on the left knee and degenerative changes and post-operative changes in the lumbar spine. Dr. Gleason testified to the medical treatment records he reviewed. His diagnosis of the left knee was the findings reflected on the MRI and operative reports with diminished range of motion. The low back was findings as reflected in the MRI report as having a prior laminectomy and posterior fusion of L4-5-S1. He opined that Petitioner was in need of no further

treatment for his left knee. He has no objective signs of difficulty in his left knee or low back. He had reached maximum medical improvement. He was capable of working in the light to medium level (RX 2).

Dr. Gleason testified that a CT scan might be preferable for seeing bony details or cortical disruptions. He did not review the CT scan in this matter. If there was a pars fracture, he would have expected to see edema on the MRI taken earlier. A pars fracture could be a pain generator. The fall would not cause a pars fracture. It is possible it could have aggravated one. He has no explanation for Petitioner's pain complaints. It raises questions about veracity and reliability. The annular bulges noted on the MRI are normal for Petitioner's age. They are chronic, long standing, preexisting and asymptomatic. There is no evidence of nerve impingement. There is no evidence of any inflammatory changes. There are contradictions and inconsistencies in the examination. The subjective symptoms are not necessarily supported by the objective findings (RX 2).

Dr. Templin testified by evidence deposition taken November 9, 2019 (PX 9). He is board-certified in orthopedic surgery with a subspecialty in spinal surgery. He testified to his treatment of Petitioner beginning July 26, 2017. Petitioner was initially diagnosed with degenerative disc disease and lumbar strain. He has since been diagnosed with spondylolisthesis. He reviewed the September 7, 2017 MRI. It showed the prior fusion of L4 to S1. There was a small disc bulge at L3-4, and he felt that there was a pars fracture of L3 with moderate foraminal stenosis. He testified that the December 22, 2017 CT showed bilateral pars fractures at L3. He ordered an injection. He saw Petitioner after the injection and noted a diagnostic response to the injection. He recommended a fusion at L3-4. He last saw Petitioner on March 23, 2018. His findings were the same at that time. He put Petitioner back to work per the functional capacity evaluation. Dr. Templin opined that the accident aggravated or caused the pars fracture causing Petitioner's pain (PX 9).

Dr. Templin testified he has not reviewed medical records prior to his treatment, He is not certain what the findings of the FCE were. He does not know if he saw the report. His diagnosis is based upon the CT and his x-rays. CT shows bone better that MRI. His examination of the back noted difficulty with flexion and extension. The remainder of his examination was normal (PX 9).

Petitioner testified he does not want to have the surgery. He has been off work since he began treatment. He has not returned to work for Respondent. He has looked for work and kept job logs during that period. He filled them out himself. He made some contacts by computer. He looked for carpentry positions. He has been a carpenter his entire life. He has experience in framing, acoustics, drywall, cabinetry. He was also a handyman, doing plumbing and electrical wiring. He testified that these may require lifting beyond his 20-pound restrictions. He also has worked in a restaurant and leather work. He has an 8th grade education.

From April 15, 2019 to May 25, 2019, and January 16, 2020 to trial, he is working at Margo's Kitchen in Houston, Texas. He worked 40 hour per week, earning $10.00 per hour in 2019 and $12.00 per hour now. He called around, interviewed and was hired. He cooks, washes the dishes, takes care of customers, register. This is a temporary job. He is still a member of the carpenters' union. He has never looked for light work through the union. He does not know if that have any.

Petitioner testified that he still has a lot of pain in his knee and his back. He uses a cane. He cannot bend, lift or push. He is limited in lifting to the restriction he received in therapy. He does not remember how much. If he sits in a car for over 40 minutes to an hour, he feels pressure in his back and tingling in his knee. He has a knee brace and a back brace. He is not on prescription medication. Before the accident, he could perform all the duties for Respondent.

Mr. Edward Steffen testified on behalf of Respondent. Mr. Steffen testified that he is employed by EPS Rehabilitation, Inc. as a Certified Rehabilitation Counselor. He reviewed Petitioner's job search logs and prepared a report (RX 3). Mr. Steffen testified that the logs indicated Petitioner was given an interview for July 1, 2019 with no other documentation. There was also an interview to be set for a construction group in Chicago with only an additional indication of an August 7th call on a form report. Mr. Steffen testified that out of all the job logs presented by Petitioner, carpenter positions were contacted on 382 occasions and "any and all" positions were requested on 441 entries. Mr. Steffen testified that most of the contacted employers were in the construction industry. A total of 185 employers were contacted. There was no evidence that resumes had been provided. Mr. Steffen confirmed there was no documentation relating to pursing any employment in the restaurant industry within the job logs of Petitioner. Mr. Steffen opined that the job logs did not represent an actual job search but was only a matter of record keeping of contacting providers that were not hiring. He did not find that the job search as documented in the logs was realistic, valid or genuine.

Mr. Steffen testified that he performed two labor market samplings for Petitioner, one within the functional capacity level and one based on the opinions of Dr. Gleason. He was provided medical records, a job history for Petitioner and advised he had completed high school. Mr. Steffen opined that both sets of limitations had readily available stable job markets for Petitioner. He noted positions as a cashier, customer service, property real estate management and cooks. The wages for the various positions ranged for $10.63 per hour to over $33.00 per hour. In his contacts, he did find some current positions available. Details were included in RX 3.

Mr. Steffen testified he was limited to the information provided by the Respondent, and it was possible his opinions might change if given additional information such as Petitioner's 8th grade education. He did not interview Petitioner. Mr. Steffen confirmed that Dr. Gleason was an independent medical examiner for Respondent. Mr. Steffen does not know if vocational services were offered to Petitioner. He testified to the services included in developing a vocational plan.

Conclusions of Law

In support of the Arbitrator's decision with respect to (C) Accident, the Arbitrator finds as follows:

To obtain compensation under the Act, a claimant must show, by a preponderance of the evidence, that he suffered a disabling injury that arose out of and in the course of the claimant's employment. An injury is accidental within the meaning of the Act 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. *International Harvester Co. v. Industrial Comm.*, 56 Ill. 2d 84, 89 (Ill. 1973). An injury occurs "in the course of' employment when it occurs during employment and at a place where the claimant may reasonably perform employment duties, and while a claimant fulfills those duties or engages in some incidental employment duties. An injury "arises out of" one's employment if it originates from a risk connected with, or incidental to, the employment and involves a causal connection between the employment and the accidental injury.

Petitioner's unrebutted testimony, corroborated by his medical records, is that on June 30, 2016, while taking chicken wires out of a room, he stepped on a piece of chicken wire, slipped and fell onto his left knee and hurt his knee and back. This occurred during Petitioner's employment and at a place where he performed those

employment duties, and while he fulfilled those duties. His injury originated from a risk connected with his employment and involves a causal connection between the employment and the accidental injury.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he sustained accidental injuries arising out of and in the course of his employment with Respondent on June 30, 2016.

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

A Workers' Compensation Claimant bears the burden of showing by a preponderance of credible evidence that his current condition of ill-being is causally related to the workplace injury. *Horath v. Industrial Commission*, 449 N.E.2d 1345, 1348 (Ill. 1983) citing *Rosenbaum v. Industrial Com.* (1982), 93 Ill.2d 381, 386, 67 Ill.Dec. 83, 444 N.E.2d 122). The Commission may find a causal relationship based on a medical expert's opinion that the injury "could have" or "might have" been caused by an accident. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 182, 457 N.E.2d 1222, 1226, 75 Ill. Dec. 663 (1983). However, expert medical evidence is not essential to support the Commission's conclusion that a causal relationship exists between a claimant's work duties and his condition of ill-being. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63, 442 N.E.2d 908, 911, 66 Ill. Dec. 347 (1982). A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Comm'n*, 265 Ill. App. 3d 830, 839, 639 N.E.2d 886, 892, 203 Ill. Dec. 327 (1994). Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1205 (2000). The accident need not be the sole or principal cause, as long as it was a causative factor in a claimant's condition of ill-being. *Lopez v. Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 130355WC-U, P25 (Ill. App. Ct. 3d Dist. 2014)

Petitioner's unrebutted testimony was that he had no prior left knee complaints, injuries or medical care before the June 30, 2016 accident. While he had a prior back surgery, his unrebutted testimony and consistent medical histories are that he had no back symptoms or treatment for years before his accident. He was performing his full duty job for Respondent as a carpenter up until that accident. Although Petitioner delayed treatment after his accident for a month, he presented with a consistent history of onset of symptoms in his back and left knee from the accident. No evidence of any intervening event was presented. Dr. Tu noted the left knee MRI showed a traumatic complex posterior horn tear of the medial meniscus, which was unstable. Petitioner underwent two surgeries for this left knee condition. Dr. Tu found Petitioner at MMI on February 8, 2018. Petitioner also underwent an ongoing course of care for his low back symptoms with Dr. Salehi, Dr, Templin and Dr. Abusharif. Dr. Templin testified that Petitioner had bilateral pars fractures at L3. He opined that the accident aggravated or caused the pars fracture causing Petitioner's pain. Dr. Templin found that if Petitioner did not want further back surgery, he was at MMI as of March 23, 2018.

Respondent disputes causal connection of Petitioner's conditions of ill-being after August 2017 based upon the opinions of Dr. Gleason. Dr. Gleason testified that there are contradictions and inconsistencies in the examination. The subjective symptoms are not necessarily supported by the objective findings. He opined that Petitioner was in need of no further treatment for his left knee. He has no objective signs of difficulty in his left knee or low back. He had reached maximum medical improvement. He was capable of working in the light to medium level due to his prior back surgery.

It is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 406-07, 459 N.E.2d 963, 76 Ill. Dec. 828 (1984); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675, 928 N.E.2d 474, 340 Ill. Dec. 475 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041, 721 N.E.2d 1165, 242 Ill. Dec. 634 (1999). Expert testimony shall be weighed like other evidence with its weight determined by the character, capacity, skill and opportunities for observation, as well as the state of mind of the expert and the nature of the case and its facts. *Madison Mining Company v. Industrial Commission*, 309 Ill. 91, 138 N.E. 211 (1923). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, 960 N.E.2d 587, 355 Ill. Dec. 705. If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S.*, 339 Ill. App. 3d 599, 607, 791 N.E.2d 80, 87, 274 Ill. Dec. 284 (2003). A finder of fact is not bound by an expert opinion on an ultimate issue but may look 'behind' the opinion to examine the underlying facts. Not only may the Commission decide which medical view is to be accepted, it may attach greater weight to the opinion of the treating physician. *International Vermiculite Co. v. Industrial Comm'n*, 77 Ill.2d 1, 31 Ill. Dec. 789, 394 N.E.2d 1166 (1979); *ARA Services, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 225, 168 Ill. Dec. 756, 590 N.E. 2d 78 (1992).

Having heard the testimony and reviewed the exhibits, the Arbitrator finds the opinions of Dr. Tu and Dr. Templin persuasive and consistent with the chain of events. Dr. Tu described a traumatic tear of the meniscus. His treatment, including the second surgery for lack of motion, were to address the condition of ill-being in the left knee following the accident. Dr. Gleason examined Petitioner in the middle of treatment and did not provide any further opinions which would evaluate the results of the further care. Dr. Templin had the benefit of reviewing the CT scan which Dr. Gleason admits is preferable for evaluating bony abnormalities. Most persuasively, he notes that the L3 facet injection noted a diagnostic result. Whether the L3 abnormality is described as a fracture, spondylolisthesis or stenosis, this result would confirm that this level is the pain generator. Dr. Gleason admits that the fall could aggravate an L3 pars fracture.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that his conditions of ill-being in the left knee and low back are causally connected to the accident sustained on June 30, 2016

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

Under §8(a) of the Act, 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 a claimant's injury. The claimant has the burden of proving that the medical services were necessary, and the expenses incurred were reasonable. *City of Chicago v. Illinois Workers' Compensation Commission*, 409 Ill. App. 3d 258,267 (1st Dist., 2011). In weighing the reasonableness and necessity of treatment, the Commission considered the medical opinions presented. In determining the reasonableness and necessity of treatment, the Commission also has considered whether the records demonstrate subjective or objective improvement or whether the treatment failed to provide

demonstrable benefit. *Hugo Alvarez v AMI Bearings, 16 IWCC 0408; Nelson Centeno v. Minute Men, 13 IWCC 0914, affirmed Centeno v. Illinois Workers' Compensation Commission, 2016 IL App (2d) 150575WC-U; 2016 Ill. App. Unpub. LEXIS 1261.* Based upon the Arbitrator's finding with respect to Causal Connection, reasonable and necessary treatment related to Petitioner's conditions of ill-being in the left knee and low back would be causally related to the accident.

Petitioner submitted PX 11 containing unpaid bills to ATI Physical Therapy ($4,944.07) for treatment from 7/28/17 through 9/12/17, and the 9/20/17 FCE; Pain Treatment Centers ($27,461.60) for the injections from 8/21/17 through 2/7/18; Hinsdale Orthopedics ($444.00) for treatment 9/7/17 through 2/8/18; and G & T Orthopedics ($345.00) for an office visit with Dr. Tu on 2/8/18. Having reviewed the bills and the medical exhibits in evidence, the Arbitrator finds these bills are reasonable, necessary and causally related to the accident on June 30, 2016.

Based upon the record as a whole, the Arbitrator finds that Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $444.00 to Hinsdale Orthopedics, $4,944.07 to ATI Physical Thearpy, $27,461.60 to Pain Treatment Centers, and $345.00 to G &T Orthopedics, as provided in Sections 8(a) and 8.2 of the Act.

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

Temporary compensation is provided for in Section 8(b) of the Workers' Compensation Act, which provides, weekly compensation shall be paid as long as the total temporary incapacity lasts, which has interpreted to mean that 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. The dispositive test is whether the claimant's condition has stabilized, i.e., reached MMI. *Sunny Hill of Will County Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003). To be entitled to TTD benefits a claimant must prove not only that he did not work but that he was unable to work. *Freeman United Coal Min. Co. v. Indus. Comm'n*, 318 Ill. App. 3d 170, 175, 741 N.E.2d 1144, 1148 (2000).

Based upon the Arbitrator's finding with respect to Causal Connection including finding the opinions of Dr. Tu and Dr. Templin persuasive, Petitioner reached maximum medical improvement as of his decision to opt against having further back surgery on March 23, 2018. Petitioner was available for work thereafter within the restrictions of the September 20, 2017 FCE and his entitlement to temporary total disability would end.

However, the Arbitrator must determine whether Petitioner is entitled to maintenance benefits thereafter through the date of hearing. Section 8(a) provides for both physical rehabilitation and vocational rehabilitation and mandates that the employer pay all maintenance costs and expenses "incidental" to a program of "rehabilitation." Id.; see also *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1075, 820 N.E.2d 570, 289 Ill. Dec. 794 (2004). The statute is flexible and does not limit "rehabilitation" to formal training. *Connell v. Industrial Comm'n*, 170 Ill. App. 3d 49, 55, 523 N.E.2d 1265, 120 Ill. Dec. 354 (1988); see also *Roper Contracting v. Industrial Comm'n*, 349 Ill. App. 3d 500, 506, 812 N.E.2d 65, 285 Ill. Dec. 476 (2004). We have construed the statutory term "rehabilitation" broadly to include an injured employee's self-initiated and self-directed job search. See, e.g., *Roper*, 349 Ill. App. 3d at 506. Thus, we have approved the Commission's award of maintenance benefits to an employee who is conducting a self-directed job search, even if the employee has not requested vocational rehabilitation from his employer. Id.; see also *Greaney v. Industrial Comm'n*, 358 Ill. App. 3d 1002, 1019, 832 N.E.2d 331, 295 Ill. Dec. 180 (2005).

However, by its plain terms, Section 8(a) requires the employer to pay only those maintenance costs and expenses that are incidental to rehabilitation. That means that an employer is obligated to pay maintenance benefits only "while a claimant is engaged in a prescribed vocational-rehabilitation program." *W.B. Olson, Inc.*, 2012 IL App (1st) 113129WC at ¶ 39; see also *Nascote Industries v. Industrial Comm'n.*, 353 Ill. App. 3d 1067 at 1075. Thus, if the claimant is not engaging in some type of "rehabilitation" (whether it be physical rehabilitation, formal job training, or a self-directed job search), the employer's obligation to provide maintenance is not triggered.

Petitioner presented his job logs as evidence of his rehabilitation program consisting of a self-directed job search. Respondent presented the testimony of Edward Steffen and his report finding that this did not represent a good faith job search but rather simple documentation of companies that are not hiring. The Arbitrator notes that Petitioner did not provide any evidence of the method he used in determining who to contact or his process for follow up. Despite his testimony and FCE results showing he was not able to perform his regular work as a carpenter, he contacted virtually all construction companies looking for carpentry work. He noted he had one offer but could not physically perform the duties. While such an effort over a short term may be explained by lack of sophistication, to continue with such a futile effort for almost 2 years can only be explained by Mr. Steffen's analysis that this was not a true effort to find employment. This is amplified by the Petitioner's ability to find restaurant work when he happened to be in Texas. The Arbitrator notes that Margo's is not listed as a contact in his logs and, despite finding such work, he lists no restaurant contacts from April 2019 through the present. The Arbitrator also notes that the entries are often simply a voicemail left and is troubled by the large number of "not hiring" listings, particularly without any evidence on why such companies are selected. Given this evidence, the Arbitrator finds Mr. Steffen's opinion that this does not constitute a good faith job search designed to truly find employment persuasive.

Our inquiry does not end here, however. We must also consider whether, under the facts presented in this case, the employer was obligated to provide vocational rehabilitation. A claimant is generally entitled to vocational rehabilitation when he sustains a work-related injury which causes a reduction in earning power and there is evidence rehabilitation will increase his earning capacity. *National Tea Co. v. Industrial Comm'n*, 97 Ill. 2d 424, 432, 454 N.E.2d 672, 73 Ill. Dec. 575 (1983); see also *Greaney*, 358 Ill. App. 3d at 1019. However, "the primary goal of rehabilitation is to return the injured employee to work." *Schoon v. Industrial Comm'n*, 259 Ill. App. 3d 587, 594, 630 N.E.2d 1341, 197 Ill. Dec. 217 (quoting *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 165, 601 N.E.2d 720, 176 Ill. Dec. 22 (1992)). Thus, if the injured employee has sufficient skills to obtain employment without further training or education, that is a factor that weighs against an award of vocational rehabilitation. *National Tea Co.*, 97 Ill. 2d at 432; *Connell,* 170 Ill. App. 3d at 53-54. Moreover, an injured employee is generally not entitled to vocational rehabilitation if the evidence shows that he does not intend to return to work (i.e., if he voluntarily remains out of the workforce even though he is able to work). *Schoon*, 259 Ill. App. 3d at 594.

Petitioner did not present any evidence that he requested vocational assistance from Respondent or that such request was refused. Rather, Petitioner began compiling job logs to document that efforts to find carpentry or construction work, jobs he was physically unable to do, were not available. No evidence was presented that he was unable to complete a job search, only that he chose to look for work inappropriately. He was able to work when he focused on work within his restrictions. The Arbitrator infers that Petitioner was no truly looking for work. There was no evidence that the Petitioner lacked the skills to obtain employment without vocational assistance. Mr. Steffen noted the job logs lacked motivation, not ability. The labor market survey identified several jobs that were available to the Petitioner even within the more limited physical abilities outlined in the FCE without any further training. The claimant did not call a vocational expert to rebut these reports. The

evidence does not establish that vocational training would have increased Petitioner's earning power.

Based upon the record as a whole, the Arbitrator finds that Petitioner is entitled to temporary compensation commencing August 1, 2016 through March 23, 2018, a period of 85 5/7 weeks. Petitioner has failed to prove by a preponderance of the evidence that he is entitled to maintenance benefits.

In support of the Arbitrator's decision with respect to (L) Nature & Extent, the Arbitrator finds as follows:

Petitioner has sought permanent benefits alternatively for wage differential benefits under Section 8(d)1 or for specific loss under Sections 8(d)2 and 8(e).

To receive a section 8(d)(1) wage-differential award "an injured worker must prove (1) that he or she is partially incapacitated from pursuing his or her usual and customary line of employment and (2) that he or she has suffered an impairment in the wages he or she earns or is able to earn." *Cassens Transport Co. v. Industrial Comm'n*, 218 Ill. 2d 519, 530-31, 844 N.E.2d 414, 422, 300 Ill. Dec. 416 (2006). "A claimant's voluntary decision to remove himself from the work force does not preclude a wage differential award." *Wood Dale Electric v. Illinois Workers Compensation Comm'n*, 2013 IL App (1st) 113394WC, 986 N.E.2d 107, 369 Ill. Dec. 158. However, "[a] claimant must prove his actual earnings for a substantial period before his accident and after he returns to work, or in the event that he is unable to return to work, he must prove what he is able to earn in some suitable employment." *Gallianetti*, 315 Ill. App. 3d at 730, 734 N.E.2d at 489. Further, "liability under the Act cannot be premised on speculation or conjecture but must be based solely on the facts contained in the record." *Deichmiller v. Industrial Comm'n*, 147 Ill. App. 3d 66, 74, 497 N.E.2d 452, 457, 100 Ill. Dec. 474 (1986) (holding "an earnings loss award cannot be based on speculation as to the particular employment level or job classification which a claimant might eventually attain").

Petitioner's job search focusing on carpentry and construction jobs would imply that he believes he is capable of performing his regular job. However, the FCE finds he is not physically able to perform the full duties of his regular job. Dr. Tu and Dr. Templin agree. While stating the restrictions are not related to the accident, Dr. Gleason also agrees he is capable of only light to medium work. The Arbitrator finds that Petitioner has proven he is partially incapacitated from performing his usual and customary occupation.

The Arbitrator finds that Petitioner has failed to establish an impairment in wages in that he has failed to establish what he is able to earn in some suitable employment. The Arbitrator does not find Petitioner conducted a good faith job search. The Arbitrator notes that, even with respect to the hundreds of jobs applied for, Petitioner presented no evidence of what the jobs paid. The short term, temporary employment at Margo's restaurant while in Texas does not constitute a basis to calculate his potential earning in light of the evidence of far greater earning potential presented in the testimony of Mr. Steffen and RX 3. The wide range of potential employment and earnings listed in the labor market survey would make any calculation of loss of earnings speculation or conjecture. The Arbitrator finds that Petitioner has failed to prove a wage-differential loss by a preponderance of the credible evidence.

Petitioner's disability is therefore assessed based upon partial permanent disability. Petitioner's date of accident is after September 1, 2011 and therefore the provisions of Section 8.1b of the Act are applicable to the assessment of partial permanent disability in this matter.

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 carpenter at the time of the accident and that, as noted above, he is not able to return to work in his prior capacity as a result of said injury. The Arbitrator notes Petitioner is able to work with restrictions outlined in his FCE. He has found restaurant work in Texas. Other job classifications are noted in the labor market survey. Because of this, the Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 60 years old at the time of the accident. He would be considered an older worker. Because of this, the Arbitrator therefore gives lesser weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes, as outlined above, that while Petitioner failed to establish his current earning potential, even if he were to make a good faith effort to find additional employment within the parameter of the labor market survey, he would undoubtedly face some reduction in earnings. Because of this, the Arbitrator therefore gives greater 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 as a result of the accident Petitioner suffered injuries to his left knee and low back. He was diagnosed with a meniscus tear and underwent two surgeries on his left knee. On February 8, 2018. Petitioner still reported pain and difficulty with range of motion. Dr. Tu advised Petitioner to continue activities per the September 20, 2017 Function Capacity Evaluation. Petitioner treated with Dr. Templin with a diagnosis of spondylolistheses and a bilateral L3 pars fracture. He was offered an L3-4 fusion but opted against it and was declared at MMI on March 23, 2018 with the same restrictions per the FCE. He has had no further treatment thereafter. Because of these facts, 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's disability is related to the combined restrictions on Petitioner's physical ability as noted in the FCE which evaluated his overall physical abilities as limited by both his low back and left knee conditions. This matter is best evaluated as a loss of occupation. The Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 50% loss of use of person as a whole pursuant to §8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC003142
Case Name	LORENZEN, LISA C v. DANVILLE SCHOOL DISTRICT #118
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remanded Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0027
Number of Pages of Decision	20
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Aaron Chappell
Respondent Attorney	John Sturmanis

DATE FILED: 1/21/2022

/s/ Deborah Baker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LISA LORENZEN,

Petitioner,

vs. NO: 19 WC 03142

DANVILLE SCHOOL DISTRICT #118,

Respondent.

DECISION AND OPINION ON REVIEW

This matter comes before the Commission pursuant to Respondent's timely Petition for Review under §19(b) of the Decision of the Arbitrator in consolidated case 19 WC 21672. There being no issues raised on Review with respect to 19 WC 03142, the Commission 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 30, 2021 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the medical expenses summarized in the first twenty entries on page 1 of Petitioner's Exhibit 1, as provided in §8(a), subject to §8.2 of the Act. Respondent shall further repay Petitioner for amounts she paid to the providers as shown on pages 6, 9, 11, 13, 16, 20, 25, 29, 84, 85, 86, 87, and 88 of Petitioner's Exhibit 1.

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 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.

Under Section 19(f)(2), 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 Circuit Court.

January 21, 2022

/s/ *Deborah J. Baker*

DJB/lyc

O: 12/8/21

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC003142
Case Name	LORENZEN, LISA C v. DANVILLE SCHOOL DISTRICT #118
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Dennis O'Brien, Arbitrator

Petitioner Attorney	Aaron Chappell
Respondent Attorney	John Sturmanis

DATE FILED: 4/30/2021

/s/Dennis OBrien, Arbitrator

Signature

INTEREST RATE WEEK OF APRIL 27, 2021 0.03%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

LISA LORENZEN
Employee/Petitioner

v.

DANVILLE SCHOOL DISTRICT #118
Employer/Respondent

Case # **19 WC 3142**

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 **Dennis O'Brien**, Arbitrator of the Commission, in the city of **Springfield**, on **March 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, **November 14, 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 $**56,850.00**; the average weekly wage was $**1,1579.16**.

On the date of accident, Petitioner was **48** years of age, ***married*** with **1** dependent child.

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

Respondent shall be given a credit of $**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 by Respondent's group health insurer under Section 8(j) of the Act.**

ORDER

Petitioner's right shoulder injury is causally related to the accident of November 14, 2016.

The medical bills summarized in the first twenty entries on page 1 of Petitioner's Exhibit #1 were reasonable and were necessitated as a result of the accident of November 14, 2016. Respondent shall pay these bills in accordance with the Medical Fee Schedule, including repayment to Petitioner of amounts she has paid to these medical providers as shown on pages 6, 9, 11, 13, 16, 20, 25, 29, 84, 85, 86, 87, and 88 of Petitioner's Exhibit #1.

The parties stipulated that no temporary total disability or prospective medical benefits were being sought on account of this accident in this hearing, no additional medical treatment was being requested in regard to Petitioner's right shoulder at this time and Petitioner was alleging in this hearing that the current condition of ill-being which was disabling her was as a result of her subsequent accident of December 5, 2018, under case 19 WC 21672, which was consolidated for hearing with this cause for purposes of arbitration as the right shoulder was injured in both accidents.

A separate decision is being made in 19 WC 21672 and findings on the issues of causal connection, medical services, temporary total disability and prospective medical are being made in that case.

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

ICArbDec19(b)

APRIL 30, 2021

Lisa Lorenzen vs. Danville School District #118 -- 19 WC 3142

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner Lisa Lorenzen

Petitioner testified she was currently employed by the Danville School District as a 7th grade science teacher, and had been so employed for five years. Prior to working for Respondent she had worked for 11 years for the Cahokia School District, again as a teacher.

On November 14, 2016 Petitioner said she was working as a teacher, writing on a white board which was mounted on the wall, and the white board fell from the wall and she caught it with her right hand and let it down. She said when she caught the white board she felt a pain in her right shoulder and an ache in her back. She reported the incident to an administrator and filled out an accident report. She continued working that day.

Petitioner said that the next day she went to write her schedule on the white board and it again fell, and her reaction again caused her to try to catch it, and when she did her right shoulder began to hurt severely.

Petitioner said she was seen by a workman's compensation doctor at Carle for right shoulder complaints, but could not remember his name. She subsequently underwent physical therapy and MRI testing, finally undergoing right shoulder surgery with Dr. Gurtler on October 26, 2018. She said her right shoulder did well after surgery and she returned to work. She said everything was normal after she returned to work.

Petitioner said she was back at work following the surgery when, on December 5, 2018 there was a verbal altercation between two students. She said she asked other students to get some help and at that time the girl started moving towards the young man. She said the girl was quite a bit bigger than the boy, and she did not want her to hurt him. Petitioner said she stepped in front of the boy and asked the girl to please stop, but the girl continued to go after the boy and shoved Petitioner very hard to get her out of the way. Petitioner said she was not expecting that, she tried to catch herself so she would not land on the student who was quite a bit smaller than her. She said she did catch herself, and then looked at the girl and said she had put her hands on a teacher, and she needed to stop. The girl was very angry and started throwing chairs, desks and tables across the room. Someone then arrived to secure the student.

Petitioner said that following this incident she immediately experienced pain in her neck, back and shoulder. She reported the injury to her employer and shortly thereafter went to Carle Clinic for medical treatment by Dr. Gurtler. She said Dr. Gurtler ultimately thought that her symptoms might be coming from her neck rather than the right shoulder he had operated on. He referred her to Dr. Gornet, a spine specialist she had previously treated with in 2008 or 2009. Dr. Gornet had done a two level disc replacement at C4/5 and C5/6 in 2008 or 2009. Dr. Gornet probably saw her for the last time for that previous problem on April 23, 2009.

Petitioner was seen by Dr. Singh at Respondent's request for evaluation of her low back and neck. She said Dr. Singh recommended the surgery Dr. Gornet was recommending, and Dr. Gornet subsequently performed a one level microdiscectomy to her low back. She said her low back was better following that surgery as she no longer had tingling and numbness, but that her problem had not completely resolved, she continued to have pain. She said she continued to have low back pain as of the date of arbitration.

Petitioner said Dr. Gornet then turned his attention and care to her neck. She said he gave her a shot which helped her symptoms a little, but it did not last, the symptoms returned. She said Dr. Gornet also ordered tests. She said Dr. Gornet was recommending disc replacement surgery for her cervical spine. Petitioner testified that she wanted to have that surgery as she was in severe pain and wanted to go back to work with her kids and to perform her job properly.

After her June 21, 2019 low back surgery, at the end of the 2019 summer break, Petitioner said she returned to work teaching in the classroom. She said that went well as far as both her neck and her low back were concerned. She said she continued to have symptoms, though. She was seen at the school district's request by Dr. Nogalski, who evaluated her right shoulder and neck. She said he performed a physical examination of her and asked her to try to get her right shoulder to pop. She said he tried to help her get it popped. He then twisted her head while examining her neck and pushed it down, causing her to ask him to stop, as it hurt and increased the symptoms in her neck.

She said that if the medical records showed she called Dr. Gornet to tell him how she was doing and that he ordered a nerve conduction study for her, that would be accurate. She said she was having symptoms in both of her hands. She said she underwent the nerve conduction studies and that they indicated she had carpal tunnel in both hands. She noted that she was not claiming her work caused the carpal tunnel conditions. Those conditions were surgically repaired in 2020, but even after the surgeries she continued to have some symptoms in her hands.

On cross-examination Petitioner said the white board was what teachers write on with dry erase markers and she did not know how much it weighed. She said that if the medical records indicated she did not get seen for medical treatment between November 15, 2016 until November 28, 2016, she would agree. That was her basic answer to all questions about treatment provided by her physicians, she said if the medical records said something, she agreed with it, including histories given, complaints made, dates of treatment. She answered in this manner to questions about whether prior back complaints had resolved, whether March 14, 2017 was the date she was treated for her shoulder, and back pain for her November, 2016 accidents. She said the next time she had back pain was December 5, 2018.

Petitioner said she had replacement disc surgery in the past with Dr. Gornet, probably in 2008 or 2009. She said Dr. Gornet did not warn her that she might need another surgery down the road , that the artificial disc would need to be replaced. Petitioner said she had not had neck pain prior to the December 5, 2018 accident and had not spoken to any doctor about neck pain prior to that. When asked if she spoke to Dr. Gurtler on November 23 2018 about her neck, she said she did talk to him, because she had been sleeping in a recliner and got a crick in her neck. She had been sleeping in a recliner since her surgery, she could not sleep in bed, and she kept getting a crick in her neck from her sleeping position. She said she did not recall Dr. Gurtler prescribing medication for her neck and shoulder at that time, but that if the medical records showed that, she would believe the medical records.

Petitioner said she did disagree with the medical records if they said that running on a treadmill aggravated everything, as she did not run on a treadmill, she walked on a treadmill. She said she did work out a little, walking on the treadmill. She said she did not go to a gym. He said no other activities that she did hurt her neck prior to the December 5, 2018 accident. She said she was not continuing to walk and use the treadmill.

Petitioner said that she worked at home using her own computer, not a school laptop. She said she did not have the availability of a laptop from the school district. She said she knew the school gave some teachers laptops, but she had a laptop at home, her own personal laptop, as well as her own desktop. She could use her laptop for her work. It had a camera for Zoom and E-Learning. she said her desktop computer also had a camera.

Petitioner agreed that she lived on a farm, but said that she did no work on the farm. She said that when they had animals there she sometimes went out and watered them with the hose in the summertime, but she did not give them feed and water, she did nothing with the farm animals. She said that in the period before her second accident there were no pigs at the house. She said that at times she had a garden and tended flowers, but

she did not intend to have a garden this year. When asked what she meant when she told Dr. Gurtler that she was a farm wife, she said that meant her husband was a farmer. She said she had not done any chores as a farm wife to help her husband farm since the 2016 accident.

Petitioner said her microdiscectomy surgery was done as an outpatient procedure.

Petitioner testified that after the 2019 summer break she returned to school that fall and did well. She said she was not exercising at that time and it had been a long time since she had done so. She said she had not done any exercise outside of that prescribed by therapy since the 2016 accident involving her shoulder. She said she did walk on the treadmill at home, but she had not done so for a long time, certainly not since the December 5, 2018 accident.

She testified that her carpal tunnel surgery was in the fall of 2020 and she could not recall if she took time off work for that as her mother was ill and dying and she had taken time off due to that. She did not recall whether or not she gave the school a written reason for leave absence being due to her neck. She said the carpal tunnel surgery occurred after her leave of absence began. She said she did not give the school a specific reason for her medical leave of absence, she just wanted a medical leave of absence. She said to continue her insurance she had to take a FMLA medical leave. She said she was not currently on FMLA as that had ended, it is only 12 weeks a year. She said that as of the date of arbitration she was still employed by the school.

Petitioner testified that Dr. Paletta had never taken her off of work. She said Dr. Gornet did take her off work on March 6, 2020. She said she did not see Dr. Gornet on that date, she spoke to him on the telephone. She said she did ask Dr. Gornet for a work slip at that time that he took her off work because she was in severe pain. She said she called Dr. Gornet because of the pain and asked him what she could do and he said there was nothing they could do except take her off work. She said she did not tell Dr.Gornet that she could teach remotely on her laptop. She agreed that her license to teach was up to date. She agreed she did not have any restrictions on her drivers license.

Petition agreed that she could still cook some things and she could still do some shopping and cleaning. She is able to drive herself. She agreed that she had headaches before the December 5, 2018 accident. She said that in that accident she did not fall down or hit her head. She agreed she did not fall or hit her head in the 2016 accident, either.

Petitioners said that the two students who were involved in the altercation we're not actually fighting, it was verbal. Both were 7th graders.

Petitioner agreed that she had an EMG that showed carpal tunnel syndrome and that it was after that test that she went for carpal tunnel surgery. She said that if the records reflected that the last time she saw Dr. Gornet was February 1, 2021, that would be correct. She said that the last time she saw Dr. Gornet she told him that she was having left hip and pain in the buttock and down the leg. Counsel for Petitioner stipulated they were not claiming an actual injury to the left hip, though the pain could be referred or radicular pain.

Petitioner agreed she had medical insurance through the school district.

On redirect examination Petitioner said the white board which fell was either 6 foot by 8 foot or 4 foot by 6 foot. She said the problem with her right shoulder and neck following surgery in October 2018 was due to her sleeping in the recliner, she would wake with neck pain and could not get comfortable. After she switched how she was situated it helped her neck. She said she walked on her treadmill following her right shoulder surgery and it did not cause any aggravation or flare up in her right shoulder or her neck at that time.

Petitioner testified that when she saw Dr. Gurtler in October of 2018, prior to her December, 2018 accident, she was seeing him for her shoulder.

Petitioner said she had both a laptop and a desktop at home that she used. She attempted to use both of them when she was doing E-learning and one was no better than the other , she still had pains in her neck when she used both the laptop and the desktop computers.

Petitioner said she was a teacher, not a farmer. She said that they have pigs all the time but at certain times they are in a shed by the house. She said it was possible but unlikely that they had pigs at the house in November of 2018 when she was talking about pigs with Dr. Gurtler. She said the pigs were usually kept at the pig farm which is not at the house. She said she normally did not go up to the pig farm.

Petitioners said that prior to December 5, 2018 she did have headaches but not very often. Currently she had headaches all of the time, every day. She said the current headaches were unbearable while she was able to bear the headaches that she experienced prior to December 5, 2018. In the past she would treat headaches with Tylenol or ibuprofen and that would help , but those medications did not help with her current headaches.

Petitioner stated that Dr. Gornet had not changed any of her work restrictions since March 6, 2020 and he currently had her off of work. She said that her husband had driven her to the arbitration hearing. She said the symptoms she was having during the hearing were severe headaches, neck, shoulder, chest, upper back, and

lower back aching. She said those complaints had gotten worse as the day had progressed. She said that at no point since December 5, 2018 had her neck symptoms and pain completely resolved.

On recross examination Petitioner said that she had taken medication for the headaches she had experienced prior to these two accidents.

MEDICAL EVIDENCE

No medical evidence of physical conditions or treatment for pre-accident dates was entered by either party at arbitration.

Petitioner was seen by Dr. Bernot on November 28, 2016. She was seen due to a right abdominal pain problem but advised the physician that she also had right shoulder pain and right lower back pain which began approximately two weeks earlier while moving a board when it slipped, causing her to pull her shoulder and back in an attempt to catch it. She advised him that her right arm sometimes felt weak and that she did not seek medical care immediately because she thought it would get better on its own.

Petitioner saw Dr. Verghese on November 29, 2016 again due to abdominal pain, and also complained of the right shoulder pain and her low back pain with a consistent history. Dr. Verghese felt Petitioner had right shoulder pain of an unspecified chronicity.

Physician Assistant (PA) Jacobs of Carle Clinic Occupational Medicine saw Petitioner on March 14, 2017 with a consistent history of injury. He noted that her upper back pain had resolved but that she continued to have shoulder pain. she advised him of two incidents of the whiteboard falling. He diagnosed right shoulder impingement and prescribed physical therapy.

On April 5, 2017 PA Jacobs recorded that physical therapy apparently it made her feel worse so it was terminated. She had tenderness over the AC joint at that time as well as tenderness with moving her arm across the shoulder and with internal and external rotation. His diagnosis remained the same, right shoulder impingement.

Petitioner's next treatment for shoulder complaints was on October 20, 2017 by PA Cummings. She again gave the whiteboard falling off the wall history and noted that her work comp claim had been denied and she was trying to function the best she could without further aggravating her shoulder. She noted that exercise aggravated the pain in her shoulder quite a bit. She described frequent popping and grinding in her right

shoulder and said she had a difficult time using the arm away from her body or above shoulder height. Physical examination at that time showed mild diffuse swelling of the right shoulder and the right shoulder was mildly retracted. She was found to have limited internal rotation while the left shoulder's internal rotation was better. A diagnosis of right shoulder rotator cuff tendonitis and rotator cuff bursitis consistent with impingement was made and it was felt that there might be some element of tendonitis to the long head of the biceps. A cortisone injection was performed on that date and petitioner was given exercises for her shoulder alignment and health.

When next seen by Nurse Practitioner (NP) Blew on November 14, 2017 she advised that the shoulder injection seemed to be helping. PA Cummings Saw petitioner on February 19, 2018 Anne noted that an MRI had shown degenerative changes with the right AC joint but no rotator cuff tears. Petition was found to be tender over the right AC joint on that date. Because she was taking drugs for other medical problems they did not inject her AC joint with cortisone on that date.

Petitioner saw Dr. Gurtler on July 9, 2018. She can gave a consistent history of the accident and told him that her pain was becoming very serious, that she had frequent popping and grinding in the right shoulder and anything she did with the right shoulder brought on pain. She said she was having difficulty sleeping at night. He noted that the MRI showed inflammation around the AC joint and he believed that to be the cause of her pain. He again noted it did not show a rotator cuff tear. He said that it was difficult to get a needle into the small area affected so no injection was given at that time. He did talk to her about a surgical repair which would include a distal clavicle resection and he felt that would be very likely help her pain.

When Dr. Gurtler next saw Petitioner on August 4, 2018 he noted that when he had her push on a wall her scapula flipped up, she had a winged scapula. He said he had not noticed that before but that was because it was not as profound as some such conditions are. He noted that the MRI had shown that the acromion was poking down into the rotator cuff and that she had edema on both sides of the AC joint. He felt surgery could help both problems. He advised Petitioner that the winging of her scapula was from the injury and was permanent as it was caused by an injury to the long thoracic nerve, and that due to the long delay since the time of injury the long thoracic nerve would never come back.

Dr. Gurtler performed surgery on Petitioner's right shoulder on October 27, 2018. His postoperative diagnosis was right shoulder rotator cuff impingement with AC joint and spurs producing impingement. He noted that the undersurface of the rotator cuff was normal as was the labrum. He said there were obvious erosions under the acromion causing impingement . He removed 2 to 3 millimeters of the undersurface of the acromion. He noted the AC joint was very inflamed with spurs and red inflammation, though there was no evidence of rotator cuff tear on the bursal surface. When he saw petitioner postoperatively on November 14 2018 she was already gaining her motion back and felt better . He advised her to do no lifting for 12 weeks. He

saw her again on November 23, 2018. She noted that she was having more pain in her neck and down into her scapula. He told her this could be from her cervical spine where she had previously had the two disc replacements performed but she noted that she had problems with it now, and not before, but she had been sleeping in a chair following her surgery and that had made her neck quite stiff. She also noted that in appeared to be aggravated when she was running on a treadmill. He thought it was perhaps too early to do that as all of the bouncing might bother both her neck and her shoulder.

Petitioner's second accident, the incident with the female student who pushed her, occurred approximately two weeks following that visit with Dr. Gurtler, on December 5, 2018.

Petitioners saw Dr. Gurtler on December 6, 2018 and gave the history in regard to students fighting and being pushed what's up blow at the front of her shoulder. Her pain in that area increased from a 2 to a 7 on a 10 point scale with that injury. Dr. Gurtler noted that on physical examination he saw a bruised, raised knot about four centimeters in diameter and one centimeter in height. He said this was quite visible. He said Petitioner lost some of the motion she had regained following the surgery and had definitely suffered a setback. He was hopeful that this would not be permanent damage.

Patient was seen by Dr. Gurtler again on December 9, 2018. He noted she was still in severe pain, worse than after the white board had fallen on her. Pain was in the anterior and lateral shoulder as well as neck and scapular pain. Dr. Gurtler noted, "certainly when the girl struck her, her cervical spine could have been injured. She says some of that pain predates all of this. She's had a little bit there but it is much worse now." (PX 3 p.111)

Petitioner saw PA Jacobs in occupational medicine again on December 13, 2018. She noted her right shoulder remained problematic and that her neck had some discomfort and a mild headache. The back pain she had previously described on December 6 was now across her back but she did not discuss pain radiation. Mr Jacobs put her on very strict restrictions and she said she could teach with those restrictions without issues. (PX 3 p.112)

Petitioner was seen by Dr. Rudawski on December 20, 2018. Her pain complaints in the right shoulder neck and low back continued. He noted that she had winging of the right scapula, which was suggestive of a long thoracic nerve injury causing anterior weakness. He ordered physical therapy in an attempt to confuse her nervous system to break up the spasms that was creating some of her pain. He said he thought the radicular pain was from the neck, creating some of the radiating arm pain. He also thought that the piriformis might be irritating her sciatic nerve.

An MRI was performed of Petitioner's right shoulder on January 8th, 2019 and was interpreted to show previous operative findings but no rotator cuff tears.

Petitioner saw Dr. Rudawski again on January 17, 2019 and told him that she felt the physical therapy was making her worse. He commented on the recent MRI of the right shoulder and was happy to see that no major structural injury had been caused by the altercation. She asked if he could send a note to her spine surgeon who she was seeing in a month to consider ordering an MRI of her neck to further evaluate her radicular symptoms of burning, numbness, and tingling into fingers of the right hand.

Dr. Gurtler saw Petitioner on January 22, 2019. He noted that the new MRI showed postoperative changes as well as a lot of fluid in the subacromial space, noting that the amount was quite remarkable. He felt this was consistent with the dramatic event, referring to it as bursitis. He gave her an injection of cortisone on that date.

Petitioner was seen again by Dr. Gurtler on May 28, 2019 with continued complaints of popping and catching in his shoulder which was painful. She said the subacromial injection had not made any difference. He noted that the MRI of January 8, 2019 had showed a lot of inflammation of the subacromial space but that the event she had experienced was so dramatic it could have caused a slap tear which are hard to see on regular MRI's. He noted on physical examination that she had atrophy about the musculature of her right shoulder, which was her dominant shoulder. He did not have a diagnosis that time for the catching and popping but he said he could not rule out a slap tear. (PX 3 p.114,144)

An MRI/Arthrogram was performed on July 23, 2019. It was interpreted as showing the inferior glenohumeral joint capsule and inferior glenohumeral ligament appearing to be irregular and poorly defined with contrast extending beyond the margins of the inferior joint capsule. This caused him to be concerned for a chronic tear of the inferior joint capsule. There was no evidence of a glenoid labral tear and rotator cuff muscle bulk was maintained. (PX 3 p.213) Subsequent to that study Petitioner was seen by Dr. Gurtler on July 30, 2019. He stated in his office notes of that date that Petitioner had numbness from the right thumb, up the arm, into the base of the neck, which appeared to be from the cervical spine. He stated, “MRI shows the inferior glenohumeral ligament is damaged. This is what happened in this fight. The shoulder had to dislocate for a second when that happened it damaged the ligaments that hold the shoulder ball in socket.” He noted that the surgery to fix that condition would involve rebuilding the front of the shoulder and could result in considerable long-term stiffness. Petitioner said she would be careful and keep it out of positions that made it slip. (PX 3 p.200,204)

When seen on December 5, 2019 Petitioner was still complaining to Dr. Gornet of pain at the base of her neck , right shoulder pain and pain in her right arm into the dorsal forearm and hand. She had brought an MRI arthrogram of her shoulder in with her and he said he would be in referring her to Dr. Paletta to assess it.

On February 18, 2020 Petitioner was examined at Respondent's request by Dr. Nogalski. After receiving a consistent history from Petitioner in regard to the accidents and complaints, his physical examination revealed intermittent crepitus within the glenohumeral joint or subacromial region with decreased motor strength below shoulder level. He felt that Petitioner had suffered a right shoulder strain with aggravation of acromioclavicular joint arthritis and scapular dyskinesia without documented injury to the long thoracic nerve as a result of the 2016 accidents. He felt the 2018 altercation event had again caused a right shoulder strain and scapular dyskinesia as well as a possible cervical strain. He said he did not find documentation to support a dislocation of the shoulder or significant injury to the inferior glenohumeral ligament as a result of that accident. (RX 2)

Dr. Nogalski felt Petitioner needed to rehabilitate her right shoulder and was therefore not at MMI for that condition. (RX 2)

On August 3, 2020 an MRI/Arthrogram of the right shoulder was conducted. It did not reveal any full thickness rotator cuff tear but did show tendinopathy of the supraspinatus, the upper subscapularis and the upper infraspinatus, though there was no evidence of tearing. There was also likely tendonitis involving the biceps longhead tendon, again without definite tear. A recess capsular defect with discontinuity of the inferior glenohumeral ligament was seen, consistent with a humeral avulsion of the inferior glenohumeral ligament. (PX 5 p.3-5)

Dr. Gornet saw Petitioner on October 26, 2020. She was still having neck pain, shoulder pain and pain from her upper arms to her elbows. He noted that he continued to believe that her symptoms were related to her work injury of December 5, 2018. (PX 4 p.28)

Testimony of Dr. Matthew Gornet

Dr.Gornet's testimony was consistent with the findings in his medical examinations and test results as summarized above.

Dr. Gornet testified that he was a board certified orthopedist with subspecialty in spinal surgery. His practice involves performing decompressions, fusions, and disc replacements, with the majority of his work being disc replacement as that is his area of expertise. Before Petitioner suffered the injuries in 2016 and 2018 he had last seen her on April 23, 2009, and it was his impression that she had done fairly well following her previous cervical disc replacement surgeries, working full duty. He did not recall her having significant low back problems when he had previously treated her. (PX 11 p.5,6,8,12)

Following her two current accidents he first saw her for neck and low back pain on February 11, 2019 with a history of new neck pain beginning on December 5, 2018 following an altercation between two students which resulted in her being shoved backwards. (PX 11 p.10,11)

Dr. Gornet said that when he saw Petitioner on December 5, 2019 she was having complaints of neck pain, right shoulder pain, right arm and forearm pain and had a mild decrease in the C6/7 dermatome. (PX 11 p.21)

Testimony of Dr. Kern Singh

Dr. Singh is a board certified spinal orthopedist whose practice is limited to the spine. He saw Petitioner for an examination at the request of Respondent on June 5, 2019. He limited his examination and opinions to matters of the spine and did not make significant findings or opinions in regard to the right shoulder.

ARBITATOR'S CREDIBILITY ASSESSMENT

Petitioner's rendition of the facts at arbitration was consistent with the histories given to medical providers throughout her treatment, with very minor and inconsequential differences. While Petitioner on numerous occasions replied to questions about her medical care by saying she agreed with whatever the medical providers' records stated, the Arbitrator did not feel this was to avoid answering questions or to deny facts in the record but rather was a way to prevent herself from being confused by dates and what she may or may not have said on specific dates to specific providers or what they may have told her on those dates. There were some occasions when she may have remembered a conversation, but she was simply relying on the accuracy of the records. Petitioner's complaints at the time of the hearing also appeared to be similar to those she had been making to her treating physicians and not embellished for trial purposes. The Arbitrator finds Petitioner to have testified credibly.

The testimony of both Dr. Gornet and Dr. Singh appeared credible and consistent with their records and reports. Neither seemed to expand on previously stated opinions in an unreasonable manner and both made statements on cross-examination which narrowed the breadth of their stated opinions, not arguing with the cross-examining attorney.

CONCLUSIONS OF LAW AS TO 19 WC 3142:

In support of the Arbitrator's decision relating to whether Petitioner's current condition of ill-being is causally related to the accident of November 14, 2016, the Arbitrator makes the following findings:

The summary of medical evidence, above, is incorporated herein. The parties stipulated that the first accident, which involves the right shoulder, is causally related to this accident. The parties also stipulated that Petitioner's right shoulder injury was not, as of the date of arbitration, needing medical treatment. Petitioner also had right shoulder complaints following her subsequent accident of December 5, 2018 which were not disabling her or in need of treatment on the date of arbitration.

The Arbitrator finds that Petitioner's right shoulder injury, right shoulder rotator cuff impingement with AC joint and spurs causing impingement, is causally related to the accident of November 14, 2016. This finding is based on the testimony of Petitioner, the medical records and the stipulation of the parties.

The Arbitrator finds Petitioner is not entitled to additional temporary total disability benefits as a result of the accident of November 14, 2016 at this time based upon the stipulation of the parties.

In support of the Arbitrator's decision relating to whether the medical services that were provided to Petitioner were reasonable and necessary as a result of the Accident of November 14, 2016, the Arbitrator makes the following findings:

The findings of fact relating to causal connection, above, are incorporated herein.

Petitioner's Exhibit #1 contains medical bills relating to both the November 14, 2016 accident and the December 5, 2018 accident. The medical charges for treatment of injuries relating to Petitioner's right shoulder prior to December 5, 2018 are included in the first twenty pages of said exhibit.

The Arbitrator finds that the medical bills summarized in the first twenty entries on page 1 of Petitioner's Exhibit #1 were reasonable and were necessitated as a result of the accident of November 14, 2016. Respondent shall pay these bills in accordance with the Medical Fee Schedule, including repayment to Petitioner of amounts she has paid to these medical providers as shown on pages 6, 9, 11, 13, 16, 20, 25, 29, 84, 85, 86, 87, and 88.

In support of the Arbitrator's decision in regard to whether temporary total disability benefits are owed, the Arbitrator makes the following findings:

The findings of fact relating to causal connection, above, are incorporated herein.

The Arbitrator finds that Petitioner is not entitled to additional temporary total disability benefits as a result of the accident of November 14, 2016 at this time based upon the stipulation of the parties.

In support of the Arbitrator's decision relating to whether Petitioner is entitled to any prospective medical treatment, the Arbitrator makes the following findings:

The findings of fact relating to causal connection and medical bills, above, are incorporated herein.

Petitioner has not claimed any need for additional treatment of the right shoulder as of the date of arbitration.

The Arbitrator finds that Petitioner is not entitled to prospective medical treatment to the right shoulder as a result of the accident of November 14, 2016 at this time based upon the stipulation of the parties.

The Arbitrator further finds that based upon the need for prospective medical treatment for other injuries in the consolidated case, Petitioner has not yet reached maximum medical improvement.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC030006
Case Name	LYNCH, DARREN v. LANDMARK OF TAYLORVILLE
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remanded Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0028
Number of Pages of Decision	37
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Katherine Perry
Respondent Attorney	Lori Hiltabrand

DATE FILED: 1/21/2022

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DARREN LYNCH,

Petitioner,

vs. NO: 16 WC 30006

LANDMARK OF TAYLORVILLE,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 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 $10,200.00. 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.

January 21, 2022

CAH/tdm
O: 1/20/22
052

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

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

/s/ *Marc Parker*
Marc Parker

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

22IWCC0028

LYNCH, DARREN
Employee/Petitioner

Case# **16WC030006**

17WC024704

LANDMARK OF TAYLORVILLE
Employer/Respondent

On 2/25/2021, 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:

2217 SHAY & ASSOCIATES
KATHERINE E PERRY
1030 DURKIN DR
SPRINGFIELD, IL 62704

3174 KOEPKE & HILDABRAND
LORI HILTABRAND
2341 W WHITE OAKS DR STE A
SPRINGFIELD, IL 62704

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

DARREN LYNCH
Employee/Petitioner

v.

LANDMARK OF TAYLORVILLE
Employer/Respondent

Case # **16** WC **30006**

Consolidated cases: **17 WC 24704**

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 **Dennis S. O'Brien**, Arbitrator of the Commission, in the city of **Springfield**, on **December 16, 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. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, **August 25, 2016,** Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**32,240.00**; the average weekly wage was $**600.00**.

On the dates of accident, Petitioner was **45** years of age, ***married*** with **0** dependent children.

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

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

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

ORDER

Petitioner's medical conditions, a tear of the TFCC, an aggravation of the ulnar styloid nonunion, and the aggravation of the ulnar impaction syndrome are causally related to the accident of August 25, 2016. Petitioner's other medical conditions, DeQuervain's disease, synovitis, arthritis, carpal tunnel syndrome, and cubital tunnel syndrome, are not causally related to the accident of August 25, 2016.

Petitioner's average weekly wage while working for Respondent in the period prior to his accident was $600.00, calculated at $20.00 per hour for six hours per day and a five day week.

Petitioner was not temporarily totally disabled as a result of the accident for the period claimed by Petitioner.

With the exception of the medical bills delineated in the Conclusions of Law portion of this decision, the bills in Petitioner's Exhibit #9 are ordered to be paid by respondent in accordance with the Medical Fee Schedule. Respondent does not receive credit for amounts paid by Petitioner's wife's group health insurer.

Petitioner is not entitled to prospective medical treatment

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.

Dennis O'Brien

Signature of Arbitrator

February 21, 2021
Date

ICArbDec19(b)

FEB 25 2021

Darren Lynch vs. Landmark of Taylorville 16 WC 30006

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner Darren Lynch

Petitioner testified that he was 50 years of age as of the date of arbitration. He said he had gone to college for two years at Lincoln Land Community College and received a Certificate of Completion in Automotive technologies in 2014. He first worked for nine months as an automotive tech at Green Kia in Springfield. He then worked for Landmark Ford in Springfield for four to five years. That company is not the same as Respondent, Landmark of Taylorville. In July of 2016, less than two months prior to this accident, Petitioner began working for Respondent in Taylorville. Both Landmark dealerships were related, being part of the Landmark Automotive Group. He said that at Landmark of Taylorville his job duties as an automotive technician included repairing and servicing cars, doing tire rotations, diagnosis, tune-ups, etc..

Petitioner said that in August of 2016 he earned $20 per hour. He said that while he was at work 40 hours per week, he only got paid for the actual work he did on a job. He initially said he could not remember how many hours he was actually working and being paid for. On later questioning by the arbitrator Petitioner said that on average he probably worked jobs he got paid for five to seven hours per day, depending on the work flow.

Petitioner said that on August 25, 2016 he was working when he sustained an accident. He was performing a tire rotation on a truck. The lug nuts had been removed but the wheels have a tendency to stick to the vehicle, so he used his hands to knock the tire loose, and it came off in his hands. He said he experienced pain in his right wrist at that time. He said he caught the tire with his right hand. He said the pain was on the outside of his right wrist. He said he reported the injury at that time to Scott Aldridge. He then worked a little longer, completing the tire rotation, but he did not complete his normal workday.

After leaving work Petitioner said he went to the emergency room at Taylorville Memorial Hospital. He saw a doctor and x-rays of his wrist were taken. He was then told to see an orthopedist. He ultimately saw Dr. Ma on August 26, 2016. He advised that physician of his history of injury, and Dr. Ma after

reviewing his x-rays place his arm in a cast. He was also given light duty restrictions, and he returned to work under those restrictions, doing errands around town, fueling cars and test driving cars.

Petitioner said he saw Dr. Ma again on September 16, 2016. He said he was still having symptoms in his wrist. He said that as of the day of arbitration he was still under the medical care of Dr. Ma. Dr. Ma referred him for an MRI of his wrist and he was sent for occupational therapy at Springfield Clinic on a number of occasions.

Dr. Ma eventually performed arthroscopic surgery on his right wrist on October 27, 2016 to address a TFCC tear. He again had therapy following the surgery. He said his wrist was doing a little better following the surgery, though he continued to have symptoms in the hand. He saw Dr. Ma on January 20, 2017 and advised the doctor that he was having trouble keeping a grip on things with his right hand, such as anything with a weight, including pots and pans at home.

Petitioner said he continued working light duty up to the time of that surgery. Dr. Ma kept him off work following the surgery. He received temporary total disability from Respondent following his surgery.

Petitioner said he told Dr. Ma on January 20, 2017 that his right wrist pain was unbearable. On that date Dr. Ma returned him to work with no use of the right hand. Respondent accommodated that restriction by having Petitioner drive cars to auctions in St. Louis, Chicago, Indianapolis and Detroit. He would drive cars that were to be auctioned and pick some cars up. A bunch of people would drive cars to the auctions and then Respondent would return the drivers home in a van that picked them up.

Petitioner saw Dr. Ma on March 17, 2017. He said he continued to have pain on the outside of his wrist. He was having numbness in the ring and baby finger of the hand at that point that had started a short time before. He believed he was continuing to have problems with his grip strength at that time. On that date Dr. Ma recommended he have an EMG/NCV performed and he later had that test performed by Dr. Becker. He then saw Dr. Ma on April 21, 2017 and was diagnosed with right carpal and cubital tunnel syndromes.

Dr. Ma recommended Petitioner undergo a surgical repair of the carpal and cubital tunnel and Petitioner eventually had those surgeries. He said he was off work following those surgeries. He was not paid TTD for the time of following the carpal tunnel surgery. He eventually returned to work for a total of three days.

Petitioner testified that while performing his duties for Respondent he used several different types of tools, pneumatic tools, hand tools and power tools. He identified numerous tools by photographs introduced as exhibits. He identified Petitioner Exhibit 2A as an air hammer which is powered by air pressure. He said that it placed pressure on his hand when used. He said he was right-handed and primarily used tools with his right hand. He said Petitioner Exhibit 2B depicted a variety of hammers, dead blows and pry bars which he used in his work to hit stuff. For instance, if you had a stuck ball joint you would hit it with a certain weight hammer to knock it loose. He said when doing this prior to the accident you would feel the hit.

Petitioner identified the next photo as an impact wrench which was an air tool. He said it had a lot more force than the earlier air tool they had discussed. He said it was used for removing lug nuts as well as big nuts and bolts. He said that tool was kept out of the toolbox all day. He said Petitioner Exhibit 2D was a picture of an air rachet, which was use in tight spaces to loosen nuts. He identified Petitioner Exhibit Petitioner Exhibit 2E as showing grinders, which are used to cut pipe and old, rusty bolts. He said he would use it to cut off bolts.

Petitioner said Petitioner Exhibit 2F showed torques, bits, nut drivers and chisels, which were hand tools used on interior parts. Petitioner Exhibit 2G showed vice grips, screw drivers, pliers, needle nose pliers, and wrenches, all of which were hand tools he would use his right hand to grip and twist with his right hand. He said he would use these tools quite often during the day. Petitioner said Petitioner Exhibit 2H showed longer wrenches for more torque to break bolts loose.

Petitioner testified that Petitioner Exhibit 2I was a slide hammer, which was used to remove hubs, wheel hubs, and bearings. He said that would only use that tool once or twice a day. He said Petitioner Exhibit 2J showed impact sockets that go on the impact wrench. He identified another photo as showing an electric cordless drill which he uses, but not too often, but does apply twist and torque to his hand. He then identified cordless impacts, which he said were battery operated which function similar to an air impact wrench. He said the red impact applied more torque to it than the other, with more breaking power.

He then identified a C clamp and a rivet gun, saying the C clamp was used to squeeze the brake out of the back end to get to the pads. He said it was not operated by squeezing, but by twisting. He said the rivet gun was used to install license plate brackets on new cars at the auto dealership. They usually receive 20 to 50 new vehicles at a time, and the work is done by several people.

Petitioner then identified a photo showing a brake caliber press, which squeezes the caliber piston back when putting new brake pads on. He said it is squeezed like a pliers. The next page showed sockets, and was a duplicate photo. He said the last page of photos, Petitioner Exhibit 2S, was a battery carrier which clamps on to a battery so you could remove it from a car and then carry it one handed, while squeezing it. He said his wife took all the photos as they are all his own tools that he used while working for Respondent.

Petitioner said that after the carpal and cubital tunnel surgeries he continued to have wrist pain off and on which ran up from his wrist to his arm.

Dr. Ma at some point in time said he was not certain where to go with Petitioner's treatment, so he referred him to Dr. Greatting, who evaluated him. After that evaluation Dr. Greatting recommended another surgical procedure, a right wrist arthroscopy and synovectomy, with an open reduction internal fixation of a right ulnar styloid fracture and a right ulnar shortening osteotomy. He said Dr. Ma performed that procedure on July 29, 2019. Petitioner said he was off work for a period of time after that surgery, and received TTD following that surgery. He then underwent more physical therapy. Dr. Ma released Petitioner to return to work on March 3, 2020. Petitioner said he was able to return to work at that time, but he did not return to work for Respondent, but went to work for Green Dodge. He only worked three days as he was then laid off due to the Covid pandemic.

Petitioner said that after being laid off he looked for alternative work for a period of time. He then returned to see Dr. Ma on May 5, 2020 because he had a burning sensation and pain in his wrist, on the outside, running up his arm. Dr. Ma placed him on work restrictions of no lifting more than three to five pounds with his right arm. He has continued to see Dr. Ma and has again been examined by Dr. Greatting. He said the current treating recommendations are that he get an MRI and a nerve study. He said he was doing physical therapy at home, stretches with bands for strengthening.

Petitioner said he had not received any TTD since being placed on restrictions by Dr. Ma in May of 2020. He was requesting that his TTD benefits be reinstated and that the MRI and EMG be approved.

Petitioner testified that as of the date of arbitration he was still having symptoms in his right wrist. He said it was a burning sensation and a little bit of pain in the bone they did surgery on. He pointed to the bump on the outside of his wrist, at the distal end of the ulna, with the pain running up the lateral side of the arm towards the elbow. He said there was a scar in that location where then cut that bone. He said he had no issues with the scar.

On cross-examination Petitioner said that the incident where he was knocking a tire loose happened about a month after he started working for Respondent. He said that after the incident on August 25, 2016 he never again used the tools seen in Petitioner Exhibit 2 while working for Respondent. He only used these tools while working for Respondent from his beginning of work for Respondent in July of 2016 until the date of accident, August 25, 2016, about a month.

He said he did not know exactly how much he was paid in the month he worked for Respondent.

Petitioner said he was a borderline diabetic, he was not insulin dependent, although Dr. Brewer noted him as diabetic.

Petitioner agreed that when he saw Dr. Ma on March 7, 2017 he was complaining to him of numbness in the ring finger and the small finger which he'd been having for a short time. He further agreed that he had not been doing any work with his right hand between August 25, 2016 and March 7, 2017.

Petitioner said the TFCC surgery in October of 2016 was paid for, and he was paid for his time off following that surgery. He said that some of the time he was off following the carpal and cubital tunnel surgeries was time he was off work for the TFCC injury and received TTD payment for part of that time but not necessarily due to the carpal tunnel condition.

Petitioner said that the bills for the final surgery in July of 2019 were paid and he was paid for the time he was off work from that surgery. He said he went through an extensive amount of occupational and physical therapy over the past four years, and he did some of the hand exercises on his own when he was not in occupational or physical therapy.

Petitioner said he was a member of Planet Fitness, joining in about September of 2018. He said he was still a member there. He said that to enter you swipe a card which documents your check-in time. Since joining he said he works out there pretty steadily, doing cardio even when Dr. Ma had him off work.

Petitioner agreed that when he saw Dr. Ma on March 3, 2020, Dr. Ma released him to return to work without any restrictions. He agreed he told Dr. Ma he felt ready to go back to work. He said Dr. Ma did some testing of his grip strength and range of motion and if the records showed he had 120 pounds of grip strength he would not dispute it. He said he did not complain to Dr. Ma at that time of issues with dropping things or issues with his grip.

Petitioner said that after he was hired by Green Dodge on March 16, 2020 he worked for three days and then was laid off on March 20, 2020 due to Covid, but they paid him for an extra day. Petitioner said he was doing the same type of work for Green Dodge that he had done for Respondent. He said he experienced difficulty with grip and picking things up as well as some wrist pain, but he did not report it. He agreed that he did not see Dr. Ma until May 5, 2020.

Petitioner testified that he told Dr. Ma that the problems he had with gripping and pain in the wrist had happened while he was working. He said if Dr. Ma's records reflected that he told him that the shooting pain over the ulnar aspect of his right forearm had only started a few days earlier he would dispute that, saying it took two or three months to get an appointment with Dr. Ma. He said he made the appointment about a month before seeing him, having waited five or six weeks.

Petitioner then testified that he was not disputing the history of the shooting pain only starting a few days before being seen.

Petitioner said the numbness and tingling he had in the right small finger had always been there, it had never gone away, it was there slightly after the carpal tunnel surgery and then got worse. When asked if he requested medicine prescriptions from Dr. Ma while he was waiting to be seen, Petitioner said he already had some Voltaren, but he may have called Dr. Ma, he did not remember.

Petitioner agreed that he looked for work after Green Dodge laid him off, at PJP Automotive and a couple places online. He said PJP did give him an interview. He said he did not recall if he was having issues with his wrist and difficulty with gripping when he was interviewed by PJP Automotive.

When asked why Dr. Ma gave him work restrictions on May 5, 2020 when he was not working, Petitioner said it was because of the problems he was having in his wrist. He did not know why he did that when he was not working, though.

Petitioner said the pain he was having is the same pain he had in the same area as when it started four years earlier, despite the three surgeries he had undergone.

On redirect examination Petitioner said he did not have a primary care physician, that Dr. Brewer had retired, and he went to Dr. Martinek because of Dr. Brewer's retirement. He said that prior to the date of accident he had been treated by Dr. Brewer for some increased blood sugar, initially not getting

medication, but later being prescribed Metformin. He said he was not currently on medication, but he had taken the Metforin for a couple of years. He said he was currently managing his blood sugar through diet and exercise.

Petitioner said he went to Planet Fitness a couple of times a week, using the stationary bike. There was also a period of time from March 5, 2020 through October 19, 2020 that he did not go to Planet Fitness. He said they initially shut down the gym but when the local area went to tier 4 they reopened.

Petitioner said he did not sustain any injuries while working for Green Dodge.

On recross-examination Petitioner said he rested his hands on the handlebars when on the stationary bike, he did not have to hold it. When asked if he used the stair climber at Planet Fitness Petitioner said he had not used that in a long time.

MEDICAL EVIDENCE

Medical evidence was introduced by Respondent for the period of July 24, 2012 through July 28, 2016. Most, if not all, of these records are not in regard to Petitioner's right hand or arm but are introduced in regard to Petitioner's repetitive trauma claim to show lack of complaints consistent with carpal or cubital tunnel syndromes. They also include records in regard to diabetes which may be relevant to repetitive trauma injuries of this sort.

The record of August 13, 2012 of Nurse Practitioner (NP) Jennifer Hendricks notes an elevated A1C result. His glucose level on that date was 235 (normal is 70 – 100). The record also notes that Petitioner's mother is borderline diabetic, that his siblings do not suffer from diabetes but that diabetes runs in relatives on both sides of his family. He was advised that regular testing of his blood sugars needed to be done and he was given an Accu-check Aviva Plus monitor and told to buy test strips and lancets, and to check his blood sugar daily. Medication was discussed, but Petitioner said he wanted to try to control it via diet and exercise. No right hand complaints were made at that time. RX 1

The office note of Dr. Brewer of August 28, 2012 notes Petitioner was being seen in "followup on his diabetes and hypertension." It noted that his weight had been reduced by 18 pounds, to 320 compared to 338 in his prior visit. Dr. Brewer's assessment, along with benign essential hypertension, was diabetes mellitus. No right hand complaints were made at that time. RX 1

Petitioner was seen twice in 2012, once in 2013, once in 2014, once in 2015, and twice in 2016 by Dr. Stevens for chronic ankle pain. No mention of diabetes or any hand complaints were contained in these records. RX 1

On January 9, 2012 Petitioner was seen by Dr. Brewer who noted that Petitioner reported his checks of blood sugars, which he did from time to time, came back in the low 100s. No right hand complaints were made at that time. RX 1

On March 31, 2014 Petitioner was seen in Prompt Care by Dr. Rotondo. This visit was due to possible diabetic problems. Petitioner was requesting a sugar check as he felt off and his vision was a bit blurry. He was on his way to buy testing supplies when he decided to go to Prompt Care. His A1C test at that time was 5.9 (normal is 4.3 – 5.8), a little high, and his glucose was 135 (normal 70 – 100), so a little high. The doctor noted Petitioner "is a diet controlled diabetic." No hand complaints were made during this visit. RX 1

On August 2, 2013 Petitioner was seen by NP Hudgins-Brewer as he was feeling sick. The nurse practitioner noted that "He does have a history of diabetes and has been watching his diet and lost a lot of weight, he says up to 100 pounds in last year and A1C has gone down." His weight on this date was 298 pounds, so he had lost 40 pounds since seeing NP Hendricks on August 13, 2012. No right hand complaints were voiced during this visit. RX 1

Petitioner was seen by Dr. Brewer on February 26, 2015. His weight was back up to 329, but there is no mention of either diabetes or right hand complaints during this visit. RX 1

Petitioner was treated at MOHA on August 21 and 24, 2015 for a second degree burn to his left hand. No mention of diabetes or right hand complaints are included in those records. RX 1

Petitioner was seen by Dr. Chandler at MOHA on December 8, 2015 with thoracic back complaints. He noted that Petitioner had a history of diabetes but that it was diet controlled. No right hand complaints are included in this record. RX 1

Petitioner was seen by Physician's Assistant (PA) Peterson at MOHA on March 17, 2016 for an injury to his nose. Neither diabetes nor right hand complaints are mentioned in this record. RX 1

Dr. Brewer saw Petitioner for a health maintenance exam on June 6, 2016. No mention of diabetes or right hand complaints are included in this record. RX 1

Immediately following Petitioner's August 25, 2016 accident he was seen at Taylorville Memorial Hospital for his right wrist injury. He gave a consistent history and had tenderness and mild swelling of the right distal wrist. An x-ray performed at that time suggested an old fracture of the right ulnar styloid process which appeared to have healed with a nonunion. Petitioner was placed in a splint and told to see his primary care physician. PX 3

Petitioner saw Dr. Ma, an orthopedic surgeon, the following day. Petitioner reported that NSAIDS had not provided much relief. Dr. Ma found that Petitioner had significant tenderness on the ulnar aspect of the wrist, limited range of motion due to pain and his sensation was normal. He said x-rays suggested a fracture malunion/nonunion in the ulnar styloid. He applied a short arm cast to the right wrist and noted that an MRI might be needed to evaluate a possible tear of the TFCC. No sensory complaints were voiced. He restricted Petitioner to work without use of the right hand. PX 3

On September 16, 2016 Petitioner advised Dr. Ma that his pain was slightly improved, 8/10. His physical examination was the same. No sensory complaints were voiced. He was referred to occupational therapy for a brace evaluation and gentle range of motion and stretching therapy. A custom orthosis was made for him that day. An MRI was ordered to check the TFCC, and Petitioner said he was not interested in a steroid injection. His one-handed work restriction continued. PX 3

Petitioner received occupational therapy at Taylorville Memorial Hospital from September 21, 2016 through May 4, 2017. Treatment gaps occurred at times following surgery but then re-started. PX 4

An MRI of the right wrist on September 30, 2016 revealed a partial tear of the TFCC and a possible tiny perforation in the lunate triquetral ligament. PX 3

Petitioner told Dr. Ma on October 7, 2016 that he was waking 10 – 15 times per night due to pain in his right wrist. The physical examination on that date again showed voicing of tenderness upon palpation on the ulnar aspect of the right wrist. After discussion, Petitioner said he wanted surgery to repair the TFCC tear. He was again allowed to work with no use of the right hand. PX 3

Dr. Ma performed right wrist arthroscopy and debridement on October 27, 2016. He found significant synovitis on the dorsal aspect of the right wrist as well as the tear of the TFCC and cartilage damage and degenerative arthritis over the medial carpal joint. All three areas were debrided. PX 3

By December 7, 2016 occupational therapy found Petitioner was able to do range of motion within normal limits without pain. On December 28, 2016 he reported increased pain but did not think the exercise was what was causing the pain. They noted the pain was throughout the wrist, not just the ulnar aspect. PX 4

On December 9, 2016, six weeks after the surgery, Petitioner told Dr. Ma that the pain in the right wrist had improved but was still significant. Dr. Ma's physical exam on that date was about what he expected to see at that point, though he noted the wrist was stiff. He wanted Petitioner to continue working with therapy on range of motion and stretching s well as strengthening. PX 3

On January 9, 2017 Petitioner began complaining to occupational therapy of waking up in the night due to pain. On January 19, 2017 he said his pain was less, but rated it 7/10, and noted he could not sleep. While telling the therapist that he could not pick stuff up or button or zip his pants, the therapist noted that "He reports inability to perform simple functional tasks, despite demo 5/5 resisted strength in the hand for pinch and grip and (sic) well as ability to pick up and carry 10 pound object. His ROM has slightly improved from last assessment but Pt self report of ability has declined." PX 4

On January 19, 2017, the day before Petitioner was to again be seen by Dr. Ma, Physical Therapist Carla Tippett wrote a letter to Dr. Ma. She said she felt it necessary to touch base with him even though she had sent him an assessment report. She advised him of the contrast between Petitioner's stating he could not due basic tasks, like using a knife to cut food, and their observations of his abilities in therapy. She noted, "He currently rates his functional ability as very poor, but is noted with much more ability in tasks I have presented to him in therapy session. I am not clear as to why he reports such a high pain rating this far out from his surgery and it has not improved over the last 6 weeks he has attended therapy." PX 4

Dr. Ma saw Petitioner on January 20, 2017. Petitioner told him that while he was able to lift 5 – 10 pounds in therapy, he still could not lift a milk jar and he still dropped things from his right hand. He said the right hand kept him up at night. Dr. Ma's physical examination on this date included new complaints. He now had tenderness on the radial and dorsal aspects of the right wrist while his previous complaints had been to the ulnar and dorsal wrist. Dr. Ma again noted that Petitioner's sensation was normal. Petitioner also had a new problem in his left wrist, deQuervain's disease. Petitioner told him that was slowing down his recovery. While Carla Tippett had recommended work hardening, Dr. Ma said he did not feel Petitioner was ready for that. He returned him to occupational therapy and again restricted him from right hand work. PX 3

In the February 2, 2017 occupational therapy report it is noted that while Petitioner said he had pain throughout the day and at night, they saw no signs of difficulty with pain during their therapy session. A similar comment was included in their February 9, 2017 notes. On that date they commented, "Pt complains of constant pain at home, in evening and reports difficulty sleeping. However, pain is not reported in therapy session with ROM or with strengthening exercises. Pain complaints are not located in consistent area." On February 27 they noted, "Pt noted with normal ROM. He is equal in ROM with his left hand. He has no swelling observed. He does not grimace during exercise performed in therapy. * * * Self report of inability to perform activities despite increase in grip." PX 3

On February 14, 2017 Petitioner complained of worsening pain in the first extensor compartment, and Dr. Ma treated that with bracing and injection. A review of Dr. Ma's records for the five-and -a -half months since the accident does not disclose prior complaints in this area. Dr. Ma again injected the left wrist, and there is no mention of injecting the right wrist. PX 3

On February 16, 2017 Petitioner advised the therapist that he was currently pain free, but said Dr. Ma had given him two shots to his wrist. Again no mention of a right wrist injection is contained in Dr. Ma's office note of February 14, 2017. Petitioner had no complaints on February 16, 2017, and his theraband which he used for home exercise was replaced with a harder theraband. On February 27, 2017 Petitioner said his pain was coming back. The therapist noted, "Pt progressed with strengthening exercises. Does not report pain during exercises this date. Does state he has been having some discomfort over the weekend but does not report specific activity that causes pain." On March 2, 2017 the therapist reported that right arm strengthening exercises continued, and that Petitioner was noted to have good range of motion and the ability to perform fine motor activity using index and thumb pinch. PX 3; PX 4

On March 6, 2017 Petitioner reported that his pain was returning and it was keeping him up at night, stating that the pain was on both the ulnar and radial sides of his wrist. The therapist commented in her notes that "Pt noted with normal ROM. He is equal ROM with his left hand. He has no swelling observed. He does not grimace during exercise in therapy. * * * Self report of inability to perform activities despite increase in grip." PX 3

Dr. Ma saw Petitioner on March 17, 2017, five months following his surgery. He told Dr. Ma that his pain would flare up after therapy. Petitioner at that time said that he had occasional numbness to his right ring and small fingers on an every day basis. Neither Dr. Ma's records nor the occupational therapy records reflect any complain of numbness in the previous five months following surgery or in the seven months since his accident.

Dr. Ma's records during that time frequently reflect Petitioner having normal sensation. Petitioner had been restricted from work or restricted to work not involving the right hand during that seven month period. On March 17, 2017 Dr. Ma's records reflect his finding a positive Tinel's sign at the cubital tunnel as well as decreased sensation to the ulnar nerve distribution. These were new findings as of this date. Dr. Ma told Petitioner to discontinue at home strengthening exercises and to avoid prolonged periods of elbow flexion including when driving or sleeping. An EMG/NCV was ordered on this date. PX 3; PX 4

The therapists on April 6, 2017 noted that "Pt unable to specify consistent pain making it difficult to modify exercise program." PX 4

Dr. Becker performed EMG/NCV testing on Petitioner on April 10, 2017. Petitioner's history to Dr. Becker was that the numbness and tingling in his 4th and 5th digits began in August of 2016, and that since then he has been having symptoms. Dr. Becker's impression following testing was that Petitioner had mild right carpal tunnel and moderate right cubital tunnel. PX 3/PX 7

Petitioner saw Dr. Ma on April 21, 2017, telling him that his entire hand becomes numb. Dr. Ma noted that Petitioner was continuing to work with no use of the right arm. The physical examination that day showed decreased sensation to both the median and ulnar nerve distributions, positive Tinel's tests at both the carpal and cubital tunnels, significant tenderness over the ulnar aspect of the wrist and tenderness to the first extensor compartment. Dr. Ma interpreted Dr. Becker's report to show a mild carpal tunnel and a moderate to severe cubital tunnel, though her report only noted moderate cubital tunnel. Dr. Ma believed Petitioner should have both carpal tunnel and cubital tunnel surgeries due to the severity of the numbness and tingling. PX 3

On June 7, 2017 Respondent had Petitioner examined by Dr. Maender pursuant to Section 12 of the Act. In his history to Dr. Maender Petitioner told him that at some point after his surgery he began having numbness and tingling, he could not remember any numbness or tingling prior to that. Petitioner advised Dr. Maender that he had borderline diabetes. Dr. Maender reviewed prior medical records. During Dr. Maender's examination Petitioner removed his right wrist brace, revealing tan lines making it clear he had been wearing it regularly. Dr. Maender found Petitioner to have good range of motion of the wrist, equal to the left side. He wrote that Petitioner was tender in five separate areas of the wrist. Petitioner had a negative Tinel's sign, but a positive Phalen's sign. He had no atrophy of the thenar musculature, but subjective decreased sensation to the ring and small fingers. Dr. Maender diagnosed right wrist pain, right TFCC tear, status post-debridement, midcarpal

degenerative osteoarthritis, mild carpal tunnel syndrome and moderate cubital tunnel syndrome. Dr. Maender's opinions will be noted in the summary of his deposition testimony, below. PX 3 & RX 2

Dr. Ma again saw Petitioner on June 27, 2017 with continuing complaints of numbness and tingling in his right hand. Petitioner said his pain was 8/10. After examining Petitioner Dr. Ma recommended a right extensor compartment release, a right ulnar wrist steroid injection, a right carpal tunnel release and a right cubital tunnel release with a possible ulnar nerve transposition. Dr. Ma noted that Petitioner had recently been diagnosed with pre-diabetes with A1C of 6.2. He again allowed Petitioner to do restricted work with no use of the right hand. PX 3

Petitioner saw Dr. Ma on several occasions with continuing complaints prior to his May 10, 2018 surgeries. On that date Dr. Ma performed a steroid injection into the right wrist joint, a right carpal tunnel repair, a right cubital tunnel repair and a transposition of the ulnar nerve at the right elbow. Dr. Ma saw him on May 18, 2018, eight days after the surgeries, and Petitioner at that time was complaining of significant postoperative limitations in mobility and reduced strength in the right arm. Dr. Ma referred him for occupational therapy. PX 3

From May 22, 2018 until July 10, 2018 Petitioner was treated by Springfield Clinic Occupational Therapy. Over the course of their treatment they noted several different pain complaints including along his elbow scar, continued numbness and tingling in the fingers of his hand, pain in the area of his carpal tunnel scar, pain in the hand, and pain at the end of range of motion when reaching to his lower back or overhead when washing his hair. PX 3

When Petitioner saw Dr. Ma on June 26, 2018, six weeks after the most recent surgery, he said his right ring and small fingers remained numb and more sensitive. He also complained of numbness and tingling on the lateral side of the right arm. Dr. Ma told Petitioner that the numbness and tingling would improve over time and to continue his home exercise program. He also thought an MRI might be helpful to see if the pain on the ulnar aspect of his right wrist was a possible TFCC tear. PX 3

Dr. Maender performed a second IME examination at the request of Respondent on January 16, 2019. After noting that Petitioner had undergone surgeries to several areas he noted that as of that date Petitioner was complaining of pain on the ulnar side of the wrist which could go to 10/10, that the wrist would pop with motions, though he was unable to reproduce that, occasional numbness and tingling, and pain waking him at night. Petitioner told him he had undergone a work hardening program which had increased his pain. His

physical examination of Petitioner revealed a 20% reduction in extension and flexion of the right wrist. He said most of Petitioner's tenderness was over the pisotriquestral joint, the triquetrum and the lunate. He found Petitioner to have normal strength to resistance with flexion and extension, and his right hand had normal strength when compared to the left. He said Petitioner's right hand grip was 65 pounds while the left hand grjp was 90 pounds. Dr. Maender's opinions will be noted in the summary of his deposition testimony, below. RX 2

Dr. Ma scheduled Petitioner for additional surgery, apparently after a second opinion from Dr. Greatting. Dr. Greatting's records were not included in the Springfield Clinic records introduced into evidence as PX 3. In the pre-operative examination of Petitioner on July 29, 2019 Dr. Ma stated, "It was noted he has a significant medical history of diabetes. His most recent blood glucose was 120 and A1C was 6.8." Dr. Ma stated that Petitioner's right wrist pain had been aggravated again and that he had slightly decreased sensation to the ulnar nerve distributions. On July 29, 1019 Dr. Ma performed a right wrist arthroscopy and synovectomy. He found significant synovitis on the ulnar aspect of the wrist as well as a degenerative change of the cartilage on the ulnar side of the triquetrum, He also examined the TFCC and found it to be stable. He performed a synovectomy for the other problems. PX 3

During that same July 29, 2019 surgery Dr. Ma performed an open reduction and internal fixation of the nonunion of the old right ulnar styloid fracture. He removed scar tissue around the old fracture nonunion and placed 2 K-wires to stabilize the fracture. He then performed a right ulnar shortening osteotomy, resecting 5 mm of the distal ulna and then installed a plate on the ulnar and volar aspect of the right ulna. PX 3

Postoperatively Dr. Ma saw Petitioner on August 13, 2019. In the interim Petitioner had suffered a fall, injuring his left ankle, and was in a fracture boot. Petitioner said his right wrist pain and ulnar nerve problems were improving. Dr. Ma put Petitioner in a short arm cast for his right wrist on that date and kept him off work. PX 3

On August 27, 2019 Petitioner voiced continued improvement in pain and nerve distribution. Dr. Ma removed the K-wires at that time and sent Petitioner for a brace evaluation. He was fitted for a cock-up splint that same day in occupational therapy. PX 3

Petitioner was seen by NP Osowski on September 4, 2019, and she noted that he was not checking his blood sugars regularly, was not watching his diet too closely and had not been exercising. His blood sugar testing that day revealed glucose of 264 (normal 70 – 100), and A1C of 8.4 (normal of 4.3 – 5.6).

When seen by Dr. Ma on September 10, 2019 Petitioner was still complaining of a lot of numbness and tingling in the palm of the right hand. Dr. Ma referred him for gentle range of motion and stretching therapy, told him to wear a brace for protection, gave him a one pound lifting limit for the hand and kept him off work. PX 3

Springfield Clinic Occupational therapy started a new therapy program which ran from September 25, 2019 to October 31, 2019. Over the course of that period Petitioner progressed well, and as of October 25, 2019 the therapist noted that Petitioner had no complaint of pain with any of his activities. On October 29, 2019 the therapist wrote, "Pt. is progressing very well with strengthening, endurance and tolerance of increased resistive tasks." On October 31, 2019 she wrote that Petitioner had met all goals set for occupational therapy and was discharged from therapy. PX 3

Petitioner saw Dr. Ma on November 5, 2019 complaining of intermittent and aching pain over the proximal portion of the incision area, but otherwise was doing well. Physical examination revealed Petitioner still had some stiffness in the right wrist but his sensation was normal upon light touch. Dr. Ma found that he still had a lot of weakness in the right wrist and forearm and would benefit from "continuous therapy." He noted Petitioner should be off work and should return in two months. PX 3

Petitioner therefore re-started occupational therapy and received treatment from the therapists from December 5, 2019 through March 2, 2020. On December 11, 2019 Petitioner asked the therapist if he could perform similar arm strengthening exercises at a gym as well as at therapy, and she agreed. At later sessions he was noted to continue to progress with strengthening both in therapy and outside of therapy. On December 19, 2019 Petitioner told the therapist that his arm was feeling stronger each day and that he was continuing to work out at the gym. On January 6, 2020 Petitioner said his strength continued to improve. PX 3

On January 7, 2020 Petitioner was seen by Dr. Ma. He was five months post op at that time. Dr. Ma noted that the strength in Petitioner's wrist was definitely improving, that he was getting stronger in the right hand and wrist. Petitioner was still complaining of numbness and tingling in the tip of his right small finger, as well as some pain over the ulnar aspect of his forearm. Physical examination on that date showed no evidence of atrophy, the motion in his wrist was reasonable, his forearm supination was almost full but his ulnar nerve sensation was decreased. While Dr. Ma felt Petitioner overall was doing well, that the osteotomy was healing well, that the strength and sensation in the right wrist and hand were improving, he ordered another two months of therapy and kept Petitioner off work. PX 3

Petitioner was seen in therapy the next day, January 8, 2020, and noted no new concerns, saying he continued to go to the gym to work on his strengthening outside of therapy. By February 5, 2020 Petitioner had met all of the short term goals occupational therapy had initially set, but had not yet met one they added later, being able to transfer 70 pounds lifted from the floor to the waist with both arms. The February 10, 2020 note reflects Petitioner was continuing to do right arm strengthening at the gym. PX 3

Petitioner's last visit with occupational therapists was on March 2, 2020. It was noted he was to see Dr. Ma the next day. He told the therapist that he was having no pain. They noted that Petitioner had improved significantly with right arm strength with lifting and heavier activities, that he was carrying an 80 pound container as well as performing waist to shoulder height transfers with a 77 pound bin. He was able to do bicep curls using a pulley machine with 95 pounds of resistance. All of his goals had been met. They noted that Petitioner had been going to the gym regularly for strengthening exercises. PX 3

Dr. Ma saw Petitioner on March 3, 2020 and told him that the pain in his right wrist was improving. Dr. Ma noted that Petitioner's grip strength on the right was 120 pounds. He found Petitioner's motion in the wrist to be almost full, though he thought there was still some weakness in the wrist, and his ulnar nerve was improving. X-rays that day showed the osteotomy was healing well. He released Petitioner to work with no restrictions and told him to return if he had problems. PX 3

Petitioner was next seen on May 5, 2020. Petitioner told Dr. Ma that he had returned to work for three days and then his work was discontinued due to the COVID-19 crisis. He complained of some shooting pain over the ulnar aspect of the right forearm which had started a few days earlier. He reported no new injury. He said the pain was 8/10. He said he also had some pain over the ulnar aspect of the right wrist that had started a month earlier. He also complained of some popping in his wrist at night. Dr. Ma's physical examination revealed tenderness to palpation over the ulnar aspect of the right wrist, very mild swelling in the right wrist, full motion in the wrist, and slightly decreased nerve distribution to the right small finger. Dr. Ma didn't think there was anything surgical to be done, he told him to take NSAIDS and continue his home exercise program. He gave him a note advising him to return to work with no heavy lifting, pushing, pulling, or grasping of more than 3 to 5 pounds with his right hand. A Health Status Form was introduced into evidence with that date showing those restrictions. A second Health Status Form was also introduced into evidence for that same date noting he was not to work. The medical records themselves are silent as to a no work restriction and contain no explanation for the second form. PX 3

Dr. Ma saw Petitioner on June 16, 2020. The same types of complaints were made by Petitioner as had been made on May 5, 2020. The physical findings on examination were also quite similar. Dr. Ma wrote that the pain in Petitioner's wrist was probably related to aggravation of synovitis in his right wrist. He said Petitioner was a good candidate for injection given his significant medical history of diabetes. Dr. Ma ordered more occupational therapy as well as an EMG/NCV and said Petitioner should not work. PX 3

No medical records of Dr. Greatting were introduced into evidence.

TESTIMONY OF DR. JIANJUN MA IN FIRST DEPOSITION

Dr. Ma is a board certified orthopedic surgeon specializing in the hand and upper extremity. (PX 10 p.4-6) His testimony in regard to history given to him by Petitioner, tests, conservative treatment and surgeries was consistent with the medical summary above. (PX 10 p.6-32)

In his testimony Dr. Ma testified that the TFCC tear which was seen on the MRI was consistent with Petitioner's symptoms. He stated that he was not sure if the accident August 25, 2016 caused the TFCC tear, but he was sure it aggravated Petitioner's symptoms.(PX 10 p.13,14)

Dr. Ma said the first time Petitioner mentioned numbness in his hand to him was March 17, 2017. Dr. Ma was asked a hypothetical question in which he was shown photos of tools and told what Petitioner did with those tools. He was then asked if the use of those tools could cause carpal and/or cubital tunnel syndromes, and he answered, "I cannot say cause. Aggravate symptoms, could be * * * symptoms could be aggravated with significant amount of daily use over years." (PX 10 p.35,36)

Dr. Ma said that Petitioner's recovery was definitely slowed down by his co-existent conditions of DeQuervain's disease and cubital and carpal tunnel syndrome. (PX 10 p.39)

On cross-examination Dr. MA said he had treated Petitioner since the day after the accident, and March of 2017 was the first time Petitioner complained to him of numbness and tingling in his hand. He said if Petitioner had complained earlier he would have noted it in his records as it was important to document complaints. He said Petitioner never mentioned a history of working with specific tools aggravating a condition in his right hand. Dr. Ma said Petitioner had been recommended not to use any type of tool since August of 2016 and it was Dr.

Ma's understanding that Petitioner had followed that restriction. He was not to use his right hand at all, through the date of the deposition, December 5, 2017. (PX 10 p.45-47)

In regard to the numbness and tingling in Petitioner's right hand Dr. Ma said, "We don't know when this started. I feel this is a chronic condition that has been going on for a long time. We don't know if it's two weeks, five weeks, a month, three months, five years. We don't know. I have no documentation." Dr. Ma said he had no history or documentation that prior to August 25, 2016 Petitioner was having any problems with his right hand. He said he did not know when Petitioner's carpal tunnel and cubital tunnel started. When asked if he had enough information to state to any reasonable degree of medical and surgical certainty whether Petitioner had a condition that was aggravated by his work for Respondent,Dr. Ma said, "I cannot rule it in; I cannot rule it out, because we don't know." (PX 10 p.53,54,56,59)

Dr. Ma said he does not know what caused Petitioner's DeQuervains' disease. (PX 10 p.65,66)

As to the carpal and cubital tunnels, Dr. Ma said that if Petitioner did not have symptoms before the accident, it could not be aggravated. (PX 10 p.66,67)

In regard to synovitis Dr. Ma said it is caused by inflammation, and they don't know why they have synovitis, they just don't know. (PX 10 p.73)

DEPOSITION TESTIMONY OF DR. MARK GREATTING

Dr. Greatting is a board certified orthopedic surgeon with added qualifications in hand surgery. He testified that he only saw Petitioner on one occasion, on January 28, 2019, at the request of Dr. Ma. He said he reviewed radiological images as well as pertinent medical records. (PX 11 p.4-6,8,9)

Dr. Greatting said Petitioner's first x-ray of the right wrist showed a chronic-appearing ulnar styloid nonunion, a fracture at the base of the ulnar styloid which had never healed. He testified that he did not know if he reviewed images of 2016 MRI, though he reviewed the report from that study as well as the report of Dr. Ma's surgery of October 27, 2016 for synovitis and TFCC tear. Dr. Greatting said he reviewed the report of the 2018 MRI, but not the images. He said that report indicated that there was a tear of the TFCC, a partial tear of the scapholunate ligament and an ununited ulnar styloid process fracture. He said you would expect the TFCC

tear to be seen in that MRI, as it was not repaired in Dr. Ma's earlier surgery, just debrided, so the tear, a hole, would continue to exist. (PX 11 p.9,11,12)

Dr. Greatting performed a physical examination of Petitioner and found him to be tender over the ulnocarpal joint and the base of the ulnar styloid, and minimally tender over the lunotriquetral interval, with the rest of his examination being normal. He said the area of all of the tenderness was the ulnar side of the wrist. (PX 11 p.14)

Dr. Greatting said in his opinion Petitioner's pain was related to the ulnar styloid nonunion. He said the pain might be related to ulnar impaction/ulnar abutment syndrome, the contact between the head of the ulna and the wrist bones on that side of the wrist. Dr. Greatting testified that the ulnar styloid fracture was not caused by this accident, it had pre-existed for some time. (PX 11 p.15)

Dr. Greatting said Petitioner told him he knew of no prior injury which would have caused the fracture and said he had no problems with wrist pain prior to the accident. (PX 11 p.15,16)

Dr. Greatting felt the injury of August 25, 2016 aggravated the pre-existing styloid nonunion rendering it symptomatic based on history of no prior problems and pain immediately after accident. He said pain on that side of the wrist would certainly be consistent with that. (PX 11 p.16)

Dr. Greatting said the ulnar impaction syndrome is not related to the fracture nonunion. He said Petitioner's ulna was a bit longer than his radius, putting more pressure on that side of the wrist. It is a normal anatomic variant, some people just have longer ulnas. He said that the removing a tire incident could be the type of injury which would cause symptoms from the ulnar impaction syndrome. (PX 11 p.17)

In Dr. Greatting's opinion an arthroscopy should be performed on Petitioner's right wrist to see if there was impaction, and if so, the ulna should be shortened to take pressure off of that side of the wrist. As for the nonunion of the ulnar styloid, that is an open surgery, for that the surgeon scrapes fibrous tissue out of the area where the bone hadn't healed and then you fix the fracture with little pins or K-wires. (PX 11 p.18)

On cross-examination Dr. Greatting said that Dr. Ma did not treat any of the other tears identified by the 2016 MRI in his first surgery, though those areas would generally have been visible to him. If tears were seen he would generally identify them, though being torn doesn't means it needs to be treated. He said there is no

way to identify the exact time those other tears may occurred. Dr. Greatting said that when he examined Petitioner he did not have any findings to indicate a scapholunate ligament injury or problem. He said the pain in the area of the triangular fibrocartilage and the lunotriquetral ligament may all be due to the impaction syndrome, they could be inflamed or torn by that, and over time the tearing or degeneration can get worse, as that is the natural progression of that condition. PX 11 p.22-24)

TESTIMONY OF DR. CHRISTOPHER W. MAENDER

Dr. Maender is a board certified orthopedic surgeon with a specialty in hand and upper extremity surgery. His testimony in regard to the history and physical examination findings was consistent with the medical summary, above. He said he first saw Petitioner on June 7, 2017 at request of the insurance carrier. During the physical examination Petitioner complained over the radius bone, which Dr. Maender said should not hurt unless that bone had been broken, and there was no indication it had been broken. (PX 11p.5.6.13,14)

Dr. Maender testified that he did not believe the DeQuervain's diseases was work related. He said the DeQuervain's disease was on the opposite side as the ulnar styloid and the TFCC, it was in the thumb area as opposed to the wrist bone on the small finger side of the hand. He said that any treatment of DeQuervain's would not be related to this accident. (RX 3 p.29,30)

As a result of his history, medical record review and his physical examination of Petitioner, Dr. Maender diagnosed him to have mild carpal tunnel syndrome and moderate cubital tunnel syndrome, mid carpal degenerative arthritis, a right central TFCC tear which had been debrided, and right wrist pain. His recommendation for the wrist pain was a diagnostic injection into the radial carpal joint to localize where pain was coming from, since Petitioner had multiple areas of pain. He said that If Petitioner did not get relief from that it was unlikely further surgery would help any of his pain. The TFCC tear is in the area that would be injected. (RX 3 p.32-34)

Dr. Maender felt Petitioner was a surgical candidate for right carpal tunnel and right cubital tunnel and possible nerve transposition. In his opinion there was no causal relationship between the accident and right right carpal tunnel or right cubital tunnel syndromes based on Petitioner's making no mention of numbness and tingling and catching a tire. Dr. Maender believed Petitioner could RTW until after the diagnostic injection

with a limitation of no lifting greater than 5 pounds with the right arm and no repetitive grippin g. (RX 3 p.33-36)

Based on reported response to the suggested injection, constant stabbing, aching, and burning at 6/10 level with pain on both the radial and ulnar sides of the right wrist, aggravated by activity, Dr. Maender opined that repeat surgery would not be recommended. He said that if Petitioner did not feel he could return to work, a FCE should be performed to see what he could physically do, and to test his effort. (RX 3 p.38,39)

In an addendum report of November 22, 2017 Dr. Maender opined that work of a mechanic could cause carpal and cubital syndromes, but after reading Dr. Ma's deposition he wrote another addendum report on December 22, 2017, noting that Petitioner had not done the work of an automobile mechanic for several months prior to complaining of numbness and tingling, so he did not believe the carpal and cubital tunnel syndromes were caused or aggravated by his repetitive work. He said Petitioner did not tell him of having numbness and tingling prior to August 25, 2016, nor did he tell him of having numbness and tingling while performing work duties for Respondent. (RX 3 p.40-43)

Dr. Maender said he did not think the Dequervaine's disease or the arthritis near it were causally related to this accident. He did not believe the carpal or cubital tunnel conditions were causally related to this accident. The only pain in the right wrist which he thought was related to this accident was the ulnar-sided pain. (RX 3 p.45-47)

On cross-examination Dr. Maender said that the factors for finding carpal and cubital tunnel were not related to Petitioner's work were that he had not been working in his job as an auto mechanic for seven months prior to documentation of his symptoms, and he did not complain of any numbness or symptoms prior to the injury date. (RX 3 p.52)

Dr. Maender was asked a hypothetical question by Petitioner's attorney. He was asked to assume that following his TFCC surgery Petitioner returned to work driving cars for Respondent, for both short and long trips, where he would drive for several hours, and that while driving, to avoid using his right hand, he rested his right elbow on the center console. Dr. Maender said that resting the elbow on the center console is the type of activity which could place pressure on the nerve at the elbow and could bring on symptoms of cubital

tunnel syndrome. The numbness and tingling in the fourth and fifth fingers are more cubital tunnel. (RX 3 p.53,54)

Dr. Maender testified that he performed less than five IMEs per year. (RX 3 p.54)

On redirect examination Dr. Maender testified that during his examination of Petitioner, Petitioner did not indicate to Dr. Maender that his job duties of repetitive twisting, gripping, repetitive elbow motion had caused him numbness or tingling in his right upper extremity. He said there was nothing in the records which indicated that Petitioner was having any numbness or tingling in the right upper extremity prior to August 25, 2016 or prior to March of 2017 or that work he was performing for Respondent caused numbness in the ulnar nerve prior to March of 2017. He said he believes Petitioner's nerve conditions were idiopathic, meaning they don't have a cause for it. (RX 3 p.56-57)

TESTIMONY OF DR. JIANJUN MA IN SECOND DEPOSITION

Dr. Ma was deposed for a second time on October 6, 2020. He said Dr. Greatting did a 2nd opinion exam at his request and told him that he felt the ulnar bone was too long and was causing impingement which was causing Petitioner's pain. Dr. Ma said the ulnar impingement was not from the non-union. It was a condition normally treated in his practice. He said some people are just born with a longer bone, others are due to a fracture, and sometimes it is because the radius is too short. Dr. Ma was of the opinion that the trauma to Petitioner's wrist made him vulnerable to developing impingement. (PX 12 p.20,21)

Dr. Ma said he was of the opinion that Petitioner's symptoms could have been caused by the accident of August 25, 2016, that the trauma to his right wrist could make him vulnerable to develop impaction syndrome. (PX 12 p.26,27)

Dr. Ma testified that while another examiner prior to March 15, 2019 had felt Petitioner could return to work without restrictions, he felt Petitioner should absolutely not return to unrestricted work due complaints of severe pain and popping in his wrist. (PX 12 p.28)

Dr. Ma said that when he saw Petitioner on May 5, 2020, Petitioner had complaints of wrist pain. He said that could be from chronic inflammation from his original injury or from recently returning to work. He did not know when the last time Petitioner worked was. When he saw Petitioner again on June 15, 2020 he was still

complaining of right wrist pain. He felt Petitioner's pain was from an aggravation of the synovitis in the wrist, but he was not sure what had caused the aggravation. (PX 12 p.37-39,50)

Dr. Ma said that he performs hundreds of cubital tunnel surgeries a year. He said a very small number of those continued to have problems indefinitely after that surgery. Dr. Ma said he last saw Petitioner on June 16, 2020, six months prior to his deposition. He said that if Petitioner had not seen Dr. Greatting in the interim and had been told something different, he would still have Petitioner off work. (PX 12p.42)

On cross-examination Dr. Ma agreed that there could be other activities which aggravated the synovitis other than the accident. He agreed that it could have been aggravated by the accident , gotten better, and then physical therapy aggravated it. Petitioner did not indicate to Dr. Ma what he was doing when the pain returned prior to the May 5, 2020 visit. Dr. Ma said he did not know what the cause of the synovitis was, that it could be from diabetes, from activities or from trauma. Dr. Ma said that people with diabetes have a higher risk of infection and more stiffness in the wrist because of swelling due to the high level of blood sugar, it is a very common cause. Dr. Ma said that he could not say if it was the accident in 2016, activity or diabetes which led to Petitioner's synovitis, he was not sure. Dr. Ma said that diabetes definitely made the ulnar nerve more vulnerable to be compromised, and can affect the inflammation in the area of the ulnar nerve. (PX 12 p.45,46.48,49,51-54)

The only reason for another ulnar transposition would be Petitioner's symptoms. Dr. Ma said he did not know if Petitioner's inflammation around his ulnar nerve was from his diabetes or if he got it from some other reason. Dr. Ma said he knew Petitioner was seeing Dr. Greatting subsequent to his last visit with him on June 3 16, 2020. (PX 12 p.56,57)

ARBITATOR'S CREDIBILITY ASSESSMENT

Petitioner's rendition of the facts at arbitration was often contradicted by medical records. While he tried to initially describe himself as pre-diabetic, several medical records from the years immediately prior to this accident showed he was a diabetic who had been told to test his blood daily as early as 2012, but did not do so. It was only on redirect examination that he admitted to his diabetes. A comparison of Petitioner's non-complaints, even statements that he was having no pain, to the occupational therapists at Taylorville, are totally different to what he was saying to Dr. Ma just a day or so later. Petitioner would give a history to the therapists of problems at home, and while sleeping, but show no discomfort while doing exercises with them. While the therapist had documented all of this in her records, the therapist felt is necessary to send a note to Dr. Ma

pointing this out. While that note is in the records of the hospital, it is not in Dr. Ma's records, so it is unknown whether he ever saw it. Petitioner also testified that when at the gym, Planet Fitness, he used a stationary bicycle, and on redirect examination said he just rested his hands on the handlebars. The physical therapy records of Springfield Clinic, however, note that he asked if he could do arm exercises at the gym, and they advised him he could. Later physical therapy notes reflect his telling them on multiple occasions how he was doing his arm exercises at the gym. Petitioner's actions after being hired by Green Dodge and then being laid off within a week, on March 20, 2020, due to the COVID-19 pandemic, also raise questions of credibility. Petitioner testified that he felt pain while working at Green Dodge, but did not report it. Indeed, he also did not report it to Dr. Ma, Dr. Greatting or Dr. Maender, either. Petitioner said he attempted for quite some time to get an appointment with Dr. Ma after his employment with Green Dodge. While the clinic's medical records include several records of telephone calls where he spoke to a nurse or a telenurse, there are no records reflecting his attempts to get an appointment. His history to Dr. Ma on May 5, 2020 was that he had shooting pain over the ulnar aspect of the right forearm that had started only a few days earlier, saying there was no new injury. He also said that he had pain over the ulnar aspect of his wrist that had started about a month earlier. No mention was made of pain at work, however. His complaints on May 5, 2020 and June 16, 2020 are totally subjective, and the timing gives the appearance of seeking secondary gain. The Arbitrator finds Petitioner to have poor credibility.

Dr. Ma appears to be quite credible in his testimony. He appeared to answer each attorney's questions in an honest manner. He did not hesitate to say he did not know something, his opinions of causation did not show any apparent attempt to favor either party.

Dr. Greatting's testimony also seemed credible. His explanations of causation did not seem stretched in the least, they appeared to be based upon objective fact.

Dr. Maender also seemed credible in his testimony. While hired by the insurance company, he found several conditions to be causally related, even the carpal and cubital tunnel conditions, opinions which he later reversed after obtaining additional facts about the temporal non-relationship of Petitioner's work and his first complaints of numbness and tingling.

CONCLUSIONS OF LAW:

In support of the Arbitrator's decision relating to whether Petitioner's current condition of ill-being is causally related to the accident of August 25, 2016, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

Petitioner testified to the events which occurred on August 25, and the histories given to medical providers were generally consistent with his testimony in that regard. His area of complaint has continually been his right wrist and he has received extensive treatment, and two operations for the TFCC debridement and ulnar osteotomy and the open reduction and internal fixation of the old ulnar styloid nonunion. Dr. Ma testified extensively in regard to the TFCC debridement and reason for not performing a repair and the tear's causal relationship to this accident. Both Dr. Greatting and Dr. Ma testified in regard to the aggravation of the ulnar styloid nonunion by the accident as well as the aggravation of ulnar impaction syndrome, where the ulna is longer than the radius and how the tire removal incident of August 25, 2016 aggravated that pre-existing condition and made it symptomatic.

The Arbitrator finds that Petitioner's medical conditions, a tear of the TFCC, an aggravation of the ulnar styloid nonunion, and the aggravation of the ulnar impaction syndrome, are causally related to the accident of August 25, 2016. This finding is based on the testimony of Petitioner and the medical records immediately following the accident, both at the Taylorville Memorial Hospital emergency room on the day of the accident and with Dr. Ma the day following the accident, as well as follow up occupational therapy records, medical records, tests, operative reports and the deposition testimony of Dr. Ma, Dr. Greatting and Dr. Maender.

The Arbitrator further finds that Petitioner's other medical conditions, DeQuervain's disease, synovitis, arthritis, carpal tunnel syndrome, and cubital tunnel syndrome, are not causally related to the accident of August 25, 2016. This finding is based upon the testimony of Dr. Ma and Dr. Maender. In regard to the carpal and cubital tunnel syndromes, neither Dr. Ma nor Dr. Maender took a history of sensory loss having occurred in the hours, days, weeks, or even first few months following the accident. Dr. Ma testified that March 17, 2017, nearly seven months after the accident, was the first time Petitioner mentioned numbness in his hand to him. Dr. Ma testified he felt Petitioner's pain was from an aggravation of the synovitis in the wrist, but he was not sure what had caused that aggravation. Dr. Ma further said that he could not say if it was the accident in 2016,

activity or diabetes which led to Petitioner's synovitis, he was not sure. He did note that people with diabetes have a higher risk of infection, swelling, and stiffness in the wrist. Dr. Ma testified he does not know what caused Petitioner's DeQuervains' disease. Dr. Maender said he did not think the Dequervaine's disease or the arthritis near it were causally related to this accident. Both Dr. Ma and Dr. Maender opined that if Petitioner did not have numbness and tingling complaints prior to August 25, 2016 and/or prior to March of 2017, his carpal and cubital tunnel conditions were not caused or aggravated by the accident. There is no evidence of tingling prior to those two dates in the record, and Petitioner testified and told Dr. Maender that he did not have symptoms prior to August 25, 2016. Petitioner did tell Dr. Becker on April 10, 2017 that he had experienced numbness and tingling in his 4th and 5th digits beginning in August of 2016, but that history is totally inconsistent with all other medical records and even Petitioner's testimony at arbitration.

In support of the Arbitrator's decision relating to Petitioner's earnings preceding August 25, 2016 the Arbitrator makes the following findings:

Petitioner began working for Respondent in July of 2016, less than two months prior to this date of accident. Petitioner said that in August of 2016 he earned $20 per hour. Petitioner testified that while he was at work 40 hours per week, he only got paid for the actual work he did on a job. He initially said he could not remember how many hours he was actually working and being paid for. On later questioning by the arbitrator Petitioner said that on average he probably worked jobs he got paid for five to seven hours per day, depending on the work flow.

No other evidence was introduced on the issue of earnings.

The Arbitrator finds that Petitioner's average weekly wage while working for Respondent in the period prior to his accident was $600.00, calculated at $20.00 per hour for six hours per day and a five day week. That would result in annual earnings of $31,200.00

In support of the Arbitrator's decision relating to what temporary benefits Petitioner is entitled to as a result of the accident of August 25, 2016, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The conclusions of law relating to causal connection, above, are incorporated herein.

Petitioner's claimed period of temporary total disability is from May 5, 2020 through the date of arbitration, December 16, 2020. Petitioner was found to have met all of his occupational therapy goals as of March 2, 2020. His therapist noted that he had no pain as of that date, he was capable of carrying an 80 pound object and lifting a 77 pound bin from waist to shoulder height as well as do 95 pound curls using a pulley machine. He had been going to a gym to strengthen his arm, also. The next day, March 3, 2020, Petitioner was examined by Dr. Ma, who released him to full, unrestricted work and told him to return if he had problems. Petitioner testified he was able to work at that time and obtained employment with Green Dodge, doing the same type of work he had done for Respondent. He said he worked there for three days prior to being laid off due to the Covid-19 pandemic. While Petitioner testified that he experienced difficulty with grip and picking things up and wrist pain, he did not report that to his employer. Further, when seen by Dr. Ma nine days before being hired by Green Dodge, the doctor noted Petitioner had 120 pounds of grip strength, and he agreed that he at that time did not complain to Dr. Ma of dropping things or having issues with his grip. Subsequent to his being laid off by Green Dodge Petitioner said he looked for work, at PJP Automotive and a couple places online. He said PJP did give him an interview. He said he did not recall if he was having issues with his wrist and difficulty with gripping when he was interviewed by PJP Automotive. There was no medical evidence introduced to substantiate Petitioner's having any complaints in regard to his right hand between March 3, 2020 and May 5, 2020. Petitioner testified that he told Dr. Ma that his problems while gripping and pain in the wrist had happened while he was working. Dr. Ma's records do not reflect that, they indicate that the history he received form Petitioner on May 5, 2020 was of Petitioner having shooting pains over the ulnar aspect of his right forearm which had started a few days earlier. Petitioner said he had tried getting an appointment with Dr. Ma for two to three months, but there is no proof of that, and while there are telenurse notes for prior calls from Petitioner, showing he knew how to do that, there are no telenurse notes for the two months prior to May 5, 2020.

When Dr. Ma saw Petitioner on May 5, 2020 almost all of Dr. Ma's findings were subjective in nature, pain over the ulnar aspect of the wrist which Petitioner told him started a month earlier (again, with no mention of it occurring at work two months earlier), popping of the wrist at night (and not witnessed by Dr. Ma), tenderness to palpation and slightly decreased sensation to the right small finger. Petitioner had full motion of the wrist, and a very mild swelling of the wrist was observed, the last being the only

objective finding. Despite a total lack of objective findings Dr. Ma restricted Petitioner from work entirely.

Dr. Ma last saw Petitioner on June 16, 2020, six months prior to the arbitration hearing, with the same physical examination findings. He wrote that the pain in Petitioner's wrist was probably related to an aggravation of synovitis in Petitioner's right wrist. As noted above, synovitis is not causally related to the accident of August 25, 2016.

No medical evidence was introduced to support any claim for temporary total disability for the six months subsequent to Dr. Ma's visit of June 16, 2020.

The Arbitrator finds that Petitioner was not temporarily totally disabled as a result of the accident for the period claimed by Petitioner. This finding is based upon the medical records of Dr. Ma, which contradicted Petitioner's testimony in regard to post-March 3, 2020 actions and history, the lack of causal connection for the problem Dr. Ma felt was causing Petitioner's complaints in May and June of 2020, Petitioner's negative objective examinations on May 5, 2020 and June 16, 2020, the lack of medical evidence of any disability in the six months prior to arbitration and the lack of causal connection for the malady Dr. Ma felt was probably causing Petitioner's May and June, 2020 complaints.

In support of the Arbitrator's decision relating to whether the medical services that were provided to Petitioner were reasonable and necessary as a result of the Accident of June 1, 2020, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The conclusions of law relating to causal connection and temporary total disability, above, are incorporated herein.

Petitioner introduced medical bills and a medical bill summary as Petitioner Exhibit #9. The vast majority of those bills for services reflect a zero balance following payments and adjustments. Portions of these bills, noted by "WC" on the medical bills summary, were paid by the workers' compensation insurance carrier and Respondent gets a credit for all amounts paid and adjustments applied to those bills. Other bills were paid by

the group health carrier of Petitioner's wife, not by Respondent's group health carrier, so no credit is given for the amounts paid by that carrier, identified as "HL" on the medical bill summary.

A number of medical bills have outstanding balances after payments and adjustments.

The Arbitrator finds that all of the bills introduced into evidence which are related to Petitioner's right wrist injury, and are reasonable and necessary to treat his causally connected injuries with the exception of the following unrelated treatments:

- Carpal tunnel and cubital tunnel syndrome and ulnar nerve transposition surgeries of May 10, 2018
- Springfield Clinic Occupational Therapy visits immediately following that surgery (May 22, 2018 through July 10, 2018)
- charges of January 24, 2017 of NP Naughton (for which there are no medical records)
- bill of Dr. Brewer, Petitioner's primary care physician, of April 3, 2017 for a blood pressure check (bill is included in exhibit but is not on medical bill summary)
- charges of September 4, 2019 of NP Osowski for diabetes and blood work
- charges of Dr. Ma for May 5, 2020 for unrelated aggravation of synovitis

With the exception of the medical bills delineated above, Respondent shall pay the bills Petitioner's Exhibit #9 in accordance with the Medical Fee Schedule.

In support of the Arbitrator's decision relating to whether Petitioner is entitled to any prospective medical treatment, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The findings of fact and conclusions of law relating to causal connection, temporary total disability and reasonableness and necessity of medical services, above, are incorporated herein.

The Arbitrator finds that Petitioner is not entitled to prospective medical treatment based upon his lack of credibility in regards to events and complaints subsequent to March 3, 2020, his having only

very mild swelling on May 5, 2020, and no other objective findings, only subjective complaints of right wrist pain, tenderness on palpation, and nerve changes in the right small finger, and Dr. Ma's opinion that the probable cause of his complaints at that time was aggravation of synovitis, a condition found to not be causally connected to the accident of August 25, 2016.

The Arbitrator further finds that based upon the findings in regard to causal connection with regard to synovitis and Dr. Ma's findings and release to full duty work as of March 3, 2020, Petitioner reached maximum medical improvement on March 3, 2020.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC024704
Case Name	LYNCH, DARREN v. LANDMARK OF TAYLORVILLE
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	22IWCC0029
Number of Pages of Decision	33
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Katherine Perry
Respondent Attorney	Lori Hiltabrand

DATE FILED: 1/21/2022

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DARREN LYNCH,

Petitioner,

vs. NO: 17 WC 24704

LANDMARK OF TAYLORVILLE,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical treatment, and temporary total disability (TTD), 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 25, 2021 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 removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

January 21, 2022

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

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

/s/ *Marc Parker*
Marc Parker

CAH/tdm
O: 1/20/22
052

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

22IWCC0029

LYNCH, DARREN
Employee/Petitioner

Case# **17WC024704**
16WC030006

LANDMARK OF TAYLORVILLE
Employer/Respondent

On 2/25/2021, 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:

2217 SHAY & ASSOCIATES
KATHERINE E PERRY
1030 DURKIN DR
SPRINGFIELD, IL 62704

3174 KOEPKE & HILDABRAND
LORI HILTABRAND
2341 W WHITE OAKS DR STE A
SPRINGFIELD, IL 62704

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

DARREN LYNCH
Employee/Petitioner

v.

LANDMARK OF TAYLORVILLE
Employer/Respondent

Case # **17** WC **24704**

Consolidated cases: **16 WC 30006**

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 **Dennis. S. O'Brien**, Arbitrator of the Commission, in the city of **Springfield**, on **December 16, 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. [x] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [ ] What was the date of the accident?
E. [ ] Was timely notice of the accident given to Respondent?
F. [x] Is Petitioner's current condition of ill-being causally related to the injury?
G. [ ] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [ ] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [ ] 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, **April 10, 2017**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On these dates, Petitioner ***did 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 $**32,240.00**; the average weekly wage was $**600.00**.

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

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

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

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

ORDER

Petitioner has failed to prove that he suffered an accident on April 10, 2017 which arose out of and in the course of his employment by Respondent.

Petitioner's carpal tunnel syndrome, cubital tunnel syndrome, and need for an ulnar nerve transposition are not causally related to the accident of April 10, 2017.

Benefits are therefore denied.

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

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

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

Signature of Arbitrator

February 21, 2021
Date

FEB 25 2021

Darren Lynch vs. Landmark of Taylorville 17 WC 24704

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner Darren Lynch

Petitioner testified that he was 50 years of age as of the date of arbitration. He said he had gone to college for two years at Lincoln Land Community College and received a Certificate of Completion in Automotive technologies in 2014. He first worked for nine months as an automotive tech at Green Kia in Springfield. He then worked for Landmark Ford in Springfield for four to five years. That company is not the same as Respondent, Landmark of Taylorville. In July of 2016, less than two months prior to this accident, Petitioner began working for Respondent in Taylorville. Both Landmark dealerships were related, being part of the Landmark Automotive Group. He said that at Landmark of Taylorville his job duties as an automotive technician included repairing and servicing cars, doing tire rotations, diagnosis, tune-ups, etc..

Petitioner said that in August of 2016 he earned $20 per hour. He said that while he was at work 40 hours per week, he only got paid for the actual work he did on a job. He initially said he could not remember how many hours he was actually working and being paid for. On later questioning by the arbitrator Petitioner said that on average he probably worked jobs he got paid for five to seven hours per day, depending on the work flow.

Petitioner said that on August 25, 2016 he was working when he sustained an accident. He was performing a tire rotation on a truck. The lug nuts had been removed but the wheels have a tendency to stick to the vehicle, so he used his hands to knock the tire loose, and it came off in his hands. He said he experienced pain in his right wrist at that time. He said he caught the tire with his right hand. He said the pain was on the outside of his right wrist. He said he reported the injury at that time to Scott Aldridge. He then worked a little longer, completing the tire rotation, but he did not complete his normal workday.

After leaving work Petitioner said he went to the emergency room at Taylorville Memorial Hospital. He saw a doctor and x-rays of his wrist were taken. He was then told to see an orthopedist. He ultimately saw Dr. Ma on August 26, 2016. He advised that physician of his history of injury, and Dr. Ma after reviewing his x-rays place his arm in a cast. He was also given light duty restrictions, and he returned to work under those restrictions, doing errands around town, fueling cars and test driving cars.

Petitioner said he saw Dr. Ma again on September 16, 2016. He said he was still having symptoms in his wrist. He said that as of the day of arbitration he was still under the medical care of Dr. Ma. Dr. Ma referred him for an MRI of his wrist and he was sent for occupational therapy at Springfield Clinic on a number of occasions.

Dr. Ma eventually performed arthroscopic surgery on his right wrist on October 27, 2016 to address a TFCC tear. He again had therapy following the surgery. He said his wrist was doing a little better following the surgery, though he continued to have symptoms in the hand. He saw Dr. Ma on January 20, 2017and advised the doctor that he was having trouble keeping a grip on things with his right hand, such as anything with a weight, including pots and pans at home.

Petitioner said he continued working light duty up to the time of that surgery. Dr. Ma kept him off work following the surgery. He received temporary total disability from Respondent following his surgery.

Petitioner said he told Dr. Ma on January 20, 2017 that his right wrist pain was unbearable. On that date Dr. Ma returned him to work with no use of the right hand. Respondent accommodated that restriction by having Petitioner drive cars to auctions in St. Louis, Chicago, Indianapolis and Detroit. He would drive cars that were to be auctioned and pick some cars up. A bunch of people would drive cars to the auctions and then Respondent would return the drivers home in a van that picked them up.

Petitioner saw Dr. Ma on March 17, 2017. He said he continued to have pain on the outside of his wrist. He was having numbness in the ring and baby finger of the hand at that point that had started a short time before. He believed he was continuing to have problems with his grip strength at that time. On that date Dr. Ma recommended he have an EMG/NCV performed and he later had that test performed by Dr. Becker. He then saw Dr. Ma on April 21, 2017 and was diagnosed with right carpal and cubital tunnel syndromes.

Dr. Ma recommended Petitioner undergo a surgical repair of the carpal and cubital tunnel and Petitioner eventually had those surgeries. He said he was off work following those surgeries. He was not paid TTD for the time of following the carpal tunnel surgery. He eventually returned to work for a total of three days.

Petitioner testified that while performing his duties for Respondent he used several different types of tools, pneumatic tools, hand tools and power tools. He identified numerous tools by photographs introduced as exhibits. He identified Petitioner Exhibit 2A as an air hammer which is powered by air pressure. He said that it placed pressure on his hand when used. He said he was right-handed and

primarily used tools with his right hand. He said Petitioner Exhibit 2B depicted a variety of hammers, dead blows and pry bars which he used in his work to hit stuff. For instance, if you had a stuck ball joint you would hit it with a certain weight hammer to knock it loose. He said when doing this prior to the accident you would feel the hit.

Petitioner identified the next photo as an impact wrench which was an air tool. He said it had a lot more force than the earlier air tool they had discussed. He said it was used for removing lug nuts as well as big nuts and bolts. He said that tool was kept out of the toolbox all day. He said Petitioner Exhibit 2D was a picture of an air rachet, which was use in tight spaces to loosen nuts. He identified Petitioner Exhibit Petitioner Exhibit 2E as showing grinders, which are used to cut pipe and old, rusty bolts. He said he would use it to cut off bolts.

Petitioner said Petitioner Exhibit 2F showed torques, bits, nut drivers and chisels, which were hand tools used on interior parts. Petitioner Exhibit 2G showed vice grips, screw drivers, pliers, needle nose pliers, and wrenches, all of which were hand tools he would use his right hand to grip and twist with his right hand. He said he would use these tools quite often during the day. Petitioner said Petitioner Exhibit 2H showed longer wrenches for more torque to break bolts loose.

Petitioner testified that Petitioner Exhibit 2I was a slide hammer, which was used to remove hubs, wheel hubs, and bearings. He said that would only use that tool once or twice a day. He said Petitioner Exhibit 2J showed impact sockets that go on the impact wrench. He identified another photo as showing an electric cordless drill which he uses, but not too often, but does apply twist and torque to his hand. He then identified cordless impacts, which he said were battery operated which function similar to an air impact wrench. He said the red impact applied more torque to it than the other, with more breaking power.

He then identified a C clamp and a rivet gun, saying the C clamp was used to squeeze the brake out of the back end to get to the pads. He said it was not operated by squeezing, but by twisting. He said the rivet gun was used to install license plate brackets on new cars at the auto dealership. They usually receive 20 to 50 new vehicles at a time, and the work is done by several people.

Petitioner then identified a photo showing a brake caliber press, which squeezes the caliber piston back when putting new brake pads on. He said it is squeezed like a pliers. The next page showed sockets, and was a duplicate photo. He said the last page of photos, Petitioner Exhibit 2S, was a battery carrier which clamps on to a battery so you could remove it from a car and then carry it one handed, while squeezing it.

He said his wife took all the photos as they are all his own tools that he used while working for Respondent.

Petitioner said that after the carpal and cubital tunnel surgeries he continued to have wrist pain off and on which ran up from his wrist to his arm.

Dr. Ma at some point in time said he was not certain where to go with Petitioner's treatment, so he referred him to Dr. Greatting, who evaluated him. After that evaluation Dr. Greatting recommended another surgical procedure, a right wrist arthroscopy and synovectomy, with an open reduction internal fixation of a right ulnar styloid fracture and a right ulnar shortening osteotomy. He said Dr. Ma performed that procedure on July 29, 2019. Petitioner said he was off work for a period of time after that surgery, and received TTD following that surgery. He then underwent more physical therapy. Dr. Ma released Petitioner to return to work on March 3, 2020. Petitioner said he was able to return to work at that time, but he did not return to work for Respondent, but went to work for Green Dodge. He only worked three days as he was then laid off due to the Covid pandemic.

Petitioner said that after being laid off he looked for alternative work for a period of time. He then returned to see Dr. Ma on May 5, 2020 because he had a burning sensation and pain in his wrist, on the outside, running up his arm. Dr. Ma placed him on work restrictions of no lifting more than three to five pounds with his right arm. He has continued to see Dr. Ma and has again been examined by Dr. Greatting. He said the current treating recommendations are that he get an MRI and a nerve study. He said he was doing physical therapy at home, stretches with bands for strengthening.

Petitioner said he had not received any TTD since being placed on restrictions by Dr. Ma in May of 2020. He was requesting that his TTD benefits be reinstated and that the MRI and EMG be approved.

Petitioner testified that as of the date of arbitration he was still having symptoms in his right wrist. He said it was a burning sensation and a little bit of pain in the bone they did surgery on. He pointed to the bump on the outside of his wrist, at the distal end of the ulna, with the pain running up the lateral side of the arm towards the elbow. He said there was a scar in that location where then cut that bone. He said he had no issues with the scar.

On cross-examination Petitioner said that the incident where he was knocking a tire loose happened about a month after he started working for Respondent. He said that after the incident on August 25, 2016 he never again used the tools seen in Petitioner Exhibit 2 while working for Respondent. He only used

these tools while working for Respondent from his beginning of work for Respondent in July of 2016 until the date of accident, August 25, 2016, about a month.

He said he did not know exactly how much he was paid n the month he worked for Respondent.

Petitioner said he was a borderline diabetic, he was not insulin dependent, although Dr. Brewer noted him as diabetic.

Petitioner agreed that when he saw Dr. Ma on March 7, 2017 he was complaining to him of numbness in the ring finger and the small finger which he'd been having for a short time. He further agreed that he had not been doing any work with his right hand between August 25, 2016 and March 7, 2017.

Petitioner said the TFCC surgery in October of 2016 was paid for, and he was paid for his time off following that surgery. He said that some of the time he was off following the carpal and cubital tunnel surgeries was time he was off work for the TFCC injury and received TTD payment for part of that time but not necessarily due to the carpal tunnel condition.

Petitioner said that the bills for the final surgery in July of 2019 were paid and he was paid for the time he was off work from that surgery. He said he went through an extensive amount of occupational and physical therapy over the past four years, and he did some of the hand exercises on his own when he was not in occupational or physical therapy.

Petitioner said he was a member of Planet Fitness, joining in about September of 2018. He said he was still a member there. He said that to enter you swipe a card which documents your check-in time. Since joining he said he works out there pretty steadily, doing cardio even when Dr. Ma had him off work.

Petitioner agreed that when he saw Dr. Ma on March 3, 2020, Dr. Ma released him to return to work without any restrictions. He agreed he told Dr. Ma he felt ready to go back to work. He said Dr. Ma did some testing of his grip strength and range of motion and if the records showed he had 120 pounds of grip strength he would not dispute it. He said he did not complain to Dr. Ma at that time of issues with dropping things or issues with his grip.

Petitioner said that after he was hired by Green Dodge on March 16, 2020 he worked for three days and then was laid off on March 20, 2020 due to Covid, but they paid him for an extra day. Petitioner said he was doing the same type of work for Green Dodge that he had done for Respondent. He said he experienced difficulty with grip and picking things up as well as some wrist pain, but he did not report it. He agreed that he did not see Dr. Ma until May 5, 2020.

Petitioner testified that he told Dr. Ma that the problems he had with gripping and pain in the wrist had happened while he was working. He said if Dr. Ma's records reflected that he told him that the shooting pain over the ulnar aspect of his right forearm had only started a few days earlier he would dispute that, saying it took two or three months to get an appointment with Dr. Ma. He said he made the appointment about a month before seeing him, having waited five or six weeks.

Petitioner then testified that he was not disputing the history of the shooting pain only starting a few days before being seen.

Petitioner said the numbness and tingling he had in the right small finger had always been there, it had never gone away, it was there slightly after the carpal tunnel surgery and then got worse. When asked if he requested medicine prescriptions from Dr. Ma while he was waiting to be seen, Petitioner said he already had some Voltaren, but he may have called Dr. Ma, he did not remember.

Petitioner agreed that he looked for work after Green Dodge laid him off, at PJP Automotive and a couple places online. He said PJP did give him an interview. He said he did not recall if he was having issues with his wrist and difficulty with gripping when he was interviewed by PJP Automotive.

When asked why Dr. Ma gave him work restrictions on May 5, 2020 when he was not working, Petitioner said it was because of the problems he was having in his wrist. He did not know why he did that when he was not working, though.

Petitioner said the pain he was having is the same pain he had in the same area as when it started four years earlier, despite the three surgeries he had undergone.

On redirect examination Petitioner said he did not have a primary care physician, that Dr. Brewer had retired, and he went to Dr. Martinek because of Dr. Brewer's retirement. He said that prior to the date of accident he had been treated by Dr. Brewer for some increased blood sugar, initially not getting medication, but later being prescribed Metformin. He said he was not currently on medication, but he had taken the Metforin for a couple of years. He said he was currently managing his blood sugar through diet and exercise.

Petitioner said he went to Planet Fitness a couple of times a week, using the stationary bike. There was also a period of time from March 5, 2020 through October 19, 2020 that he did not go to Planet Fitness. He said they initially shut down the gym but when the local area went to tier 4 they reopened.

Petitioner said he did not sustain any injuries while working for Green Dodge.

On recross-examination Petitioner said he rested his hands on the handlebars when on the stationary bike, he did not have to hold it. When asked if he used the stair climber at Planet Fitness Petitioner said he had not used that in a long time.

MEDICAL EVIDENCE

This claim is for alleged repetitive trauma injuries to Petitioner's right wrist/hand and right arm/elbow, resulting in right carpal tunnel syndrome, right cubital tunnel syndrome and the need for a right ulnar nerve transposition.

Medical evidence was introduced by Respondent for the period of July 24, 2012 through July 28, 2016. Most, if not all, of these records are not in regard to Petitioner's right hand or arm but are introduced in regard to Petitioner's repetitive trauma claim to show lack of complaints consistent with carpal or cubital tunnel syndromes. They also include records in regard to diabetes which may be relevant to repetitive trauma injuries of this sort.

The record of August 13, 2012 of Nurse Practitioner (NP) Jennifer Hendricks notes an elevated A1C result. His glucose level on that date was 235 (normal is 70 – 100). The record also notes that Petitioner's mother is borderline diabetic, that his siblings do not suffer from diabetes but that diabetes runs in relatives on both sides of his family. He was advised that regular testing of his blood sugars needed to be done and he was given an Accu-check Aviva Plus monitor and told to buy test strips and lancets, and to check his blood sugar daily. Medication was discussed, but Petitioner said he wanted to try to control it via diet and exercise. No right hand complaints were made at that time. RX 1

The office note of Dr. Brewer of August 28, 2012 notes Petitioner was being seen in "followup on his diabetes and hypertension." It noted that his weight had been reduced by 18 pounds, to 320 compared to 338 in his prior visit. Dr. Brewer's assessment, along with benign essential hypertension, was diabetes mellitus. No right hand complaints were made at that time. RX 1

Petitioner was seen twice in 2012, once in 2013, once in 2014, once in 2015, and twice in 2016 by Dr. Stevens for chronic ankle pain. No mention of diabetes or any hand complaints were contained in these records. RX 1

On January 9, 2012 Petitioner was seen by Dr. Brewer who noted that Petitioner reported his checks of blood sugars, which he did from time to time, came back in the low 100s. No right hand complaints were made at that time. RX 1

On March 31, 2014 Petitioner was seen in Prompt Care by Dr. Rotondo. This visit was due to possible diabetic problems. Petitioner was requesting a sugar check as he felt off and his vision was a bit blurry. He was on his way to buy testing supplies when he decided to go to Prompt Care. His A1C test at that time was 5.9 (normal is 4.3 – 5.8), a little high, and his glucose was 135 (normal 70 – 100), so a little high. The doctor noted Petitioner "is a diet controlled diabetic." No hand complaints were made during this visit. RX 1

On August 2, 2013 Petitioner was seen by NP Hudgins-Brewer as he was feeling sick. The nurse practitioner noted that "He does have a history of diabetes and has been watching his diet and lost a lot of weight, he says up to 100 pounds in last year and A1C has gone down." His weight on this date was 298 pounds, so he had lost 40 pounds since seeing NP Hendricks on August 13, 2012. No right hand complaints were voiced during this visit. RX 1

Petitioner was seen by Dr. Brewer on February 26, 2015. His weight was back up to 329, but there is no mention of either diabetes or right hand complaints during this visit. RX 1

Petitioner was treated at MOHA on August 21 and 24, 2015 for a second degree burn to his left hand. No mention of diabetes or right hand complaints are included in those records. RX 1

Petitioner was seen by Dr. Chandler at MOHA on December 8, 2015 with thoracic back complaints. He noted that Petitioner had a history of diabetes but that it was diet controlled. No right hand complaints are included in this record. RX 1

Petitioner was seen by Physician's Assistant (PA) Peterson at MOHA on March 17, 2016 for an injury to his nose. Neither diabetes nor right hand complaints are mentioned in this record. RX 1

Dr. Brewer saw Petitioner for a health maintenance exam on June 6, 2016. No mention of diabetes or right hand complaints are included in this record. RX 1

Immediately following Petitioner's August 25, 2016 accident he was seen at Taylorville Memorial Hospital for his right wrist injury. He gave a consistent history and had tenderness and mild swelling of the right distal wrist. An x-ray performed at that time suggested an old fracture of the right ulnar styloid process which

appeared to have healed with a nonunion. Petitioner was placed in a splint and told to see his primary care physician. PX 3

Petitioner saw Dr. Ma, an orthopedic surgeon, the following day. Petitioner reported that NSAIDS had not provided much relief. Dr. Ma found that Petitioner had significant tenderness on the ulnar aspect of the wrist, limited range of motion due to pain and his sensation was normal. He said x-rays suggested a fracture malunion/nonunion in the ulnar styloid. He applied a short arm cast to the right wrist and noted that an MRI might be needed to evaluate a possible tear of the TFCC. No sensory complaints were voiced. He restricted Petitioner to work without use of the right hand. PX 3

On September 16, 2016 Petitioner advised Dr. Ma that his pain was slightly improved, 8/10. His physical examination was the same. No sensory complaints were voiced. He was referred to occupational therapy for a brace evaluation and gentle range of motion and stretching therapy. A custom orthosis was made for him that day. An MRI was ordered to check the TFCC, and Petitioner said he was not interested in a steroid injection. His one-handed work restriction continued. PX 3

Petitioner received occupational therapy at Taylorville Memorial Hospital from September 21, 2016 through May 4, 2017. Treatment gaps occurred at times following surgery but then re-started. PX 4

An MRI of the right wrist on September 30, 2016 revealed a partial tear of the TFCC and a possible tiny perforation in the lunate triquetral ligament. PX 3

Petitioner told Dr. Ma on October 7, 2016 that he was waking 10 – 15 times per night due to pain in his right wrist. The physical examination on that date again showed voicing of tenderness upon palpation on the ulnar aspect of the right wrist. After discussion, Petitioner said he wanted surgery to repair the TFCC tear. He was again allowed to work with no use of the right hand. PX 3

Dr. Ma performed right wrist arthroscopy and debridement on October 27, 2016. He found significant synovitis on the dorsal aspect of the right wrist as well as the tear of the TFCC and cartilage damage and degenerative arthritis over the medial carpal joint. All three areas were debrided. PX 3

By December 7, 2016 occupational therapy found Petitioner was able to do range of motion within normal limits without pain. On December 28, 2016 he reported increased pain but did not think the exercise was what was causing the pain. They noted the pain was throughout the wrist, not just the ulnar aspect. PX 4

On December 9, 2016, six weeks after the surgery, Petitioner told Dr. Ma that the pain in the right wrist had improved but was still significant. Dr. Ma's physical exam on that date was about what he expected to see at that point, though he noted the wrist was stiff. He wanted Petitioner to continue working with therapy on range of motion and stretching as well as strengthening. PX 3

On January 9, 2017 Petitioner began complaining to occupational therapy of waking up in the night due to pain. On January 19, 2017 he said his pain was less, but rated it 7/10, and noted he could not sleep. While telling the therapist that he could not pick stuff up or button or zip his pants, the therapist noted that "He reports inability to perform simple functional tasks, despite demo 5/5 resisted strength in the hand for pinch and grip and (sic) well as ability to pick up and carry 10 pound object. His ROM has slightly improved from last assessment but Pt self report of ability has declined." PX 4

On January 19, 2017, the day before Petitioner was to again be seen by Dr. Ma, Physical Therapist Carla Tippett wrote a letter to Dr. Ma. She said she felt it necessary to touch base with him even though she had sent him an assessment report. She advised him of the contrast between Petitioner's stating he could not due basic tasks, like using a knife to cut food, and their observations of his abilities in therapy. She noted, "He currently rates his functional ability as very poor, but is noted with much more ability in tasks I have presented to him in therapy session. I am not clear as to why he reports such a high pain rating this far out from his surgery and it has not improved over the last 6 weeks he has attended therapy." PX 4

Dr. Ma saw Petitioner on January 20, 2017. Petitioner told him that while he was able to lift 5 – 10 pounds in therapy, he still could not lift a milk jar and he still dropped things from his right hand. He said the right hand kept him up at night. Dr. Ma's physical examination on this date included new complaints. He now had tenderness on the radial and dorsal aspects of the right wrist while his previous complaints had been to the ulnar and dorsal wrist. Dr. Ma again noted that Petitioner's sensation was normal. Petitioner also had a new problem in his left wrist, deQuervain's disease. Petitioner told him that was slowing down his recovery. While Carla Tippett had recommended work hardening, Dr. Ma said he did not feel Petitioner was ready for that. He returned him to occupational therapy and again restricted him from right hand work. PX 3

In the February 2, 2017 occupational therapy report it is noted that while Petitioner said he had pain throughout the day and at night, they saw no signs of difficulty with pain during their therapy session. A similar comment was included in their February 9, 2017 notes. On that date they commented, "Pt complains of constant pain at home, in evening and reports difficulty sleeping. However, pain is not reported in therapy session with ROM or with strengthening exercises. Pain complaints are not located in consistent area." On February 27 they noted,

"Pt noted with normal ROM. He is equal in ROM with his left hand. He has no swelling observed. He does not grimace during exercise performed in therapy. * * * Self report of inability to perform activities despite increase in grip." PX 3

On February 14, 2017 Petitioner complained of worsening pain in the first extensor compartment, and Dr. Ma treated that with bracing and injection. A review of Dr. Ma's records for the five-and -a -half months since the accident does not disclose prior complaints in this area. Dr. Ma again injected the left wrist, and there is no mention of injecting the right wrist. PX 3

On February 16, 2017 Petitioner advised the therapist that he was currently pain free, but said Dr. Ma had given him two shots to his wrist. Again no mention of a right wrist injection is contained in Dr. Ma's office note of February 14, 2017. Petitioner had no complaints on February 16, 2017, and his theraband which he used for home exercise was replaced with a harder theraband. On February 27, 2017 Petitioner said his pain was coming back. The therapist noted, "Pt progressed with strengthening exercises. Does not report pain during exercises this date. Does state he has been having some discomfort over the weekend but does not report specific activity that causes pain." On March 2, 2017 the therapist reported that right arm strengthening exercises continued, and that Petitioner was noted to have good range of motion and the ability to perform fine motor activity using index and thumb pinch. PX 3; PX 4

On March 6, 2017 Petitioner reported that his pain was returning and it was keeping him up at night, stating that the pain was on both the ulnar and radial sides of his wrist. The therapist commented in her notes that "Pt noted with normal ROM. He is equal ROM with his left hand. He has no swelling observed. He does not grimace during exercise in therapy. * * * Self report of inability to perform activities despite increase in grip." PX 3

Dr. Ma saw Petitioner on March 17, 2017, five months following his surgery. He told Dr. Ma that his pain would flare up after therapy. Petitioner at that time said that he had occasional numbness to his right ring and small fingers on an every day basis. Neither Dr. Ma's records nor the occupational therapy records reflect any complain of numbness in the previous five months following surgery or in the seven months since his accident. Dr. Ma's records during that time frequently reflect Petitioner having normal sensation. Petitioner had been restricted from work or restricted to work not involving the right hand during that seven month period. On March 17, 2017 Dr. Ma's records reflect his finding a positive Tinel's sign at the cubital tunnel as well as decreased sensation to the ulnar nerve distribution. These were new findings as of this date. Dr. Ma told Petitioner to discontinue at home strengthening exercises and to avoid prolonged periods of elbow flexion including when driving or sleeping. An EMG/NCV was ordered on this date. PX 3; PX 4

The therapists on April 6, 2017 noted that "Pt unable to specify consistent pain making it difficult to modify exercise program." PX 4

Dr. Becker performed EMG/NCV testing on Petitioner on April 10, 2017. Petitioner's history to Dr. Becker was that the numbness and tingling in his 4th and 5th digits began in August of 2016, and that since then he has been having symptoms. Dr. Becker's impression following testing was that Petitioner had mild right carpal tunnel and moderate right cubital tunnel. PX 3/PX 7

Petitioner saw Dr. Ma on April 21, 2017, telling him that his entire hand becomes numb. Dr. Ma noted that Petitioner was continuing to work with no use of the right arm. The physical examination that day showed decreased sensation to both the median and ulnar nerve distributions, positive Tinel's tests at both the carpal and cubital tunnels, significant tenderness over the ulnar aspect of the wrist and tenderness to the first extensor compartment. Dr. Ma interpreted Dr. Becker's report to show a mild carpal tunnel and a moderate to severe cubital tunnel, though her report only noted moderate cubital tunnel. Dr. Ma believed Petitioner should have both carpal tunnel and cubital tunnel surgeries due to the severity of the numbness and tingling. PX 3

On June 7, 2017 Respondent had Petitioner examined by Dr. Maender pursuant to Section 12 of the Act. In his history to Dr. Maender Petitioner told him that at some point after his surgery he began having numbness and tingling, he could not remember any numbness or tingling prior to that. Petitioner advised Dr. Maender that he had borderline diabetes. Dr. Maender reviewed prior medical records. During Dr. Maender's examination Petitioner removed his right wrist brace, revealing tan lines making it clear he had been wearing it regularly. Dr. Maender found Petitioner to have good range of motion of the wrist, equal to the left side. He wrote that Petitioner was tender in five separate areas of the wrist. Petitioner had a negative Tinel's sign, but a positive Phalen's sign. He had no atrophy of the thenar musculature, but subjective decreased sensation to the ring and small fingers. Dr. Maender diagnosed right wrist pain, right TFCC tear, status post-debridement, midcarpal degenerative osteoarthritis, mild carpal tunnel syndrome and moderate cubital tunnel syndrome. Dr. Maender's opinions will be noted in the summary of his deposition testimony, below. PX 3 & RX 2

Dr. Ma again saw Petitioner on June 27, 2017 with continuing complaints of numbness and tingling in his right hand. Petitioner said his pain was 8/10. After examining Petitioner Dr. Ma recommended a right extensor compartment release, a right ulnar wrist steroid injection, a right carpal tunnel release and a right cubital tunnel release with a possible ulnar nerve transposition. Dr. Ma noted that Petitioner had recently been diagnosed with pre-diabetes with A1C of 6.2. He again allowed Petitioner to do restricted work with no use of the right hand. PX 3

Petitioner saw Dr. Ma on several occasions with continuing complaints prior to his May 10, 2018 surgeries. On that date Dr. Ma performed a steroid injection into the right wrist joint, a right carpal tunnel repair, a right cubital tunnel repair and a transposition of the ulnar nerve at the right elbow. Dr. Ma saw him on May 18, 2018, eight days after the surgeries, and Petitioner at that time was complaining of significant postoperative limitations in mobility and reduced strength in the right arm. Dr. Ma referred him for occupational therapy. PX 3

From May 22, 2018 until July 10, 2018 Petitioner was treated by Springfield Clinic Occupational Therapy. Over the course of their treatment they noted several different pain complaints including along his elbow scar, continued numbness and tingling in the fingers of his hand, pain in the area of his carpal tunnel scar, pain in the hand, and pain at the end of range of motion when reaching to his lower back or overhead when washing his hair. PX 3

When Petitioner saw Dr. Ma on June 26, 2018, six weeks after the most recent surgery, he said his right ring and small fingers remained numb and more sensitive. He also complained of numbness and tingling on the lateral side of the right arm. Dr. Ma told Petitioner that the numbness and tingling would improve over time and to continue his home exercise program. He also thought an MRI might be helpful to see if the pain on the ulnar aspect of his right wrist was a possible TFCC tear. PX 3

Dr. Maender performed a second IME examination at the request of Respondent on January 16, 2019. After noting that Petitioner had undergone surgeries to several areas he noted that as of that date Petitioner was complaining of pain on the ulnar side of the wrist which could go to 10/10, that the wrist would pop with motions, though he was unable to reproduce that, occasional numbness and tingling, and pain waking him at night. Petitioner told him he had undergone a work hardening program which had increased his pain. His physical examination of Petitioner revealed a 20% reduction in extension and flexion of the right wrist. He said most of Petitioner's tenderness was over the pisotriquestral joint, the triquetrum and the lunate. He found Petitioner to have normal strength to resistance with flexion and extension, and his right hand had normal strength when compared to the left. He said Petitioner's right hand grip was 65 pounds while the left hand grjp was 90 pounds. Dr. Maender's opinions will be noted in the summary of his deposition testimony, below. RX 2

Dr. Ma scheduled Petitioner for additional surgery, apparently after a second opinion from Dr. Greatting. Dr. Greatting's records were not included in the Springfield Clinic records introduced into evidence as PX 3. In the pre-operative examination of Petitioner on July 29, 2019 Dr. Ma stated, "It was noted he has a significant medical history of diabetes. His most recent blood glucose was 120 and A1C was 6.8." Dr. Ma stated that

Petitioner's right wrist pain had been aggravated again and that he had slightly decreased sensation to the ulnar nerve distributions. On July 29, 1019 Dr. Ma performed a right wrist arthroscopy and synovectomy. He found significant synovitis on the ulnar aspect of the wrist as well as a degenerative change of the cartilage on the ulnar side of the triquetrum, He also examined the TFCC and found it to be stable. He performed a synovectomy for the other problems. PX 3

During that same July 29, 2019 surgery Dr. Ma performed an open reduction and internal fixation of the nonunion of the old right ulnar styloid fracture. He removed scar tissue around the old fracture nonunion and placed 2 K-wires to stabilize the fracture. He then performed a right ulnar shortening osteotomy, resecting 5 mm of the distal ulna and then installed a plate on the ulnar and volar aspect of the right ulna. PX 3

Postoperatively Dr. Ma saw Petitioner on August 13, 2019. In the interim Petitioner had suffered a fall, injuring his left ankle, and was in a fracture boot. Petitioner said his right wrist pain and ulnar nerve problems were improving. Dr. Ma put Petitioner in a short arm cast for his right wrist on that date and kept him off work. PX 3

On August 27, 2019 Petitioner voiced continued improvement in pain and nerve distribution. Dr. Ma removed the K-wires at that time and sent Petitioner for a brace evaluation. He was fitted for a cock-up splint that same day in occupational therapy. PX 3

Petitioner was seen by NP Osowski on September 4, 2019, and she noted that he was not checking his blood sugars regularly, was not watching his diet too closely and had not been exercising. His blood sugar testing that day revealed glucose of 264 (normal 70 – 100), and A1C of 8.4 (normal of 4.3 – 5.6).

When seen by Dr. Ma on September 10, 2019 Petitioner was still complaining of a lot of numbness and tingling in the palm of the right hand. Dr. Ma referred him for gentle range of motion and stretching therapy, told him to wear a brace for protection, gave him a one pound lifting limit for the hand and kept him off work. PX 3

Springfield Clinic Occupational therapy started a new therapy program which ran from September 25, 2019 to October 31, 2019. Over the course of that period Petitioner progressed well, and as of October 25, 2019 the therapist noted that Petitioner had no complaint of pain with any of his activities. On October 29, 2019 the therapist wrote, "Pt. is progressing very well with strengthening, endurance and tolerance of increased resistive tasks." On October 31, 2019 she wrote that Petitioner had met all goals set for occupational therapy and was discharged from therapy. PX 3

Petitioner saw Dr. Ma on November 5, 2019 complaining of intermittent and aching pain over the proximal portion of the incision area, but otherwise was doing well. Physical examination revealed Petitioner still had

some stiffness in the right wrist but his sensation was normal upon light touch. Dr. Ma found that he still had a lot of weakness in the right wrist and forearm and would benefit from "continuous therapy." He noted Petitioner should be off work and should return in two months. PX 3

Petitioner therefore re-started occupational therapy and received treatment from the therapists from December 5, 2019 through March 2, 2020. On December 11, 2019 Petitioner asked the therapist if he could perform similar arm strengthening exercises at a gym as well as at therapy, and she agreed. At later sessions he was noted to continue to progress with strengthening both in therapy and outside of therapy. On December 19, 2019 Petitioner told the therapist that his arm was feeling stronger each day and that he was continuing to work out at the gym. On January 6, 2020 Petitioner said his strength continued to improve. PX 3

On January 7, 2020 Petitioner was seen by Dr. Ma. He was five months post op at that time. Dr. Ma noted that the strength in Petitioner's wrist was definitely improving, that he was getting stronger in the right hand and wrist. Petitioner was still complaining of numbness and tingling in the tip of his right small finger, as well as some pain over the ulnar aspect of his forearm. Physical examination on that date showed no evidence of atrophy, the motion in his wrist was reasonable, his forearm supination was almost full but his ulnar nerve sensation was decreased. While Dr. Ma felt Petitioner overall was doing well, that the osteotomy was healing well, that the strength and sensation in the right wrist and hand were improving, he ordered another two months of therapy and kept Petitioner off work. PX 3

Petitioner was seen in therapy the next day, January 8, 2020, and noted no new concerns, saying he continued to go to the gym to work on his strengthening outside of therapy. By February 5, 2020 Petitioner had met all of the short term goals occupational therapy had initially set, but had not yet met one they added later, being able to transfer 70 pounds lifted from the floor to the waist with both arms. The February 10, 2020 note reflects Petitioner was continuing to do right arm strengthening at the gym. PX 3

Petitioner's last visit with occupational therapists was on March 2, 2020. It was noted he was to see Dr. Ma the next day. He told the therapist that he was having no pain. They noted that Petitioner had improved significantly with right arm strength with lifting and heavier activities, that he was carrying an 80 pound container as well as performing waist to shoulder height transfers with a 77 pound bin. He was able to do bicep curls using a pulley machine with 95 pounds of resistance. All of his goals had been met. They noted that Petitioner had been going to the gym regularly for strengthening exercises. PX 3

Dr. Ma saw Petitioner on March 3, 2020 and told him that the pain in his right wrist was improving. Dr. Ma noted that Petitioner's grip strength on the right was 120 pounds. He found Petitioner's motion in the wrist to be

almost full, though he thought there was still some weakness in the wrist, and his ulnar nerve was improving. X-rays that day showed the osteotomy was healing well. He released Petitioner to work with no restrictions and told him to return if he had problems. PX 3

Petitioner was next seen on May 5, 2020. Petitioner told Dr. Ma that he had returned to work for three days and then his work was discontinued due to the COVID-19 crisis. He complained of some shooting pain over the ulnar aspect of the right forearm which had started a few days earlier. He reported no new injury. He said the pain was 8/10. He said he also had some pain over the ulnar aspect of the right wrist that had started a month earlier. He also complained of some popping in his wrist at night. Dr. Ma's physical examination revealed tenderness to palpation over the ulnar aspect of the right wrist, very mild swelling in the right wrist, full motion in the wrist, and slightly decreased nerve distribution to the right small finger. Dr. Ma didn't think there was anything surgical to be done, he told him to take NSAIDS and continue his home exercise program. He gave him a note advising him to return to work with no heavy lifting, pushing, pulling, or grasping of more than 3 to 5 pounds with his right hand. A Health Status Form was introduced into evidence with that date showing those restrictions. A second Health Status Form was also introduced into evidence for that same date noting he was not to work. The medical records themselves are silent as to a no work restriction and contain no explanation for the second form. PX 3

Dr. Ma saw Petitioner on June 16, 2020. The same types of complaints were made by Petitioner as had been made on May 5, 2020. The physical findings on examination were also quite similar. Dr. Ma wrote that the pain in Petitioner's wrist was probably related to aggravation of synovitis in his right wrist. He said Petitioner was a good candidate for injection given his significant medical history of diabetes. Dr. Ma ordered more occupational therapy as well as an EMG/NCV and said Petitioner should not work. PX 3

No medical records of Dr. Greatting were introduced into evidence.

TESTIMONY OF DR. JIANJUN MA IN FIRST DEPOSITION

Dr. Ma is a board certified orthopedic surgeon specializing in the hand and upper extremity. (PX 10 p.4-6) His testimony in regard to history given to him by Petitioner, tests, conservative treatment and surgeries was consistent with the medical summary above. (PX 10 p.6-32)

In his testimony Dr. Ma testified that the TFCC tear which was seen on the MRI was consistent with Petitioner's symptoms. He stated that he was not sure if the accident August 25, 2016 caused the TFCC tear, but he was sure it aggravated Petitioner's symptoms.(PX 10 p.13,14)

Dr. Ma said the first time Petitioner mentioned numbness in his hand to him was March 17, 2017. Dr. Ma was asked a hypothetical question in which he was shown photos of tools and told what Petitioner did with those tools. He was then asked if the use of those tools could cause carpal and/or cubital tunnel syndromes, and he answered, "I cannot say cause. Aggravate symptoms, could be * * * symptoms could be aggravated with significant amount of daily use over years." (PX 10 p.35,36)

Dr. Ma said that Petitioner's recovery was definitely slowed down by his co-existent conditions of DeQuervain's disease and cubital and carpal tunnel syndrome. (PX 10 p.39)

On cross-examination Dr. MA said he had treated Petitioner since the day after the accident, and March of 2017 was the first time Petitioner complained to him of numbness and tingling in his hand. He said if Petitioner had complained earlier he would have noted it in his records as it was important to document complaints. He said Petitioner never mentioned a history of working with specific tools aggravating a condition in his right hand. Dr. Ma said Petitioner had been recommended not to use any type of tool since August of 2016 and it was Dr. Ma's understanding that Petitioner had followed that restriction. He was not to use his right hand at all, through the date of the deposition, December 5, 2017. (PX 10 p.45-47)

In regard to the numbness and tingling in Petitioner's right hand Dr. Ma said, "We don't know when this started. I feel this is a chronic condition that has been going on for a long time. We don't know if it's two weeks, five weeks, a month, three months, five years. We don't know. I have no documentation." Dr. Ma said he had no history or documentation that prior to August 25, 2016 Petitioner was having any problems with his right hand. He said he did not know when Petitioner's carpal tunnel and cubital tunnel started. When asked if he had enough information to state to any reasonable degree of medical and surgical certainty whether Petitioner had a condition that was aggravated by his work for Respondent, Dr. Ma said, "I cannot rule it in; I cannot rule it out, because we don't know." (PX 10 p.53,54,56,59)

Dr. Ma said he does not know what caused Petitioner's DeQuervains' disease. (PX 10 p.65,66)

As to the carpal and cubital tunnels, Dr. Ma said that if Petitioner did not have symptoms before the accident, it could not be aggravated. (PX 10 p.66,67)

In regard to synovitis Dr. Ma said it is caused by inflammation, and they don't know why they have synovitis, they just don't know. (PX 10 p.73)

DEPOSITION TESTIMONY OF DR. MARK GREATTING

Dr. Greatting is a board certified orthopedic surgeon with added qualifications in hand surgery. He testified that he only saw Petitioner on one occasion, on January 28, 2019, at the request of Dr. Ma. He said he reviewed radiological images as well as pertinent medical records. (PX 11 p.4-6,8,9)

Dr. Greatting examined Petitioner in regard to the traumatic injury to his wrist on August 25, 2016 and did not examine him in regard to carpal or cubital tunnel syndromes or possible ulnar nerve transposition. He rendered no opinions in regard to those conditions.

TESTIMONY OF DR. CHRISTOPHER W. MAENDER

Dr. Maender is a board certified orthopedic surgeon with a specialty in hand and upper extremity surgery. His testimony in regard to the history and physical examination findings was consistent with the medical summary, above. He said he first saw Petitioner on June 7, 2017 at request of the insurance carrier. During the physical examination Petitioner complained over the radius bone, which Dr. Maender said should not hurt unless that bone had been broken, and there was no indication it had been broken. (PX 11p.5.6.13,14)

Dr. Maender testified that he did not believe the DeQuervain's diseases was work related. He said the DeQuervain's disease was on the opposite side as the ulnar styloid and the TFCC, it was in the thumb area as opposed to the wrist bone on the small finger side of the hand. He said that any treatment of DeQuervain's would not be related to this accident. (RX 3 p.29,30)

As a result of his history, medical record review and his physical examination of Petitioner, Dr. Maender diagnosed him to have mild carpal tunnel syndrome and moderate cubital tunnel syndrome, mid carpal degenerative arthritis, a right central TFCC tear which had been debrided, and right wrist pain. His recommendation for the wrist pain was a diagnostic injection into the radial carpal joint to localize where pain was coming from, since Petitioner had multiple areas of pain. He said that If Petitioner did not get relief from

that it was unlikely further surgery would help any of his pain. The TFCC tear is in the area that would be injected. (RX 3 p.32-34)

Dr. Maender felt Petitioner was a surgical candidate for right carpal tunnel and right cubital tunnel and possible nerve transposition. In his opinion there was no causal relationship between the accident and right right carpal tunnel or right cubital tunnel syndromes based on Petitioner's making no mention of numbness and tingling and catching a tire. Dr. Maender believed Petitioner could RTW until after the diagnostic injection with a limitation of no lifting greater than 5 pounds with the right arm and no repetitive gripping. (RX 3 p.33-36)

Based on reported response to the suggested injection, constant stabbing, aching, and burning at 6/10 level with pain on both the radial and ulnar sides of the right wrist, aggravated by activity, Dr. Maender opined that repeat surgery would not be recommended. He said that if Petitioner did not feel he could return to work, a FCE should be performed to see what he could physically do, and to test his effort. (RX 3 p.38,39)

In an addendum report of November 22, 2017 Dr. Maender opined that work of a mechanic could cause carpal and cubital syndromes, but after reading Dr. Ma's deposition he wrote another addendum report on December 22, 2017, noting that Petitioner had not done the work of an automobile mechanic for several months prior to complaining of numbness and tingling, so he did not believe the carpal and cubital tunnel syndromes were caused or aggravated by his repetitive work. He said Petitioner did not tell him of having numbness and tingling prior to August 25, 2016, nor did he tell him of having numbness and tingling while performing work duties for Respondent. (RX 3 p.40-43)

Dr. Maender said he did not think the Dequervaine's disease or the arthritis near it were causally related to this accident. He did not believe the carpal or cubital tunnel conditions were causally related to this accident. The only pain in the right wrist which he thought was related to this accident was the ulnar-sided pain. (RX 3 p.45-47)

On cross-examination Dr. Maender said that the factors for finding carpal and cubital tunnel were not related to Petitioner's work were that he had not been working in his job as an auto mechanic for seven months prior to documentation of his symptoms, and he did not complain of any numbness or symptoms prior to the injury date. (RX 3 p.52)

Dr. Maender was asked a hypothetical question by Petitioner's attorney. He was asked to assume that following his TFCC surgery Petitioner returned to work driving cars for Respondent, for both short and long trips, where he would drive for several hours, and that while driving, to avoid using his right hand, he rested his right elbow on the center console. Dr. Maender said that resting the elbow on the center console is the type of activity which could place pressure on the nerve at the elbow and could bring on symptoms of cubital tunnel syndrome. The numbness and tingling in the fourth and fifth fingers are more cubital tunnel. (RX 3 p.53,54)

Dr. Maender testified that he performed less than five IMEs per year. (RX 3 p.54)

On redirect examination Dr. Maender testified that during his examination of Petitioner, Petitioner did not indicate to Dr. Maender that his job duties of repetitive twisting, gripping, repetitive elbow motion had caused him numbness or tingling in his right upper extremity. He said there was nothing in the records which indicated that Petitioner was having any numbness or tingling in the right upper extremity prior to August 25, 2016 or prior to March of 2017 or that work he was performing for Respondent caused numbness in the ulnar nerve prior to March of 2017. He said he believes Petitioner's nerve conditions were idiopathic, meaning they don't have a cause for it. (RX 3 p.56-57)

TESTIMONY OF DR. JIANJUN MA IN SECOND DEPOSITION

Dr. Ma was deposed for a second time on October 6, 2020. He said Dr. Greatting did a 2nd opinion exam at his request and told him that he felt the ulnar bone was too long and was causing impingement which was causing Petitioner's pain. Dr. Ma said the ulnar impingement was not from the non-union. It was a condition normally treated in his practice. He said some people are just born with a longer bone, others are due to a fracture, and sometimes it is because the radius is too short. Dr. Ma was of the opinion that the trauma to Petitioner's wrist made him vulnerable to developing impingement. (PX 12 p.20,21)

Dr. Ma said he was of the opinion that Petitioner's symptoms could have been caused by the accident of August 25, 2016, that the trauma to his right wrist could make him vulnerable to develop impaction syndrome. (PX 12 p.26,27)

Dr. Ma testified that while another examiner prior to March 15, 2019 had felt Petitioner could return to work without restrictions, he felt Petitioner should absolutely not return to unrestricted work due complaints of severe pain and popping in his wrist. (PX 12 p.28)

Dr. Ma said that when he saw Petitioner on May 5, 2020, Petitioner had complaints of wrist pain. He said that could be from chronic inflammation from his original injury or from recently returning to work. He did not know when the last time Petitioner worked was. When he saw Petitioner again on June 15, 2020 he was still complaining of right wrist pain. He felt Petitioner's pain was from an aggravation of the synovitis in the wrist, but he was not sure what had caused the aggravation. (PX 12 p.37-39,50)

Dr. Ma said that he performs hundreds of cubital tunnel surgeries a year. He said a very small number of those continued to have problems indefinitely after that surgery. Dr. Ma said he last saw Petitioner on June 16, 2020, six months prior to his deposition. He said that if Petitioner had not seen Dr. Greatting in the interim and had been told something different, he would still have Petitioner off work. (PX 12p.42)

On cross-examination Dr. Ma agreed that there could be other activities which aggravated the synovitis other than the accident. He agreed that it could have been aggravated by the accident , gotten better, and then physical therapy aggravated it. Petitioner did not indicate to Dr. Ma what he was doing when the pain returned prior to the May 5, 2020 visit. Dr. Ma said he did not know what the cause of the synovitis was, that it could be from diabetes, from activities or from trauma. Dr. Ma said that people with diabetes have a higher risk of infection and more stiffness in the wrist because of swelling due to the high level of blood sugar, it is a very common cause. Dr. Ma said that he could not say if it was the accident in 2016, activity or diabetes which led to Petitioner's synovitis, he was not sure. Dr. Ma said that diabetes definitely made the ulnar nerve more vulnerable to be compromised, and can affect the inflammation in the area of the ulnar nerve. (PX 12 p.45,46.48,49,51-54)

The only reason for another ulnar transposition would be Petitioner's symptoms. Dr. Ma said he did not know if Petitioner's inflammation around his ulnar nerve was from his diabetes or if he got it from some other reason. Dr. Ma said he knew Petitioner was seeing Dr. Greatting subsequent to his last visit with him on June 3 16, 2020. (PX 12 p.56,57)

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ARBITATOR'S CREDIBILITY ASSESSMENT

Petitioner's rendition of the facts at arbitration was often contradicted by medical records. While he tried to initially describe himself as pre-diabetic, several medical records from the years immediately prior to this accident showed he was a diabetic who had been told to test his blood daily as early as 2012, but did not do so. It was only on redirect examination that he admitted to his diabetes. A comparison of Petitioner's non-complaints, even statements that he was having no pain, to the occupational therapists at Taylorville, are totally different to what he was saying to Dr. Ma just a day or so later. Petitioner would give a history to the therapists of problems at home, and while sleeping, but show no discomfort while doing exercises with them. While the therapist had documented all of this in her records, the therapist felt is necessary to send a note to Dr. Ma pointing this out. While that note is in the records of the hospital, it is not in Dr. Ma's records, so it is unknown whether he ever saw it. Petitioner also testified that when at the gym, Planet Fitness, he used a stationary bicycle, and on redirect examination said he just rested his hands on the handlebars. The physical therapy

records of Springfield Clinic, however, note that he asked if he could do arm exercises at the gym, and they advised him he could. Later physical therapy notes reflect his telling them on multiple occasions how he was doing his arm exercises at the gym. Petitioner's actions after being hired by Green Dodge and then being laid off within a week, on March 20, 2020, due to the COVID-19 pandemic, also raise questions of credibility. Petitioner testified that he felt pain while working at Green Dodge, but did not report it. Indeed, he also did not report it to Dr. Ma, Dr. Greatting or Dr. Maender, either. Petitioner said he attempted for quite some time to get an appointment with Dr. Ma after his employment with Green Dodge. While the clinic's medical records include several records of telephone calls where he spoke to a nurse or a telenurse, there are no records reflecting his attempts to get an appointment. His history to Dr. Ma on May 5, 2020 was that he had shooting pain over the ulnar aspect of the right forearm that had started only a few days earlier, saying there was no new injury. He also said that he had pain over the ulnar aspect of his wrist that had started about a month earlier. No mention was made of pain at work, however. His complaints on May 5, 2020 and June 16, 2020 are totally subjective, and the timing gives the appearance of seeking secondary gain. The Arbitrator finds Petitioner to have poor credibility.

Dr. Ma appears to be quite credible in his testimony. He appeared to answer each attorney's questions in an honest manner. He did not hesitate to say he did not know something, his opinions of causation did not show any apparent attempt to favor either party.

Dr. Greatting's testimony also seemed credible. His explanations of causation did not seem stretched in the least, they appeared to be based upon objective fact.

Dr. Maender also seemed credible in his testimony. While hired by the insurance company, he found several conditions to be causally related, even the carpal and cubital tunnel conditions, opinions which he later reversed after obtaining additional facts about the temporal non-relationship of Petitioner's work and his first complaints of numbness and tingling.

CONCLUSIONS OF LAW:

In support of the Arbitrator's decision relating to whether an accident occurred which arose out of and in the course of Petitioner's employment by Respondent on April 10, 2017 and whether Petitioner's current condition of ill-being, right carpal tunnel syndrome, right cubital tunnel syndrome and ulnar

nerve transposition are causally related to the accident of April 10, 2017, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

Petitioner testified to the physical efforts performed in his work for Respondent during the period of less than two months prior to his ceasing work on August 25, 2016 due to a traumatic injury to his right wrist, an accident resulting in a claim for that date of accident, which was consolidated for trial with 16 WC 30006, which received its separate 19b decision. Petitioner identified photographs of the tools he used in performing his work for Respondent, describing each tool and what it was used for in his work.

Dr. Ma and Dr. Maender both rendered opinions in regard to the carpal tunnel and cubital tunnel syndromes and what relationship, if any those conditions had to Petitioner's work.

Dr. Ma said the first time Petitioner mentioned numbness in his hand to him was March 17, 2017. Dr. Ma was asked a hypothetical question in which he was shown photos of tools and told what Petitioner did with those tools. He was then asked if the use of those tools could cause carpal and/or cubital tunnel syndromes, and he answered, "I cannot say cause. Aggravate symptoms, could be * * * symptoms could be aggravated with significant amount of daily use over years."

Dr. Ma said he had treated Petitioner since the day after the accident, and March of 2017 was the first time Petitioner complained to him of numbness and tingling in his hand. He said if Petitioner had complained earlier he would have noted it in his records as it was important to document complaints. He said Petitioner never mentioned a history of working with specific tools aggravating a condition in his right hand. Dr. Ma said Petitioner had been recommended not to use any type of tool since August of 2016 and it was Dr. Ma's understanding that Petitioner had followed that restriction. He was not to use his right hand at all, through the date of the deposition, December 5, 2017.

In regard to the numbness and tingling in Petitioner's right hand Dr. Ma said, "We don't know when this started. I feel this is a chronic condition that has been going on for a long time. We don't know if it's two weeks, five weeks, a month, three months, five years. We don't know. I have no documentation." Dr. Ma said he had no history or documentation that prior to August 25, 2016 Petitioner was having any problems with his right hand. He said he did not know when Petitioner's carpal tunnel and cubital tunnel started. When asked if he

had enough information to state to any reasonable degree of medical and surgical certainty whether Petitioner had a condition that was aggravated by his work for Respondent, Dr. Ma said, "I cannot rule it in; I cannot rule it out, because we don't know."

As to the carpal and cubital tunnels, Dr. Ma said that if Petitioner did not have symptoms before the accident, it could not be aggravated.

As a result of his history, medical record review and his physical examination of Petitioner, Dr. Maender diagnosed him to have mild carpal tunnel syndrome and moderate cubital tunnel syndrome Dr. Maender felt Petitioner was a surgical candidate for right carpal tunnel and right cubital tunnel and possible nerve transposition. In his opinion there was no causal relationship between the accident and right right carpal tunnel or right cubital tunnel syndromes based on Petitioner's making no mention of numbness and tingling and catching a tire.

In an addendum report of November 22, 2017 Dr. Maender opined that work of a mechanic could cause carpal and cubital syndromes, but after reading Dr. Ma's deposition he wrote another addendum report on December 22, 2017, noting that Petitioner had not done the work of an automobile mechanic for several months prior to complaining of numbness and tingling, so he did not believe the carpal and cubital tunnel syndromes were caused or aggravated by his repetitive work. He said Petitioner did not tell him of having numbness and tingling prior to August 25, 2016, nor did he tell him of having numbness and tingling while performing work duties for Respondent.

Dr. Maender was asked a hypothetical question by Petitioner's attorney. He was asked to assume that following his TFCC surgery Petitioner returned to work driving cars for Respondent, for both short and long trips, where he would drive for several hours, and that while driving, to avoid using his right hand, he rested his right elbow on the center console. Dr. Maender said that resting the elbow on the center console is the type of activity which could place pressure on the nerve at the elbow and could bring on symptoms of cubital tunnel syndrome. The numbness and tingling in the fourth and fifth fingers are more cubital tunnel. The facts in the hypothetical question relating to Petitioner's resting his elbow on the center console were never testified to by Petitioner at arbitration. The Arbitrator therefore does not consider Dr. Maender's testimony in this regard.

Dr. Maender testified that during his examination of Petitioner, Petitioner did not indicate to Dr. Maender that his job duties of repetitive twisting, gripping, repetitive elbow motion had caused him numbness or tingling in his right upper extremity. He said there was nothing in the records which indicated that Petitioner was having any numbness or tingling in the right upper extremity prior to August 25, 2016 or prior to March of 2017 or that work he was performing for Respondent caused numbness in the ulnar nerve prior to March of 2017. He said he believes Petitioner's nerve conditions were idiopathic, meaning they don't have a cause for it.

Dr. Maender testified that the factors for finding carpal and cubital tunnel were not related to Petitioner's work were that he had not been working in his job as an auto mechanic for seven months prior to documentation of his symptoms, and he did not complain of any numbness or symptoms prior to the injury date.

The Arbitrator finds that Petitioner's alleged accident date, April 10, 2017, is a proper manifestation date for the alleged accident as that is the date that EMG/NCV studies were performed on Petitioner's right hand and arm and the date a definitive diagnosis of right carpal tunnel syndrome and right cubital tunnel syndrome were made.

The Arbitrator finds that Petitioner has failed to prove that he suffered an accident on April 10, 2017 which arose out of and in the course of his employment by Respondent and that Petitioner's carpal tunnel syndrome, cubital tunnel syndrome, and need for an ulnar nerve transposition are not causally related to the accident of April 10, 2017. These findings are based upon the testimony of Dr. Ma and Dr. Maender and the lack of history by Petitioner to his treating and testing physicians that his symptoms were caused by his work by the tools he testified to at arbitration. Neither Dr. Ma nor Dr. Maender took a history of sensory loss having occurred in the hours, days, weeks, or even first few months following the accident. Dr. Ma testified that March 17, 2017, nearly seven months after the accident, was the first time Petitioner mentioned numbness in his hand to him. Dr. Ma testified that working with tools such as those seen in the photographs introduced at arbitration could aggravate carpal tunnel and cubital tunnel syndromes, but that if Petitioner did not have symptoms before his accident involving the right wrist on August 25, 2016, the work could not have aggravated such conditions. Dr. Maender thought that working with the type of tools seen in the photographs could cause these types of conditions, but that temporally, they would not have done so in Petitioner's case, as the symptoms were not reported until seven months after he had last performed that work. Petitioner had seen a hand specialist for treatment of his right wrist injury on numerous occasions without voicing carpal or cubital tunnel symptoms during that seven month period of time. Both Dr. Ma and Dr. Maender opined that if

Petitioner did not have numbness and tingling complaints prior to August 25, 2016 and/or March of 2017, his carpal and cubital tunnel conditions were not caused or aggravated by this accident. There is no evidence of numbness or tingling prior to those dates in the record.

Petitioner's claim for benefits is therefore denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC011216
Case Name	SEA, ROBERT v. CITY OF PEKIN
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0030
Number of Pages of Decision	15
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Damon Young
Respondent Attorney	John Fassola

DATE FILED: 1/24/2022

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT SEA,

Petitioner,

vs. NO: 20 WC 11216

CITY OF PEKIN,
TRANSPORTATION DEPARTMENT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, and prospective medical 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 Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 7, 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.

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.

January 24, 2022

o- 1/11/21
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	20WC011216
Case Name	SEA,ROBERT v. CITY OF PEKIN
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Damon Young
Respondent Attorney	John Fassola

DATE FILED: 5/7/2021

INTEREST RATE FOR THE WEEK OF MAY 4, 2021 0.03%

/s/ Bradley Gillespie, Arbitrator
Signature

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
19(b)

ROBERT SEA
Employee/Petitioner

v.

CITY OF PEKIN
Employer/Respondent

Case # **20** WC **11216**

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 **March 18, 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, **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 $; the average weekly wage was $**506.50**.

On the date of accident, Petitioner was **66** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**0.00** 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 that Petitioner has failed to prove his current condition of ill-being is causally related to his work injury. Therefore, the Arbitrator does not award medical benefits claimed by Petitioner for treatment. *See Addendum*.

The Arbitrator denies prospective medical treatment. *See Addendum*.

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* **MAY 7, 2021**

Signature of Arbitrator

ICArbDec19(b)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT SEA, Petitioner, v. CITY OF PEKIN, Respondent.	)))))))))	Case Number(s) 20 WC 11216;

ADDENDUM TO MEMORANDUM OF ARBITRATION DECISION

FINDINGS OF FACT

Petitioner filed Applications for Adjustment of Claim for two dates of loss, November 12, 2019 and November 14, 2019. (*See* PX #1 & PX #2 respectively) The cases were consolidated for trial on Petitioner's verbal motion without objection by Respondent. This Addendum will address Findings of Fact and Conclusions of Law for both claims.

Petitioner testified that he was employed by the City of Pekin Transportation Department as a bus driver on November 12, 2019. (T.16) He described his job duties to include driving a bus and other activities as needed such as spreading salt. (T.16)

Petitioner testified that on November 12, 2019, he was walking to the tire shed to retrieve salt to spread on the sidewalks when he slipped and fell, landing on his right hand, with his palm down and fingers extended. (T.17) He testified that he felt kind of a shock and then it was gone. (T.18) He continued his regular work activities for the remainder of the day. (T.38) On further questioning from his attorney, he testified that the pain in his wrist lasted a couple of days. (T.19) Subsequently, his wrist would lock up and he would sometimes have shooting pains down his right arm. (T.19)

Petitioner testified that on November 14, 2019, he was taking flags down from around City Hall, and placing them into a garbage can in the back of his truck. (T.20) While removing the flags from the back of the truck, he slipped on black ice, falling on his right elbow. (T.20) Petitioner testified that he experienced an immediate onset of pain in the right elbow that lasted "a few days." (T.20) He described locking and tenderness in his elbow after the pain subsided. (T.21) Petitioner continued to perform his regular work activities after the second accident. (T.40)

Petitioner testified that his pain increased with activity. (T.21) He explained that he was off work for the Thanksgiving Holiday, both deer seasons, and the Christmas break shortly after

the two falls. (T.21) Petitioner estimated being off work a total of 18 days in November and December. (T.21) On the days he worked, he performed his regular job duties. (T.42)

Petitioner testified that he was able to rest his wrist and elbow while not working. (T.23) On cross examination, he admitted hunting during both deer seasons while off work. (T.41) Petitioner alleged that hunting simply involved sitting in a tree stand. (*Id*.) He acknowledged carrying a gun and backpack to his tree stand and successfully harvesting a deer on at least one occasion. (T.41)

Petitioner testified that he saw Dr. James Williams on December 19, 2019 regarding skin cancer involving his left ring finger. (T.23-24) He admitted that he did not tell Dr. Williams about his problems with the right wrist or his right elbow at that time. (T.45-46) Petitioner underwent surgery for left ring finger basal cell carcinoma on January 21, 2020. (PX #3) Petitioner returned to Dr. Williams on February 3, 2020 for follow up on his left ring finger. (PX #3) Petitioner admitted he did not discuss his right wrist or right elbow with Dr. Williams during this appointment. (T.46)

Petitioner testified that he went to his supervisor, Robert Henderson, at some point in January and told him he wanted to seek medical attention for his hand, wrist and elbow. (T.25) Eventually, he was authorized to seek treatment. (T. 26) Petitioner presented to Dr. Williams on April 6, 2020 reporting right wrist pain, numbness and tingling. ((PX #3, T.26) Petitioner testified that his wrist would lock up, pop and catch. (T.26) Dr. Williams' physical exam findings from April 6, 2020, show tenderness to palpation of the wrist and hand, pain with motion, minimal swelling and distal neurovascular status intact. (PX #3, pp.14-15) There is no mention of locking, popping or catching of the wrist and no right elbow symptoms or complaints were noted. (*Id*.) Petitioner was diagnosed with osteoarthritis of the right wrist. (PX #3, pp.14-15) Dr. Williams did not recommend any treatment at that time. (*Id.*)

Petitioner returned to Dr. Williams on April 13, 2020. (T. 27) On this occasion, he was evaluated for right elbow pain ongoing since a fall at work in March. (PX #3 p.12, T. 27) Petitioner denied providing a history of a fall in March and testified that he consistently told Dr. Williams that he fell in November. (T. 27) Dr. Williams reported right elbow exam findings including swelling and tenderness to palpation over the medial epicondyle; full range of motion; increased pain with resisted ring finger flexion; no subluxation of the ulnar nerve, negative elbow flexion

test and Tinel's at the cubital tunnel; no focal neurological deficits and 2+ radial and ulnar pulses with good capillary refill throughout his fingers. (PX #3 p. 12) Dr. Williams' note does not reference any complaints of popping or locking of the elbow. (PX #3, pp.12-13) Dr. Williams recommended an MRI of the right elbow. (*Id*.) The MRI was conducted on April 17, 2020. (PX #3 p. 6-7)

Petitioner returned to Dr. Williams on April 27, 2020 to discuss the results of his April 17, 2020 MRI. (PX #3 p. 4-5) Dr. Williams' office note describes the findings of the MRI as follows: lateral collateral ligament and common extensory tendon reconstruction; chronic tendinopathy and scarring present; dystrophic mineralization is noted within the common extensor tendon origin; interstitial fraying and microtearing is contributory; no full thickness tear or rupture demonstrated; irregularity posterolateral humeral epicondyle largely is developmental; mild epicondylitis; common flexor tendinopathy, pertendinitis, and interstitial microtearing: and a slit-like interstitial tenoosseous concealed tear occupies up to 20% of the tendon origin. (PX #3 p. 5) Dr. Williams provided education to Petitioner regarding his condition and the possible treatment options. (*Id.*) Dr. Williams' note indicates that he advised Petitioner, "rest of the arm is the most important factor in healing." (*Id*.) Furthermore, Dr. Williams' office note reflects, "Surgery is rarely indicated, and is usually reserved for patients that have failed conservative treatment." (PX #3 p. 5) Dr. Williams indicates that Petitioner wanted to proceed with surgery. (*Id.*)

Petitioner admitted to prior conditions involving his right elbow and wrist. He admitted that he had previously been diagnosed with cubital tunnel syndrome of the right arm and had cubital tunnel surgery. (T.51) He also had been diagnosed with carpal tunnel syndrome of the right wrist and had carpal tunnel surgery. (T.51) Respondent admitted into evidence documentation of four prior settlements of workers' compensation claims involving the right hand and right arm. (*See* RX #2, RX #3, RX #4, RX #5) Petitioner testified that he had been employed as a Machinist and Inspector for Caterpillar for over 36 years. (T.52)

On July 7, 2020, Petitioner was examined at the request of the Respondent by Dr. Sam Biafora. (*See* RX #1) Petitioner testified that he was truthful and honest with Dr. Biafora during the examination. (T.56) Petitioner admitted that he told Dr. Biafora that he initially had right wrist pain which ultimately resolved. (T. 56) Petitioner also admitted that he told Dr. Biafora that he initially had right elbow pain, but then it ultimately resolved. (T.56) Dr. Biafora testified that

Petitioner reported his wrist and elbow pain began to "act up" one and a half to two months later. (RX #1, p.10) Dr. Biafora also testified that Petitioner reported the numbness in tingling in the small and ring fingers of the right hand began about a month prior to the date of his exam, and that he had the same symptoms in the fingers of the left hand. (RX #1, pp.12-13)

In his deposition, Dr. Biafora described his process for taking a history from the Petitioner. (RX #1, pp.32-33) Dr. Biafora testified that the history section of his report came directly from the Petitioner and he is "100% confident" it is consistent with the history he was provided. (RX #1, p.33) Notably, that history does not include any reference to Petitioner having problems with his wrist or elbow "locking" or "popping" in the two months following his work place incidents. Petitioner admitted that he told Dr. Biafora that his pain would increase when using a chainsaw at home. (T.56) Dr. Baifora indicated that Petitioner told him his wrist complaints "come and go." (RX #1, p.13)

Dr. Biafora opined that Petitioner's right elbow condition was not causally related to his workplace accident. (RX #1, p.20) He did not believe it was consistent for Petitioner to have pain immediately following the accidents that resolved completely for a period of a couple of months and then resumed. (RX #1, p.21) Dr. Biafora could not identify a specific diagnosis involving Petitioner's right wrist but did not believe Petitioner exhibited symptoms of carpal tunnel syndrome at the time of his exam. (RX #1, pp.21-22, 27-28)

Petitioner returned to Dr. Williams on August 20, 2020 reporting right elbow pain ongoing since a fall at work while pulling a garbage can out of a truck in November 2019. (PX #3 p. 2) Petitioner also described an accident occurring two days prior to the foregoing fall where he slipped and fell on an outstretched hand while retrieving salt. (*Id.*) Petitioner reported pain worsening with elbow movements, particularly those requiring wrist flexion or lifting with the affected hand. (*Id.*) Petitioner described pain radiating into the forearm and hand associated with swelling and weakness. (*Id.*) Petitioner reported numbness and tingling over the past two months in all fingers. (PX #3 p. 2) Dr. Williams noted a positive Tinels at the carpal tunnel, Phalens test and median nerve compression test. (*Id.*) Dr. Williams reported swelling and tenderness over the medial epicondyle. (*Id.*) Dr. Williams diagnosed right medial epicondylitis and right carpal tunnel syndrome. (*Id.*) Dr. Williams' note indicated that Petitioner wished to proceed with an EMG of the right upper extremity. (PX #3 p. 2) Dr. Williams provided a causation opinion in his office

note relating Petitioner's right elbow and hand symptoms to the falls in November 2019 and indicating surgery was indicated based on failure of nonoperative treatment. (PX #3 p. 3)

Dr. Williams testified via evidence deposition. (PX #4) He opined that Petitioner's conditions of ill-being of the right wrist and right elbow were causally related to his workplace accidents, however, he could not specifically identify which accident resulted in his condition. (PX #4, pp.13, 15) Dr. Williams testified that Petitioner's MRI of the elbow showed a tear at the attachment of the tendon to the bone. (PX #4 p. 9) On cross-examination, he admitted that the MRI did not demonstrate whether the tear was related to a distinct trauma as opposed to overuse. (PX #4, pp.23-24) Dr. Williams testified that Petitioner told him in August 2020 that his complaint of numbness and tingling in the right hand developed over the prior two months. (PX #4, p.24) Dr. Williams described these complaints as "new findings". (PX #4, p.11) Dr. Williams admitted that it was more difficult, based on that timeline, to establish causation between the slip and fall and Petitioner's development of carpal tunnel complaints. (PX #4, p.25)

Dr. Williams' recommendation for surgery was based on a failure of non-operative treatment. (PX #3, p.3) Petitioner testified that he attempted home exercises but could not recall the nature of the exercises. (T.32, 52) He believes he did the exercises in April, but not thereafter. (T.52-53) He also admitted that no other conservative treatment such as bracing had been attempted. (T.53) In his written notes, Dr. Williams advised that surgery is "rarely indicated" for Petitioner's condition of ill-being. (PX #3, p.5) However, he testified that Petitioner opted for surgical intervention by April 27, 2020. (PX #4, p.10)

Petitioner testified that he continues to experience tenderness in his right elbow. (T.31) He stated that if he moves it the wrong way it hurts. (*Id.*) Petitioner described his right wrist catching while he is driving and having to pop it to free it up. (T.31) He also described tingling into his fingers. (T.32) Petitioner denied any of these problems prior to his November 2019 accidents. (T.32) Petitioner testified that he wants to proceed with the surgery if it is authorized. (T.37)

CONCLUSIONS OF LAW

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATED TO (F) IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS THE FOLLOWING:

Pursuant to the stipulation sheets, which were admitted into evidence as Arbitrator's Exhibit #1, there is a no dispute whether Petitioner sustained accidental injuries arising out of and in the course of his employment with Respondent on November 12, 2019 and November 14, 2019. However, Respondent disputes that Petitioner's current conditions of ill-being are causally related to the workplace accidents on November 12, 2019 and November 14, 2019.

The Arbitrator notes that Petitioner did not seek any medical treatment for his injuries for nearly five months following the November 12, 2019 and 14, 2019 accidents. (Tr. pp. 23, 39) Petitioner continued to perform his regular work duties following his work accidents. (T. 40) Petitioner's testimony regarding his complaints is somewhat inconsistent with other evidence presented at arbitration. When describing the November 12, 2019 fall, Petitioner initially testified that he "had kind of a shock" and then the pain was gone. (T.18) Upon further questioning, Petitioner testified to having an immediate onset of pain in his right hand and thereafter experiencing locking of his wrist and joint pain. (T.19) Similarly, regarding the slip and fall on November 14, 2019, Petitioner testified to an immediate onset of right elbow pain which lasted only a few days. (T.20) Upon further questioning, Petitioner testified to ongoing locking and tenderness in his right elbow. (T.21)

As outlined above, Petitioner did obtain medical treatment within a month of his workplace accidents, albeit for an unrelated medical problem involving his opposite hand. On December 19, 2019, Petitioner saw Dr. James Williams for treatment related to a basal cell carcinoma of his left ring finger. (PX #3) No mention is made in the December 19, 2019 medical records of either fall or any complaints related to his right wrist or elbow. (PX #3 pp. 28, 29) It is understandable that Petitioner did not mention his work injuries during this treatment due to the nature of the condition for which he was receiving medical attention. However, when Petitioner presented to Dr. Williams on April 6, 2020, he only provided a history of falling at work on November 12, 2019 and sought care only regarding his right wrist. (PX #3 p. 17) Contrary to Petitioner's testimony at arbitration, Dr. Williams April 6, 2020 office notes do not reference complaints of locking, popping or catching in the wrist. (T. 26, PX #3) Dr. Williams noted tenderness to palpation of the wrist and hand, pain with motion, minimal swelling and Petitioner's distal neurovascular status was intact. (PX #3 p. 14) No complaints were noted regarding the right elbow during the April 6, 2020 office visit. (PX #3 p. 14) Petitioner was diagnosed with osteoarthritis of the right wrist and Dr. Williams

recommended "doing nothing." (*Id.*) When he saw Dr. Williams a week later, Petitioner reported pain in the elbow sometimes radiating into the forearm and hand associated with swelling and weakness. (PX #3 p. 12) Again, contrary to his testimony at arbitration, there was no reference to complaints of popping or locking of the elbow. (T.21, PX #3)

Petitioner was examined at the behest of the Respondent by Dr. Sam Biafora on July 7, 2020. (*See* RX #1) Petitioner testified that he was truthful and honest with Dr. Biafora during the examination. (T.56) Petitioner admitted that he told Dr. Biafora that he initially had right wrist pain which ultimately resolved. (T. 56) Petitioner also admitted that he told Dr. Biafora that he initially had right elbow pain, but then it ultimately resolved. (T.56) Dr. Biafora testified that Petitioner reported his wrist and elbow pain began to "act up" one and a half to two months later. (RX #1, p.10) Dr. Biafora also testified that Petitioner reported the numbness in tingling in the small and ring fingers of the right hand which began about a month prior to the date of his exam, and that he had the same symptoms in the fingers of the left hand. (RX #1, pp.12-13) Petitioner admitted that he told Dr. Biafora that his pain would increase when using a chainsaw at home. (T.56) Dr. Biafora indicated that Petitioner told him his wrist complaints "come and go." (RX #1, p.13)

Dr. Biafora opined that Petitioner's right elbow condition was not causally related to his workplace accident. (RX #1, p.20) He did not believe it was consistent for Petitioner to have pain immediately following the accidents that resolved completely for a period of a couple of months and then resumed. (RX #1, p.21) Dr. Biafora could not identify a specific diagnosis involving Petitioner's right wrist but did not believe Petitioner exhibited symptoms of carpal tunnel syndrome at the time of his exam. (RX #1, pp.21-22, 27-28)

Dr. Williams ultimately diagnosed Petitioner with medial epicondylitis of the right arm and carpal tunnel syndrome of the right wrist/hand. (*See* PX #3 p. 2) Dr. Williams opined that both conditions were causally related to Petitioner's workplace accidents and recommended surgery. (PX #3 p. 3, PX #4, p.13) Notably, Dr. Williams could not specify which of the two falls caused Petitioner's condition of ill-being. (PX #4 p. 15) Dr. Williams' initial medical notes do not provide any opinion on the issue of causation. (*See* PX #3 pp. 4-29) In fact, Petitioner's wrist condition was initially diagnosed as osteoarthritis and Dr. Williams recommended no treatment. (PX #3 p.14) The Arbitrator observes that Dr. Williams' August 20, 2020 office note addressing causation

comes after Dr. Biafora's narrative opinion led to a dispute on the issue of causation. (PX #3 p.3, RX #1 Depo Ex. 2)

Dr. Williams also admitted that medial epicondylitis is most frequently an "attritional" rather than traumatic condition. (PX #4, p.21-22) Likewise, Dr. Biafora testified that medial epicondylitis typically has a non-traumatic degenerative onset. (RX #1, p.19) Dr. Biafora conceded that medial epicondylitis can sometimes be caused by a direct blow to the elbow. (RX #1, p.26) However, a finding of traumatic medial epicondylitis would rely on persistent pain following the event. (RX #1, p.19-20)

Dr. Williams admitted that the timeline of the development of Petitioner's carpal tunnel symptoms was problematic. (PX #4, pp. 25) In his evidence deposition, Dr. Williams admitted that on August 20, 2020, he was given a history that Petitioner's numbness and tingling had developed over the past two months. (PX #4 p. 24 When asked whether that affected his causation opinion, Dr. Williams he testified, "it makes it more difficult, sir, as obviously it's a significant period of time from the time of injury until the time of onset." (PX #4, p. 25) Dr. Biafora testified that a determination of carpal tunnel syndrome relating to trauma would depend upon the development of symptoms within a few days to a couple of weeks after the trauma. (RX #1, p.32)

Petitioner advised Dr. Biafora that his symptoms regarding numbness and tingling in his small and ring finger began about a month prior to the examination, which coincides with the history given to Dr. Williams, and points to an onset in June 2020. (RX #1 p. 12) It is noteworthy that Petitioner also reported having the same symptoms in the left hand. (RX #1 p. 13) There is no indication that the left hand was injured in either workplace accident. In his history to Dr. Biafora, Petitioner described right wrist complaints that "come and go," and was unable to describe the frequency or what type of activity exacerbated his symptoms. (*Id.*) Petitioner complained of periodic elbow pain that increased with forceful use such as using a chainsaw at home. (RX #1 pp. 12-13)

The Arbitrator finds Dr. Biafora's testimony more persuasive than that provided by Dr. Williams. The inconsistencies in Petitioner's testimony and the significant interval before seeking any medical treatment lends additional credence to Dr. Biafora's opinions. Wherefore, the Arbitrator finds Petitioner has failed to establish that his current right wrist and right elbow complaints are causally related to the November 12, 2019 and/or November 14, 2019 accidents.

As a consequence, the Arbitrator declines to award benefits.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATED TO (J) WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY, THE ARBITRATOR FINDS THE FOLLOWING:

As set forth in the preceding paragraphs, Petitioner failed to prove a causal relationship between his right wrist and right elbow conditions and his work accidents on November 12, 2019 and November 14, 2019. Therefore, the Arbitrator declines to find Petitioner's medical treatment and medical bills reasonable and necessary. The Arbitrator denies the medical bills in association with both claims.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATED TO (K) IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS THE FOLLOWING:

As set forth above, the Arbitrator has found that Petitioner has failed to meet his burden of proving that his current right wrist and right elbow conditions are causally related to his workplace accidents. Consequently, the Arbitrator finds Petitioner's need for prospective medical care not causally related to either accident and declines to award prospective medical care in association with either claim.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC011217
Case Name	SEA, ROBERT v. CITY OF PEKIN
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0031
Number of Pages of Decision	15
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Damon Young
Respondent Attorney	John Fassola

DATE FILED: 1/24/2022

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT SEA,

Petitioner,

vs. NO: 20 WC 11217

CITY OF PEKIN,
TRANSPORTATION DEPARTMENT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, and prospective medical 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 Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 7, 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.

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.

January 24, 2022

o- 1/11/21
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	20WC011217
Case Name	SEA,ROBERT v. CITY OF PEKIN
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Damon Young
Respondent Attorney	John Fassola

DATE FILED: 5/7/2021

INTEREST RATE FOR THE WEEK OF MAY 4, 2021 0.03%

/s/ Bradley Gillespie, Arbitrator
Signature

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
19(b)

ROBERT SEA
Employee/Petitioner

v.

CITY OF PEKIN
Employer/Respondent

Case # **20** WC **11217**

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 **March 18, 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, **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 $; the average weekly wage was $**506.50**.

On the date of accident, Petitioner was **66** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**0.00** 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 that Petitioner has failed to prove his current condition of ill-being is causally related to his work injury. Therefore, the Arbitrator does not award medical benefits claimed by Petitioner for treatment. *See Addendum*.

Likewise, the Arbitrator denies prospective medical treatment. *See Addendum*.

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* **MAY 7, 2021**

Signature of Arbitrator

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT SEA, Petitioner, v. CITY OF PEKIN, Respondent.	)))))))))	Case Number(s) 20 WC 11217

ADDENDUM TO MEMORANDUM OF ARBITRATION DECISION

FINDINGS OF FACT

Petitioner filed Applications for Adjustment of Claim for two dates of loss, November 12, 2019 and November 14, 2019. (*See* PX #1 & PX #2 respectively) The cases were consolidated for trial on Petitioner's verbal motion without objection by Respondent. This Addendum will address Findings of Fact and Conclusions of Law for both claims.

Petitioner testified that he was employed by the City of Pekin Transportation Department as a bus driver on November 12, 2019. (T.16) He described his job duties to include driving a bus and other activities as needed such as spreading salt. (T.16)

Petitioner testified that on November 12, 2019, he was walking to the tire shed to retrieve salt to spread on the sidewalks when he slipped and fell, landing on his right hand, with his palm down and fingers extended. (T.17) He testified that he felt kind of a shock and then it was gone. (T.18) He continued his regular work activities for the remainder of the day. (T.38) On further questioning from his attorney, he testified that the pain in his wrist lasted a couple of days. (T.19) Subsequently, his wrist would lock up and he would sometimes have shooting pains down his right arm. (T.19)

Petitioner testified that on November 14, 2019, he was taking flags down from around City Hall, and placing them into a garbage can in the back of his truck. (T.20) While removing the flags from the back of the truck, he slipped on black ice, falling on his right elbow. (T.20) Petitioner testified that he experienced an immediate onset of pain in the right elbow that lasted "a few days." (T.20) He described locking and tenderness in his elbow after the pain subsided. (T.21) Petitioner continued to perform his regular work activities after the second accident. (T.40)

Petitioner testified that his pain increased with activity. (T.21) He explained that he was off work for the Thanksgiving Holiday, both deer seasons, and the Christmas break shortly after

the two falls. (T.21) Petitioner estimated being off work a total of 18 days in November and December. (T.21) On the days he worked, he performed his regular job duties. (T.42)

Petitioner testified that he was able to rest his wrist and elbow while not working. (T.23) On cross examination, he admitted hunting during both deer seasons while off work. (T.41) Petitioner alleged that hunting simply involved sitting in a tree stand. (*Id*.) He acknowledged carrying a gun and backpack to his tree stand and successfully harvesting a deer on at least one occasion. (T.41)

Petitioner testified that he saw Dr. James Williams on December 19, 2019 regarding skin cancer involving his left ring finger. (T.23-24) He admitted that he did not tell Dr. Williams about his problems with the right wrist or his right elbow at that time. (T.45-46) Petitioner underwent surgery for left ring finger basal cell carcinoma on January 21, 2020. (PX #3) Petitioner returned to Dr. Williams on February 3, 2020 for follow up on his left ring finger. (PX #3) Petitioner admitted he did not discuss his right wrist or right elbow with Dr. Williams during this appointment. (T.46)

Petitioner testified that he went to his supervisor, Robert Henderson, at some point in January and told him he wanted to seek medical attention for his hand, wrist and elbow. (T.25) Eventually, he was authorized to seek treatment. (T. 26) Petitioner presented to Dr. Williams on April 6, 2020 reporting right wrist pain, numbness and tingling. ((PX #3, T.26) Petitioner testified that his wrist would lock up, pop and catch. (T.26) Dr. Williams' physical exam findings from April 6, 2020, show tenderness to palpation of the wrist and hand, pain with motion, minimal swelling and distal neurovascular status intact. (PX #3, pp.14-15) There is no mention of locking, popping or catching of the wrist and no right elbow symptoms or complaints were noted. (*Id*.) Petitioner was diagnosed with osteoarthritis of the right wrist. (PX #3, pp.14-15) Dr. Williams did not recommend any treatment at that time. (*Id.*)

Petitioner returned to Dr. Williams on April 13, 2020. (T. 27) On this occasion, he was evaluated for right elbow pain ongoing since a fall at work in March. (PX #3 p.12, T. 27) Petitioner denied providing a history of a fall in March and testified that he consistently told Dr. Williams that he fell in November. (T. 27) Dr. Williams reported right elbow exam findings including swelling and tenderness to palpation over the medial epicondyle; full range of motion; increased pain with resisted ring finger flexion; no subluxation of the ulnar nerve, negative elbow flexion

test and Tinel's at the cubital tunnel; no focal neurological deficits and 2+ radial and ulnar pulses with good capillary refill throughout his fingers. (PX #3 p. 12) Dr. Williams' note does not reference any complaints of popping or locking of the elbow. (PX #3, pp.12-13) Dr. Williams recommended an MRI of the right elbow. (*Id*.) The MRI was conducted on April 17, 2020. (PX #3 p. 6-7)

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Petitioner admitted to prior conditions involving his right elbow and wrist. He admitted that he had previously been diagnosed with cubital tunnel syndrome of the right arm and had cubital tunnel surgery. (T.51) He also had been diagnosed with carpal tunnel syndrome of the right wrist and had carpal tunnel surgery. (T.51) Respondent admitted into evidence documentation of four prior settlements of workers' compensation claims involving the right hand and right arm. (*See* RX #2, RX #3, RX #4, RX #5) Petitioner testified that he had been employed as a Machinist and Inspector for Caterpillar for over 36 years. (T.52)

On July 7, 2020, Petitioner was examined at the request of the Respondent by Dr. Sam Biafora. (*See* RX #1) Petitioner testified that he was truthful and honest with Dr. Biafora during the examination. (T.56) Petitioner admitted that he told Dr. Biafora that he initially had right wrist pain which ultimately resolved. (T. 56) Petitioner also admitted that he told Dr. Biafora that he initially had right elbow pain, but then it ultimately resolved. (T.56) Dr. Biafora testified that

Petitioner reported his wrist and elbow pain began to "act up" one and a half to two months later. (RX #1, p.10) Dr. Biafora also testified that Petitioner reported the numbness in tingling in the small and ring fingers of the right hand began about a month prior to the date of his exam, and that he had the same symptoms in the fingers of the left hand. (RX #1, pp.12-13)

In his deposition, Dr. Biafora described his process for taking a history from the Petitioner. (RX #1, pp.32-33) Dr. Biafora testified that the history section of his report came directly from the Petitioner and he is "100% confident" it is consistent with the history he was provided. (RX #1, p.33) Notably, that history does not include any reference to Petitioner having problems with his wrist or elbow "locking" or "popping" in the two months following his work place incidents. Petitioner admitted that he told Dr. Biafora that his pain would increase when using a chainsaw at home. (T.56) Dr. Baifora indicated that Petitioner told him his wrist complaints "come and go." (RX #1, p.13)

Dr. Biafora opined that Petitioner's right elbow condition was not causally related to his workplace accident. (RX #1, p.20) He did not believe it was consistent for Petitioner to have pain immediately following the accidents that resolved completely for a period of a couple of months and then resumed. (RX #1, p.21) Dr. Biafora could not identify a specific diagnosis involving Petitioner's right wrist but did not believe Petitioner exhibited symptoms of carpal tunnel syndrome at the time of his exam. (RX #1, pp.21-22, 27-28)

Petitioner returned to Dr. Williams on August 20, 2020 reporting right elbow pain ongoing since a fall at work while pulling a garbage can out of a truck in November 2019. (PX #3 p. 2) Petitioner also described an accident occurring two days prior to the foregoing fall where he slipped and fell on an outstretched hand while retrieving salt. (*Id.*) Petitioner reported pain worsening with elbow movements, particularly those requiring wrist flexion or lifting with the affected hand. (*Id.*) Petitioner described pain radiating into the forearm and hand associated with swelling and weakness. (*Id.*) Petitioner reported numbness and tingling over the past two months in all fingers. (PX #3 p. 2) Dr. Williams noted a positive Tinels at the carpal tunnel, Phalens test and median nerve compression test. (*Id.*) Dr. Williams reported swelling and tenderness over the medial epicondyle. (*Id.*) Dr. Williams diagnosed right medial epicondylitis and right carpal tunnel syndrome. (*Id.*) Dr. Williams' note indicated that Petitioner wished to proceed with an EMG of the right upper extremity. (PX #3 p. 2) Dr. Williams provided a causation opinion in his office

note relating Petitioner's right elbow and hand symptoms to the falls in November 2019 and indicating surgery was indicated based on failure of nonoperative treatment. (PX #3 p. 3)

Dr. Williams testified via evidence deposition. (PX #4) He opined that Petitioner's conditions of ill-being of the right wrist and right elbow were causally related to his workplace accidents, however, he could not specifically identify which accident resulted in his condition. (PX #4, pp.13, 15) Dr. Williams testified that Petitioner's MRI of the elbow showed a tear at the attachment of the tendon to the bone. (PX #4 p. 9) On cross-examination, he admitted that the MRI did not demonstrate whether the tear was related to a distinct trauma as opposed to overuse. (PX #4, pp.23-24) Dr. Williams testified that Petitioner told him in August 2020 that his complaint of numbness and tingling in the right hand developed over the prior two months. (PX #4, p.24) Dr. Williams described these complaints as "new findings". (PX #4, p.11) Dr. Williams admitted that it was more difficult, based on that timeline, to establish causation between the slip and fall and Petitioner's development of carpal tunnel complaints. (PX #4, p.25)

Dr. Williams' recommendation for surgery was based on a failure of non-operative treatment. (PX #3, p.3) Petitioner testified that he attempted home exercises but could not recall the nature of the exercises. (T.32, 52) He believes he did the exercises in April, but not thereafter. (T.52-53) He also admitted that no other conservative treatment such as bracing had been attempted. (T.53) In his written notes, Dr. Williams advised that surgery is "rarely indicated" for Petitioner's condition of ill-being. (PX #3, p.5) However, he testified that Petitioner opted for surgical intervention by April 27, 2020. (PX #4, p.10)

Petitioner testified that he continues to experience tenderness in his right elbow. (T.31) He stated that if he moves it the wrong way it hurts. (*Id.*) Petitioner described his right wrist catching while he is driving and having to pop it to free it up. (T.31) He also described tingling into his fingers. (T.32) Petitioner denied any of these problems prior to his November 2019 accidents. (T.32) Petitioner testified that he wants to proceed with the surgery if it is authorized. (T.37)

CONCLUSIONS OF LAW

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATED TO (F) IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS THE FOLLOWING:

Pursuant to the stipulation sheets, which were admitted into evidence as Arbitrator's Exhibit #1, there is a no dispute whether Petitioner sustained accidental injuries arising out of and in the course of his employment with Respondent on November 12, 2019 and November 14, 2019. However, Respondent disputes that Petitioner's current conditions of ill-being are causally related to the workplace accidents on November 12, 2019 and November 14, 2019.

The Arbitrator notes that Petitioner did not seek any medical treatment for his injuries for nearly five months following the November 12, 2019 and 14, 2019 accidents. (Tr. pp. 23, 39) Petitioner continued to perform his regular work duties following his work accidents. (T. 40) Petitioner's testimony regarding his complaints is somewhat inconsistent with other evidence presented at arbitration. When describing the November 12, 2019 fall, Petitioner initially testified that he "had kind of a shock" and then the pain was gone. (T.18) Upon further questioning, Petitioner testified to having an immediate onset of pain in his right hand and thereafter experiencing locking of his wrist and joint pain. (T.19) Similarly, regarding the slip and fall on November 14, 2019, Petitioner testified to an immediate onset of right elbow pain which lasted only a few days. (T.20) Upon further questioning, Petitioner testified to ongoing locking and tenderness in his right elbow. (T.21)

As outlined above, Petitioner did obtain medical treatment within a month of his workplace accidents, albeit for an unrelated medical problem involving his opposite hand. On December 19, 2019, Petitioner saw Dr. James Williams for treatment related to a basal cell carcinoma of his left ring finger. (PX #3) No mention is made in the December 19, 2019 medical records of either fall or any complaints related to his right wrist or elbow. (PX #3 pp. 28, 29) It is understandable that Petitioner did not mention his work injuries during this treatment due to the nature of the condition for which he was receiving medical attention. However, when Petitioner presented to Dr. Williams on April 6, 2020, he only provided a history of falling at work on November 12, 2019 and sought care only regarding his right wrist. (PX #3 p. 17) Contrary to Petitioner's testimony at arbitration, Dr. Williams April 6, 2020 office notes do not reference complaints of locking, popping or catching in the wrist. (T. 26, PX #3) Dr. Williams noted tenderness to palpation of the wrist and hand, pain with motion, minimal swelling and Petitioner's distal neurovascular status was intact. (PX #3 p. 14) No complaints were noted regarding the right elbow during the April 6, 2020 office visit. (PX #3 p. 14) Petitioner was diagnosed with osteoarthritis of the right wrist and Dr. Williams

recommended "doing nothing." (*Id.*) When he saw Dr. Williams a week later, Petitioner reported pain in the elbow sometimes radiating into the forearm and hand associated with swelling and weakness. (PX #3 p. 12) Again, contrary to his testimony at arbitration, there was no reference to complaints of popping or locking of the elbow. (T.21, PX #3)

Petitioner was examined at the behest of the Respondent by Dr. Sam Biafora on July 7, 2020. (*See* RX #1) Petitioner testified that he was truthful and honest with Dr. Biafora during the examination. (T.56) Petitioner admitted that he told Dr. Biafora that he initially had right wrist pain which ultimately resolved. (T. 56) Petitioner also admitted that he told Dr. Biafora that he initially had right elbow pain, but then it ultimately resolved. (T.56) Dr. Biafora testified that Petitioner reported his wrist and elbow pain began to "act up" one and a half to two months later. (RX #1, p.10) Dr. Biafora also testified that Petitioner reported the numbness in tingling in the small and ring fingers of the right hand which began about a month prior to the date of his exam, and that he had the same symptoms in the fingers of the left hand. (RX #1, pp.12-13) Petitioner admitted that he told Dr. Biafora that his pain would increase when using a chainsaw at home. (T.56) Dr. Biafora indicated that Petitioner told him his wrist complaints "come and go." (RX #1, p.13)

Dr. Biafora opined that Petitioner's right elbow condition was not causally related to his workplace accident. (RX #1, p.20) He did not believe it was consistent for Petitioner to have pain immediately following the accidents that resolved completely for a period of a couple of months and then resumed. (RX #1, p.21) Dr. Biafora could not identify a specific diagnosis involving Petitioner's right wrist but did not believe Petitioner exhibited symptoms of carpal tunnel syndrome at the time of his exam. (RX #1, pp.21-22, 27-28)

Dr. Williams ultimately diagnosed Petitioner with medial epicondylitis of the right arm and carpal tunnel syndrome of the right wrist/hand. (*See* PX #3 p. 2) Dr. Williams opined that both conditions were causally related to Petitioner's workplace accidents and recommended surgery. (PX #3 p. 3, PX #4, p.13) Notably, Dr. Williams could not specify which of the two falls caused Petitioner's condition of ill-being. (PX #4 p. 15) Dr. Williams' initial medical notes do not provide any opinion on the issue of causation. (*See* PX #3 pp. 4-29) In fact, Petitioner's wrist condition was initially diagnosed as osteoarthritis and Dr. Williams recommended no treatment. (PX #3 p.14) The Arbitrator observes that Dr. Williams' August 20, 2020 office note addressing causation

comes after Dr. Biafora's narrative opinion led to a dispute on the issue of causation. (PX #3 p.3, RX #1 Depo Ex. 2)

Dr. Williams also admitted that medial epicondylitis is most frequently an "attritional" rather than traumatic condition. (PX #4, p.21-22) Likewise, Dr. Biafora testified that medial epicondylitis typically has a non-traumatic degenerative onset. (RX #1, p.19) Dr. Biafora conceded that medial epicondylitis can sometimes be caused by a direct blow to the elbow. (RX #1, p.26) However, a finding of traumatic medial epicondylitis would rely on persistent pain following the event. (RX #1, p.19-20)

Dr. Williams admitted that the timeline of the development of Petitioner's carpal tunnel symptoms was problematic. (PX #4, pp. 25) In his evidence deposition, Dr. Williams admitted that on August 20, 2020, he was given a history that Petitioner's numbness and tingling had developed over the past two months. (PX #4 p. 24 When asked whether that affected his causation opinion, Dr. Williams he testified, "it makes it more difficult, sir, as obviously it's a significant period of time from the time of injury until the time of onset." (PX #4, p. 25) Dr. Biafora testified that a determination of carpal tunnel syndrome relating to trauma would depend upon the development of symptoms within a few days to a couple of weeks after the trauma. (RX #1, p.32)

Petitioner advised Dr. Biafora that his symptoms regarding numbness and tingling in his small and ring finger began about a month prior to the examination, which coincides with the history given to Dr. Williams, and points to an onset in June 2020. (RX #1 p. 12) It is noteworthy that Petitioner also reported having the same symptoms in the left hand. (RX #1 p. 13) There is no indication that the left hand was injured in either workplace accident. In his history to Dr. Biafora, Petitioner described right wrist complaints that "come and go," and was unable to describe the frequency or what type of activity exacerbated his symptoms. (*Id.*) Petitioner complained of periodic elbow pain that increased with forceful use such as using a chainsaw at home. (RX #1 pp. 12-13)

The Arbitrator finds Dr. Biafora's testimony more persuasive than that provided by Dr. Williams. The inconsistencies in Petitioner's testimony and the significant interval before seeking any medical treatment lends additional credence to Dr. Biafora's opinions. Wherefore, the Arbitrator finds Petitioner has failed to establish that his current right wrist and right elbow complaints are causally related to the November 12, 2019 and/or November 14, 2019 accidents.

As a consequence, the Arbitrator declines to award benefits.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATED TO (J) WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY, THE ARBITRATOR FINDS THE FOLLOWING:

As set forth in the preceding paragraphs, Petitioner failed to prove a causal relationship between his right wrist and right elbow conditions and his work accidents on November 12, 2019 and November 14, 2019. Therefore, the Arbitrator declines to find Petitioner's medical treatment and medical bills reasonable and necessary. The Arbitrator denies the medical bills in association with both claims.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATED TO (K) IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS THE FOLLOWING:

As set forth above, the Arbitrator has found that Petitioner has failed to meet his burden of proving that his current right wrist and right elbow conditions are causally related to his workplace accidents. Consequently, the Arbitrator finds Petitioner's need for prospective medical care not causally related to either accident and declines to award prospective medical care in association with either claim.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC033518
Case Name	JORDAN, KENNY v. SONOMA UNDERGROUND
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0032
Number of Pages of Decision	14
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Joseph P. Brancky
Respondent Attorney	Kenneth Smith

DATE FILED: 1/24/2022

/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

Kenny Jordan,

Petitioner,

vs. No. 18 WC 33518

Sonoma Underground,

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, notice, causal connection, medical expenses, temporary total disability, permanent partial disability and credit for Blue Cross Blue Shield payments, 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 underlying facts of this claim were set forth in the Arbitrator's Decision which is incorporated herein, and the Arbitrator's findings of fact are adopted. As relevant to the permanent partial disability award, the Commission notes that, while Petitioner was working on August 28, 2018, he sustained an injury to his right index finger which affected his whole hand. In affirming the Arbitrator's permanency award of 15% loss of use of the right hand, the Commission has considered the five factors enumerated in §8.1b(b) of the Act, and assigns the following weight and relevance to them.

With regard to factor (i), disability impairment rating, neither party offered an AMA impairment rating into evidence. Thus, the Commission assigns no weight to this factor.

With regard to factor (ii), the employee's occupation, the Commission finds that Petitioner testified that he no longer works for Respondent, and is now employed by Baldridge Electric as a journeyman lineman. In his job, he uses his hands a lot to cut wires, thread bolts, turn nuts and

pull materials. Since his accident, he has had to use his left hand more, because he cannot grab objects as completely with his right hand. The Commission assigns some weight to this factor.

With regard to factor (iii), the employee's age, the Commission finds that Petitioner was 31 years old at the time of his accident. Since his release from care, he still experiences pain and symptoms in his right index finger and hand which he will likely have for the rest of his life. The Commission assigns significant weight to this factor.

With regard to factor (iv), future earning capacity, the Commission finds that no evidence was presented that would show Petitioner's injuries had any effect on his future earning capacity. Therefore, the Commission assigns no weight to this factor.

With regard to factor (v), evidence of disability corroborated by the treating records, the Commission finds that Petitioner sustained a significant laceration to the extensor tendon of his right index finger, which required surgical repair. During that surgery, a K-wire had to be placed in Petitioner's finger to hold it in a hyperextended position for six weeks while the injury healed. Petitioner still experiences pain and difficulty using his right hand to grasp, grip and use tools. His right hand function is challenging, and he is unable to close his hand completely into a fist. He can no longer box, a sport in which he was active prior to his accident. The Commission therefore assigns significant weight to this factor.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 3, 2021, is hereby affirmed and adopted.

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $37,700.00. 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.

January 24, 2022

MP/mcp
o-1/20/22
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	18WC033518
Case Name	JORDAN, KENNY v. SONOMA UNDERGROUND
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	Joseph P. Brancky
Respondent Attorney	Kenneth Smith

DATE FILED: 8/3/2021

THE INTEREST RATE FOR THE WEEK OF AUGUST 3, 2021 0.05%

/s/ Raychel Wesley, Arbitrator

Signature

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

KENNY JORDAN,
PETITIONER,
VS
SONOMA UNDERGROUND, 18 WC 33518
RESPONDENT.

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

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 May 4, 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 _____

Kenny Jordan v. Sonoma Underground
18 WC 33518

FINDINGS

On August 28, 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 $**58,916.00**; the average weekly wage was $**1,133.00**.

On the date of accident, Petitioner was **31** 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

Petitioner sustained accident injuries that arose out of and in the course of his employment on August 28, 2018.

Petitioner provided timely notice of the accident to Respondent.

Petitioner's current condition of ill-being is causally related to the August 28, 2018 accident.

Respondent is liable for all reasonable and necessary medical expenses related to the August 28, 2018 accident, including the unpaid services provided in Petitioner's Exhibits 2, 3, 5, 6, and 9.

Respondent shall pay Petitioner temporary total disability benefits of $755.33/week for 4 weeks, commencing 11/1/2018 through 11/28/18, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $679.80 /week for 30.75 weeks, because the injuries sustained caused the 15 % loss of the right hand , as provided in Section 8(e) of the Act

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

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

s/ Raychel Wesley

Signature of Arbitrator

AUGUST 3, 2021

STATEMENT OF FACTS

Kenny Jordan (hereinafter "Petitioner") worked for Sonoma Electric (hereinafter "Respondent") on August 28, 2018. (T. 14). He was employed as a T4 helper lineman through the International Brotherhood of Electrical Workers Local 9 in University Park. (T. 11). He had worked for Respondent for several months by that time. (T. 12). He testified Respondent is an electrical company, and part of their business involves installing shot spot sensors, which notify the police when a gun shot has been detected. (T. 13).

He testified Respondent is located in New Lenox, but he was required to travel from their warehouse to various locations in the Chicagoland area for work. (T. 14-15). He would pick up a bucket truck from the warehouse in the morning and drive off with an assistant to fill work orders as instructed by his supervisor, Mr. Timothy Baldridge (hereinafter "Mr. Baldridge"), who was also a member of Local 9. (T. 15, 111). The bucket truck would elevate the occupant to a height to perform job duties. (T. 16). Inside the truck were a mix of tools from the employer and from the union employees. (T. 17). Petitioner's job duties included securing shot spot sensors to poles and connecting them to electricity. (T. 14). Petitioner testified that handling work orders alone as a T4 helper was against Local 9 policy. (T. 103). The Local 9 bylaws require a foreman or journeyman on every job site. (T. 103). He testified a T4 helper is paid less than a journeyman or foreman. (T. 103). He explained that he was therefore supposed to be with a journeyman or foreman, as he was not yet qualified to perform all his job duties by himself. (T. 12). Petitioner testified Mr. Baldridge told him that if he had work injury he should call him right away. (T. 66).

Mr. Baldridge testified he was employed as a supervisor for Sonoma in August 2018, and his job duties included directing work and getting materials ready. (T. 111, 112). He was Petitioner's immediate supervisor. (T. 119). Mr. Baldridge helped get Petitioner into the union. (T. 112, 102). Mr. Baldridge confirmed that the installation work must be performed by a journeyman lineman or foreman per Respondent's contract with the union. (T. 129). Mr. Baldridge also explained that employees are instructed to report any accident immediately by calling their supervisor, and then to drive to a hospital. (T. 118). He testified Petitioner was to report any accident to him. (T. 119). Mr. Baldridge explained it would then be his responsibility, as the supervisor, to go through the chain of command to let the owners know of the accident. (T. 118-119). Mr. Baldridge did not recall Petitioner having any hand injury prior to August 28, 2018. (T. 133).

Bernard Powers (hereinafter "Mr. Powers") testified he is the president of Sonoma. (T. 149). He testified that when an employee is injured, the company policy is that they must access first aid, either onsite or with an ER visit, and also immediately contact their supervisor. (T. 152). He testified applying a bandage to a laceration immediately, and reporting the accident within an hour or two of the accident would be consistent with Respondent's policy. (T. 164, 165). He testified Petitioner's work for Respondent in August 2018 involved placing shot spot sensors under the direction of Mr. Baldridge. (T. 155).

Petitioner began his workday on August 28, 2018 by picking up his work truck from Respondent's warehouse at around 6:55am-7:00am. (T. 23-24). A timesheet confirms he was working that day and was paid for his usual eight-hour shift. (PX14). Petitioner picked up a work order from Mr. Baldridge's office, obtained supplies from the warehouse, and left with a co-worker, Cody Baldridge (hereinafter "Cody"). (T. 25). Cody is Mr. Baldridge's son. (T. 25). Petitioner and Cody traveled to the intersection of Homan and Madison in Chicago to install a shot spot sensor. (T. 26). Upon completing that job, they traveled to Chicago Equipment and Supply for their next job installing a shot spot sensor. (T. 27). Petitioner testified that his work on August 28, 2018 installing shot spot sensors would have been against union rules as there was no foreman or journeyman on site. (T. 103). Petitioner testified he did not want to get in trouble if it were known he violated his union rules by performing work without a foreman or journeyman present. (T. 104). Petitioner used the bucket truck to access

the roof of the building. (T. 29, PX13). Petitioner installed a shot spot sensor on a metal tripod. (T. 31). This involved using stainless steel banding to secure the sensor to the metal stand. (T. 31). Doing so required tin snips as part of the process, which were like heavy duty scissors to cut steel. (T. 31-33). While cutting the metal banding, Petitioner's right hand slipped and ran across a frayed piece of stainless steel banding, cutting it. (T. 34). He testified his finger immediately began bleeding and was "just limp." T. 36). Cody helped bandage Petitioner's cut. (T. 36). Petitioner testified he left Chicagoland Equipment and Supply around 11 am. (T. 33). He had more work orders to fill that day but was unable to continue because "my finger was hanging." (T. 73). Petitioner testified he called Mr. Baldridge at that time to report that he was injured and needed to go to the hospital. (T. 36, 39). Petitioner testified he was in work truck being driven by Cody when he called Mr. Baldridge to report the accident. (T. 76-77).

Mr. Baldridge confirmed 7 am was when Petitioner's workday would begin. (T. 144). He testified his son Cody is a college student who would work for Respondent during the summer as an untrained helper. (T. 124). Mr. Baldridge confirmed Petitioner was working with Cody on the sensors at the time of the accident. (T. 127, 128, 135). Mr. Baldridge testified he has records showing exactly where Petitioner was working that day, but Respondent did not present it as evidence. (T. 136-138). Mr. Baldridge confirmed Petitioner's work involved placing materials on rooftops. (T. 128). Mr. Baldridge testified he spoke with "lots of people" on the phone that day, but could not recall if he spoke with Petitioner on the phone on the date of the accident. (T. 135, 136).

Petitioner drove to the Silver Cross Emergency Room at approximately noon, as it was the closest ER to Respondent. (T. 40, 41). He was admitted to the Silver Cross Hospital Emergency Room on August 28, 2018 with a diagnosis of a right index finger laceration and "civilian activity done for income or pay." (PX1 at 9). He was noted to have arrived there at 12:34 pm. (PX1 at 12). His "Chief Complaint" taken at 12:41pm was "cut 2nd r finger on banding," and a "History of Present Illness" taken at that time noted the onset for just prior to arrival and "[t]he location where the incident occurred was at work." (PX1 at 15). His finger was noted to be bleeding. (PX1 at 15). He was given sutures to repair the finger laceration. (PX1 at 16). He was prescribed Tylenol 3 and Keflex, and was advised to see plastic surgeon Dr. Alan Chen. (PX1 at 13). It was noted that Dr. Chen wanted Petitioner to see him immediately. (PX1 at 17).

Petitioner saw Dr. Chen that same afternoon. The office notes record the "Reason for Visit" was that he had cut his finger on stainless steel banding. (PX4 at 2). Dr. Chen noted Petitioner "was cutting stainless steel banding with the wrong tool and the banding came loose and cut pt. on top of R IF." (PX4 at 4). Dr. Chen diagnosed a right index finger extensor tendon laceration with mallet deformity. (PX4 at 4). Dr. Chen recommended surgical repair of the extensor tendon. (PX4 at 4).

Petitioner testified he returned to work the next day and had another conversation with Mr. Baldridge about his accident. (T. 81-82). Mr. Baldridge testified Petitioner came into his office with his hand wrapped up, and he asked him about his injury. (T. 134). He said that at that time Petitioner told him he sustained "some type of injury at home, at work, at his Dad's bar, I don't know." (T. 133).

Petitioner testified he provided light duty restrictions to Mr. Baldridge and was provided light duty work on August 29, 2018 only. (T. 90). Mr. Baldridge confirmed light duty restrictions would be presented to him. (T. 139). Petitioner testified no light duty work was provided after August 29, 2018, so he resumed his full duty activities. (T. 49).

Petitioner testified he continually provided any work restrictions to his employer. (T. 50). He reported the lack of light duty to his union. (T. 91). Mr. Baldridge testified he was aware Petitioner was undergoing some medical treatment, but confirmed Respondent was unable to provide light duty. (T. 123). He testified that if an employee attempted to work in a cast the employer would be obliged to send them for medical treatment to "get checked out" for their ability to work. (T. 142). He testified that Respondent would terminate anyone with light duty restrictions that they could not accommodate. (T. 123). Mr. Baldridge testified "there really is no light duty work." (T. 156-157).

On August 31, 2018, Dr. Chen performed a right index finger extensor tendon repair. (PX4 at 18). A pin was inserted and the area was repaired with sutures. (PX4 at 18). The surgery was performed at Amsurg Surgicenter. (PX6). Photos taken of the finger and hand at that time indicate the injury was clearly to the right index finger only, and indicate a pin emerging from the right index finger was visible. (PX11). Petitioner testified that after his pin was placed, it was subsequently covered with a cast. (T. 50).

Petitioner testified he reported his work accident to Mr. Powers a few days after it occurred. (T. 83).

Petitioner attended an Orthrosis Fabrication at Midwest Hand Care on September 4, 2018. (PX8 at 5). He was fitted for a custom dorsal gutter orthosis to assist with positioning of the right index finger DIP joint in extension and provide post-operative protection. (PX8 at 6).

Petitioner returned to Dr. Chen on September 10, 2018. (PX5 at 2). It was noted a pin was still in place and the plan was to use a DIP splint and keep the wound clean. (PX4 at 7).

Petitioner returned to Dr. Chen's office on September 18, 2018. (PX5 at 2). He was advised to continue splinting and to follow up in 3 weeks. (PX4 at 11).

Petitioner returned to Dr. Chen on September 24, 2018. (PX5 at 2). It was noted the plan was to have the pin removed and to begin occupational therapy. (PX4 at 13). Petitioner testified the pin was removed at this time. (T. 48).

Petitioner returned to Dr. Chen's office on October 9, 2018. (PX5 at 2).

Petitioner began Occupational Therapy at Midwest Hand Care on October 11, 2018. (PX8 at 62). He reported he had cut his right index finger on a metal band. (PX8 at 62). He noted he was unable to perform his hobby of boxing and was concerned with his ability to ever return to it. (PX8 at 62).

Petitioner returned to Dr. Chen on October 24, 2018. (PX5 at 2). He reported decreased strength and range of motion. (PX4 at 16). He was prescribed additional therapy, advised he could return to work with a 5-pound lifting restriction, and told to follow up in a month. (PX4 at 16-17, 20).

Petitioner testified his employment with Respondent ended at this time after he reported an inability to perform full duty work with his injury. (T. 51, 52). He testified he gave them two weeks' notice that he was unable to keep working without being provided light duty. (T. 86). He testified Mr. Baldridge was upset after he told him he could not perform full duty work and threatened him. He reported the threat to Bernie. (T. 93). Mr. Baldridge testified that if an employee requested light duty work and presented a work note "I would have to dismiss him from work" because "[t]here is no light duty in the work that we perform." (T. 123). Mr. Baldridge testified Petitioner was laid off. (T. 126). Mr. Powers also asserted Petitioner was terminated on October 31, 2018. (T. 170).

Petitioner testified he had been sending his bills to Mr. Baldridge for payment prior to his employment ending. (T. 56). He testified that after his employment ended Mr. Baldridge would no longer pay his medical bills. (T. 56, 57).

Petitioner was cleared to return to full duty as of November 28, 2018. (PX8 at 20). He did not work for a new employer prior to that time. (T. 52).

Petitioner last attended physical therapy at Midwest Hand Care on December 5, 2018 and was noted to have continued difficulty making a tight fist, using tools, and with a resisted pinch. (PX8 at 17).

Petitioner's hand function currently is challenging. (T. 58). He used to exercise by boxing. (T. 59). However, since the accident his fist does not close all the way, and he therefore cannot properly make a fist or wear a boxing glove. (T. 59). As his knuckle "sticks out" now, he cannot throw a punch with the right hand or he will break his hand. (T. 59). He also has difficulty with grabbing or with screwing something on with the right hand. (T. 60). He has issues with cold. (T. 60). He notices pain with work activities like cutting wires, threading bolts, turning nuts. (T. 61). As a result, he has to use his non-dominant left hand more often now. (T. 61). He testified he must warm up and stretch the right hand before work. (T. 61).

CONCLUSIONS OF LAW

The Arbitrator makes the following findings on the issue **(C) Did Petitioner sustain accidental injuries that arose out of and in the course of his employment on August 28, 2018?**

To be compensable under the Act, an injury must arise out of and in the course of the claimant's employment. 820 ILCS 305/2 (2002). An injury "arises out of the employment if its origin is in some risk connected with or incidental to the employment. The injury occurs "in the course of the employment when it occurs within the period of employment, at a place where the claimant may reasonably be in performance of his duties, and while he is fulfilling those duties or engaged in something incidental thereto. Parro v. Industrial Com, (1995), 167 I11.2d 385, 657 N.E.2d 882, 212 Ill.Dec. 537. A "traveling employee" is an employee whose work duties require him to travel away from his employer's premises. The Venture-Newberg-Perini, Stone & Webster v. Illinois Workers' Compensation Comm'n, 2013 IL 115728, ¶ 17. If an employee is a "traveling employee," the "in the course of" test typically is met, as a traveling employee is deemed to be "in the course of his employment" from the time that he leaves home until he returns. Kertis v. Illinois Workers' Compensation

Comm'n, 2013 IL App (2d) 120252WC, ¶ 16. The analysis then turns on whether the employee can establish his injuries "arose out of" his employment. In the context of traveling employees, the Illinois Supreme Court established that an injury sustained arises out of his employment if he was injured while engaging in conduct that was reasonable and foreseeable, i.e., conduct that "might normally be anticipated or foreseen" by the employer. Robinson v. Industrial Comm'n, 96 Ill. 2d 87, 92 (1983).

Petitioner worked as a traveling employee for Respondent, traveling from Respondent's warehouse to various job sites throughout the Chicagoland area assisting with the installation of shot spot sensors. (T. 14-15, 128). Petitioner was engaged in his work as a traveling employee on August 28, 2018 assisting with Respondent's installation of shot spot sensors on rooftops under the direction of Mr. Balridge. (T. 27-28, 127-128, 155). He reported to the ER at 12:34 pm with an acute, bleeding right index finger laceration involving a tendon and mallet deformity. (PX1 at 9, 15). Petitioner's timesheet, his testimony, and Mr. Baldridge's testimony all confirm he would have sustained this injury in the middle of his workday, which was typically 7 am to 3 pm. (T. 33, 144, PX14). No evidence was presented indicating the injury occurred at any other time. The Arbitrator therefore concludes Petitioner was "in the course of his employment" at the time the injury occurred.

The parties agree Petitioner's job duties included accessing client rooftops and assisting in the installation of shot spot sensors. (T. 14, 128, 155). Petitioner's unrebutted testimony is that the installation would require cutting stainless steel banding to secure the sensor. (T. 31-33). According to Mr. Baldridge, Respondent provided something called "cut gloves" for the work. (T. 115). Petitioner was attempting to cut a piece of stainless steel banding to secure a shot spot sensor when he cut his right hand. (T. 34). The Arbitrator finds Petitioner's act of cutting stainless steel banding was both reasonable and foreseeable, and therefore concludes Petitioner sustained accidental injuries that arose out of and in the course of his employment on August 28, 2018.

In support of this conclusion, the Arbitrator notes the contemporaneous medical records contain histories consistent with an accidental work injury. Petitioner was admitted to the Silver Cross Hospital Emergency Room on August 28, 2018 with a diagnosis of a right index finger laceration and "civilian activity done for income or pay." (PX1 at 9). His "Chief Complaint" taken at 12:41pm was "cut 2nd r finger on banding," and a "History of Present Illness" taken at that time noted the onset was just prior to arrival and "[t]he location where the incident occurred was at work." (PX1 at 15). Petitioner went from the ER straight to the plastic surgeon's office, who noted Petitioner "was cutting stainless steel banding with the wrong tool and the banding came loose and cut pt. on top of R IF." (PX4 at 4).

In further support, the Arbitrator notes Respondent had detailed records which would show exactly where Petitioner was at the time of the accident, and a witness in Cody who was actually there at the time, but did not present either at trial. (T. 136, 137, 172). Cody is Mr. Baldridge's son, and Respondent indicated they would have called him as a witness for trial, but did not. (T. 15, 172). The Arbitrator infers from Respondent's withholding of the evidence under its control that the timesheets showing where Petitioner was working at the time of the accident and also the testimony of Cody would have corroborated Petitioner's testimony. See Szkoda v. Human Rights Comm'n, 302 Ill.App.3d 532, 544 (1998); Reo Movers, Inc. v. Industrial Comm'n,

226 Ill.App.3d 216, 223 (1992) ("Where a party fails to produce evidence in his control, the presumption arises that the evidence would be adverse to that party.").

The Arbitrator makes the following findings on the issue of **(E) Was timely notice of the accident given to Respondent?**

As shown above, Petitioner was working for Respondent on August 28, 2018 when he sustained an accidental injury to his right hand. At the time he sustained the injury, Petitioner was with co-worker Cody, the son of his supervisor. (T. 25). Petitioner testified he was in a work truck being driven by Cody immediately after the accident when he called Mr. Baldridge to report the accident. (T. 76-77). Respondent declined to produce Cody as a witness, though they indicated they could have. (T. 172). As before, there is therefore an inference Cody would have corroborated Petitioner's testimony regarding his accident and notice. Petitioner testified he returned to work the next day and had another conversation with Mr. Baldridge about his accident. (T. 81-82). Mr. Baldridge testified Petitioner came into his office with his hand wrapped up, and he asked him about his injury. (T. 134). He said that at that time Petitioner told him he sustained "some type of injury at home, at work, at his Dad's bar, I don't know." (T. 133). Petitioner testified he also reported his work accident to Mr. Powers a few days after it occurred. (T. 83). Petitioner continued to work after the accident, which included working with a pin in his right index finger and a cast on his right hand. (T. 50; PX11). He continued to provide work restrictions to his employer. (T. 50). Respondent's witnesses claim Petitioner never told them he was injured at work until October 31, 2018 is not very credible. (T. 130). This was a conspicuous injury that would have warranted some questions on Petitioner's ability to perform a heavy-duty job, one which required safety gloves, and it is not credible that his direct supervisor would have remained ignorant of the specifics of the accident.

Further, Section 8(j)(1) of the Act states that "[i]n 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… the period of time for giving notice of accidental injury and filing application for adjustment of claim does not commence to run until the termination of such payments." 820 ILCS 8(j)(1). When Petitioner reported to the ER the day of the accident, he provided them his Blue Cross-PPO insurance information through Respondent. (PX1 at 9). Petitioner testified he had been sending his bills to Mr. Baldridge for payment prior to his employment ending October 31, 2018. (T. 56). He testified his bills were paid by his insurance which he obtained through Respondent. (T. 54). The records indicate payments were made by Respondent's PPO through November 19, 2018. (PX3). Respondent sought an 8(j) credit for these payments at trial and does not dispute making them. (Arb. Ex. 1). Respondent's Exhibit 4 confirms written receipt of a filed Application for Adjustment of claim as of November 12, 2018. (RX4). It is therefore undisputed notice was received within 45 days of termination of payments under the group plan. There is no good faith controversy regarding notice, and it should not have been disputed at trial.

Based on the above, the Arbitrator finds timely notice of the accident was given to Respondent.

The Arbitrator makes the following findings on the issue of **(F) is Petitioner's present condition of ill-being causally related to the injury?**

The Workers' Compensation Act does not require a causation opinion. Instead, a simple chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability will suffice to prove a causal nexus between the accident and the employee's injury. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 442 N.E. 2d 908(1982). Prior to August 28, 2018, Petitioner was in his usual state of good health. There is no evidence he had any right index finger or hand injury. He worked that day for several hours before injuring his finger as above. At that time he was seen at the ER with an acute laceration severing a tendon. He underwent surgical repair with instrumentation, subsequent removal of the k-wire, and months of therapy. He has ongoing issues with the use of his right hand. Respondent did not obtain a Section 12 examination to dispute causation and has put forth no evidence of a non-work related cause. The Arbitrator therefore finds Petitioner's current condition of ill-being is related to the August 28, 2018, work injury.

The Arbitrator makes the following findings on the issue of **(J) were the medical services provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?**

The Arbitrator finds Respondent has not paid all reasonable and necessary medical expenses. As above, Petitioner sustained a work injury to his right hand and index finger on August 28, 2018. He sought emergency treatment, underwent surgical repair with instrumentation and subsequent procedure to remove it, and had post-operative physical therapy. Respondent seeks a credit for 8(j) payments in the amount of $5014.80. However, Respondent put forth no testimony or exhibits to support this amount. The Arbitrator therefore finds Respondent liable for the reasonable and necessary related medical expenses in Petitioner's Exhibits 2, 3, 5, 7, and 9, and denies any credit to Respondent.

The Arbitrator makes the following findings on the issue of **(K) what amount of compensation is due for temporary total disability?**

Petitioner sustained a work accident on August 28, 2018 causing injury to his right hand and index finger. He was given light duty restrictions which were not accommodated by Respondent after August 29, 2018. (T. 90). His supervisor testified that if an employee requested light duty work and presented a work note "I would have to dismiss him from work" because "[t]here is no light duty in the work that we perform." (T. 123). Petitioner therefore kept working his regular job despite his restrictions. Petitioner was provided a 5-pound lifting restriction on October 24, 2018 that was to remain for one month. (PX4 at 16-7, 20). Petitioner presented these restrictions to Respondent and told them he was unable to keep working without being provided light duty. (T. 86). Respondent therefore terminated Petitioner's employment on October 31, 2018. (T. 170). Petitioner was finally cleared to return to full duty work as of November 28, 2018. (PX8 at 20). He did not work for a new employer prior to that time. (T. 52). The Arbitrator therefore finds Petitioner is entitled to TTD benefits from November 1, 2018 through November 28, 2018.

The Arbitrator makes the following findings on the issue of **(L) What is the nature and extent of the injury?**

Petitioner sustained accidental injuries that arose out of and in the course of his employment on August 28, 2018 causing injury to his right index finger and right hand. Petitioner sustained a right index finger extensor tendon laceration with a resulting mallet deformity. (PX4 at 4). He testified that immediately after suffering the injury his right index finger went limp. (T. 36). He received sutures in the ER the day of the accident and underwent surgical repair of the tendon on August 31, 2018. (PX4 at 18). A pin was inserted and the area was repaired with sutures. (PX4 at 18). Petitioner was fitted for a custom dorsal gutter orthosis to assist with positioning of the right index finger DIP joint in extension and provide post-operative protection. (PX8 at 6). He had a second procedure to remove the pin. (T. 48). Petitioner underwent physical therapy until December 2018. (PX8 at 17). It was noted he had continued difficulty with making a tight fist, using tools, and resisted pinch. (PX8 at 17).

Petitioner's hand function currently is challenging. He used to exercise by boxing. (T. 59). However, since the accident his fist does not close all the way, and he therefore cannot properly make a fist or wear a boxing glove. (T. 59). A photo of both hands shows his right hand does not close completely while making a fist. (PX12). As his knuckle "sticks out" now, he cannot throw a punch with the right hand or he will break his hand. (T. 59). He also has difficulty with screwing something on with the right hand, or grabbing. (T. 60). He has issues with cold. (T. 60). He notices pain with work activities like cutting wires, threading bolts, turning nus. (T. 61). As a result he has to use his non-dominant left hand more often now. (T. 61). He testified he must warm up and stretch the right hand before work. (T. 61). Petitioner currently works as a journeyman lineman and therefore uses his hands in a physical job. (T. 11).

Based on the above, the Arbitrator finds Petitioner sustained permanent partial disability in the amount of 15% of the right hand.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC002677
Case Name	PLATT, EDWARD v. CATERPILLAR INC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	22IWCC0033
Number of Pages of Decision	24
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Matt Walker
Respondent Attorney	Zachary March

DATE FILED: 1/24/2022

/s/Kathryn Doerries, 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 Other (explain)	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify down	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EDWARD PLATT,

Petitioner,

vs. NO: 19 WC 002677

CATERPILLAR, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission agrees with the Arbitrator's Decision regarding accident and causal connection. January 7, 2019, is a proper manifestation date. This date corresponds with the narrative report authored by Dr. Burra in which Dr. Burra opines the repetitive manual activity performed by Petitioner after returning to work in 2011 was a causative factor in Petitioner's current condition of ill-being. (PX2) This was the first time the injury and its relationship to employment after Petitioner's return to work in 2011 became plainly apparent. The fact that the manifestation date occurs after Petitioner's employment with Respondent ended on November 30, 2018 is not problematic. As put forth in *A.C. & S. v. Industrial Commission,*

710 N.E.2d 837, 840 (lll. App. 1999), the modern rule allows compensation even when an injury occurs at a time and place remote from the employment if its cause is something that occurs entirely within the time and place limits of employment. (Arb. Dec. pp. 7-8) However, the Commission vacates the Arbitrator's award of TTD based upon the Commission's findings as outlined below.

Findings of Fact and Conclusions of Law

Background

Petitioner injured his left shoulder at work in 2009 and underwent surgery performed by Dr. Giridhar Burra on March 9, 2011, consisting of a microfracture of his chondral defect along with addressing his pain generators with the biceps tendon tenodesis and acromioplasty. (PX2, 1/7/19 narrative report, PX1, operative report) Petitioner settled his claim with Respondent on May 21, 2013. (PX4) The contract terms provided that Petitioner would retain his Section 8(a) rights until such time as Respondent would exercise an option to fund a Medicare Set-Aside. *Id*.

Following petitioner's work injury in 2009, he was released to return to work in June 2011. Six and one-half years after his release, he returned to Dr. Burra for two office visits, January 12, and January 30, 2018. At the office visit on January 30, 2018, Dr. Burra provided an off-work recommendation/status and his office note documents that Petitioner was to return in six weeks. (PX1) Petitioner testified that he was not aware that Dr. Burra "made a note" recommending that he be off work and that he did not remember if he received a paper version of the work status note. (T. 37) He continued to work and never returned to Dr. Burra for a work status opinion or for medical treatment between the time he saw him on January 30, 2018, and up to and through the time of trial. (T. 54. 60-61) Petitioner testified that he continued working in a full duty, full-time capacity for Respondent after the January visits to Dr. Burra. (T. 57-58).

Petitioner testified that he would not have left Respondent's employ in November 2018 if the plant did not close. (T. 38) A review of Respondent's Exhibit 5 documents that Petitioner not only continued to work in a full-time capacity, he worked a substantial amount of overtime until the last day he worked for Respondent on November 30, 2018, ten months after he last saw Dr. Burra. (RX 5).

When the plant closed, Petitioner testified that he accepted a voluntary separation agreement and a lump sum severance payment plus access to extended group health benefits and access to his pension. (T. 59-60, 64).

Temporary Total Disability

Section 9020.80 of the Rules Governing the Illinois Workers' Compensation Act state, in pertinent part, as follows:

Section 9020.80 Petitions for Immediate Hearing

a) Petition for Immediate Hearing Under Section 19(b)

1) In a Petition alleging that the Petitioner is not receiving benefits under Section 8(a) and/or 8(b) of the Act to which he or she is entitled, the Petitioner may file a Petition for Immediate Hearing, as provided for in Section 19(b) of the Act, on an appropriate form provided by the Commission. The Petition shall set forth:

A) a description of the attempts by parties or counsel to resolve the dispute requiring an immediate hearing, including the name of the representative of the opposing party with whom the Petitioner or his or her attorney has conferred, the date of the conference, and the result of the conference;

B) a statement that a signed physician's report of recent date relating to the employee's current inability to work, or a description of such other evidence of temporary total disability as is appropriate under the circumstances, has been delivered to the Respondent. *Ill. Admin. Code tit*. 50, §9020.80

The Commission finds that Petitioner failed to sustain his burden of proving that he provided "a signed physician's report *of recent date* relating to the employee's current inability work" (emphasis added) for either the period between December 1, 2018, when the plant closed, through April 7, 2019, or between June 4, 2019, through October 23, 2019. The Commission finds that the Petitioner not only failed to provide contemporaneous off work notes to the Respondent for the periods in question, but Petitioner never even returned to Dr. Burra per his January 30, 2018, office note and pursuant to Dr. Burra's documented plan for Petitioner to return in six weeks. In fact, Petitioner relied solely on Dr. Burra's January 30, 2018, recommendation when he sought medical treatment months later and for his TTD entitlement. Petitioner did not solicit any medical opinion regarding his work status after January 30, 2018, through the trial date, although he worked at Respondent's plant for 10 months until the plant closed and notwithstanding his attorney's communication with Dr. Burra months later. The Commission notes that Petitioner had health insurance during the 10 months he worked (T. 59-60) and group health insurance for approximately one year after the closing of the plant on November 30, 2018, through November 2019. (T. 65) Petitioner did attend a §12 evaluation at Respondent's request in May 2018, with Dr. Craig Phillips, a board certified orthopedic surgeon. (RX3, RX1. DepX2)

Petitioner testified that he was not made aware that Caterpillar was not going to accept his left shoulder as work-related and that he thought Respondent was going to take care of his shoulder after he saw Dr. Phillips. (T. 70-71) Nonetheless, he did not return to Dr. Burra after he saw Dr.

Phillips.

Therefore, it appears that Petitioner's left shoulder condition was stable as of May 15, 2018, as he continued to work for Respondent in a full duty unrestricted capacity at that time. Petitioner's attorney wrote Dr. Burra on August 17, 2018. (PX3DepX2) The Commission notes that the job description information did not comport with the description Petitioner provided Dr. Phillips wherein Petitioner characterized his activities with Respondent subsequent to his shoulder surgery as light and almost exclusively right-sided, with little use of his non-dominant left arm. (RX4)

The Commission further notes that Dr. Burra authored a letter to Petitioner's attorney in response on January 7, 2019, and in response to whether Petitioner had current restrictions, Dr. Burra referred only to his opinion that he authored on January 30, 2018, that at that time he had advised Petitioner to be off work. (PX2, PX3DepX3)

When asked about his opinion on cross-examination, Dr. Burra admitted that if Petitioner continued working the recommendation he had made on January 30, 2018 was a moot point. Dr. Burra testified as follows:

> Q. Now with respect to your opinion that you rendered on January 30, 2018, the last time you saw him about needing to be off-advising him to be off work, as we sit here today, you don't know if he continued working or what his status was; correct?
> A. Correct.
> Q. So if, in fact, he continued working or-if he continued working, then your recommendation for him to be off work is a moot point; correct?
> A. I guess so, yeah.
> Q. Just to be fair, you haven't seen him in, conservatively, a year and a half; correct?
> A. That's correct.
> Q. So any opinion today would be limited to the visit from January 30, 2018, correct?
> A. That would be correct
> Q. So as we sit here in November 2019, you would not necessarily be in a position to render a statement saying he should still be off work; correct?
> A. That would depend on what his situation is; but as of my last assessment, that is my recommendation. (PX3, 40-41)

Petitioner moved to Alabama on December 1, 2018, immediately after the plant closed and is currently working at his second employer since moving. Petitioner testified that he could not recall if he collected unemployment in Alabama. (T. 64) However, he applied for jobs through what he characterized as similar to the Illinois unemployment office. (T. 64)

The Commission finds that Petitioner could have returned to Dr. Burra at any time, or any other provider close to his new residence to procure updated work status reports when he was working for Respondent or thereafter. Even though the Caterpillar plant closed, Petitioner would need to address his work restrictions since he had been working for 10 months and he never returned for the recommended medical treatment at the six weeks follow-up recommended by Dr. Burra. Contrary to the Arbitrator's opinion, an off work-status is not indefinite. The Commission finds the most critical evidence in the record is the fact that after Dr. Burra recommended that Petitioner be off-work in January 2018, Petitioner worked full duty plus overtime for those 10 months. The off-work note obtained in January 2018 did not apply to his work status in May 2018 when he saw Dr. Phillips without an update. The Commission further notes that the off-work status provided by Dr. Burra in January 2018 also said return in six weeks and Petitioner never returned to him at six weeks. There is no evidence in the record that Respondent did not pay for that office visit. In fact, the Arbitrator notes Respondent paid all the reasonable and necessary medical bills incurred prior to the date of hearing. (Arb. Dec. p. 11) The note that he obtained in January 2018 was not current or applicable to Petitioner's off-work situation after the plant closed in December 2018 and a work status report from his medical provider would need to be current per the stricture of Section 9020.80 of the Administrative Rules Governing Practice Before the Illinois Workers' Compensation Commission.

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,* 201 111. App. 3d 880,886,559 N.E.2d 526,531 (1990). Entitlement to temporary total disability benefits is dependent on a claimant showing not only that he or she did not work but also that he or she was unable to work. *Id.* at 887.

In this case, Petitioner worked full-time for ten months plus overtime after Dr. Burra wrote the off-work status. There is no evidence that Petitioner suddenly could not work when he moved because of his medical condition. Thus Petitioner's claim for TTD also fails under the *Gallentine* test. Instead, he moved for personal family reasons (T. 39) and then he looked for a job in the vicinity of his new home in a new state. There is no medical evidence presented that Petitioner was not working because of his medical condition. Further, although Petitioner testified he was terminated from Moseley Technical Services because of his job performance, at no point did Petitioner seek a work restriction note at that time. In fact, Petitioner testified that his pain was the same as he felt when he was working at Respondent's plant prior to leaving in November 2018. (T. 42) Petitioner had already testified that if the plant had not closed, he would have continued to work for Respondent and he had been doing that work for ten months. After Mosely, Petitioner started work at a second employer.

There is nothing in the record that would obviate the Petitioner's obligation to provide "a signed physician's report of recent date relating to the employee's current inability to work, or a

description of such other evidence of temporary total disability as is appropriate under the circumstances," and "delivered to the Respondent" as required by the Rules.

Therefore, based upon the evidence, the law and the entire record, the Commission strikes Section L in the Arbitrator's Decision entitled "With respect to issue "L" whether Petitioner is entitled to TTD benefits, the Arbitrator finds as follows:" beginning on page 12 and ending on page 13. The Commission further reverses the Arbitrator's Decision regarding Petitioner's TTD entitlement and vacates the award because Petitioner failed to sustain his burden of proving he is entitled to TTD or 38-4/7 weeks, commencing December 1, 2018, through April 7, 2019, and again from June 4, 2019, through October 23, 2019.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on January 8, 2021, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of temporary total disability benefits of $646.13/week for 38-4/7 weeks, commencing December 1, 2018, through April 7, 2019, and again from June 4, 2019, through October 23, 2019, is vacated. This decision in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide medical treatment as recommended by Petitioner's treating surgeon, Dr. Burra, up to and including the recommended left shoulder replacement as set forth in the Arbitrator's Conclusions of Law attached hereto, and pay reasonable related medical expenses under §8(a) and §8.2 of the Act.

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

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

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

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

January 24, 2022

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

KAD/bsd
O112321
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/s/*Thomas J. Tyrrell*
Thomas J. Tyrrell

/s/*Maria E. Portela*
Maria E. Portela

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

22IWCC0033

PLATT, EDWARD
Employee/Petitioner

Case# **19WC002677**

CATERPILLAR INC
Employer/Respondent

On 1/8/2021, 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 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

1938 ALEKSY BELCHER
MATTHEW B WALKER
350 N LASALLE ST SUITE 705
CHICAGO, IL 60654

0210 GANAN & SHAPIRO PC
AMY L TURNBAUGH
120 N LASALLE ST SUITE 1750
CHICAGO, IL 60602

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Edward Platt
Employee/Petitioner

v.

Caterpillar, Inc.
Employer/Respondent

Case # **19** WC 2677

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 **Frank Soto**, Arbitrator of the Commission, in the city of **Wheaton**, on **October 29, 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. ☒ 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, **1/7/19**, 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 **$50,398.40**; the average weekly wage was **$969.20**.

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

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

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

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $646.13 / week for 38 4/7 weeks, commencing 12/1/18 through 4/7/19 and again from 6/4/19 through 10/23/19, as set forth in the Conclusions of Law attached hereto;

Respondent shall authorize medical treatment as recommended by Petitioner's treating surgeon, Dr. Burra, up to and including the recommended left shoulder replacement as set forth in the Conclusions of Law attached hereto;

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

1/6/2021
Date

ICArbDec19(b)

JAN - 8 2021

Findings of Fact

Edward Platt [hereinafter Petitioner] began working for Caterpillar, Inc. [hereinafter Respondent] in the year 2000 as a supplemental employee and later was hired on as a full-time employee in 2001. (T. 19-20). Petitioner is 54 years of age and has been married for 31 years. He is a veteran of both the United States Marine Corps and the U.S. Air Force, retiring as an E-6 in the U.S. Air Force Reserve.

For most of his career with Respondent, Petitioner worked assembling lift arms for wheel loaders. Wheel loaders are heavy machines used in construction and mining. (T. 20). The lift arm is an attachment that goes at the front of the wheel loader. *Id.* Assembling lift arms required lifting and moving parts, carrying and maneuvering parts for assembly, and reaching for tools. Petitioner engaged in overhead work when assembling parts from underneath the lift arm. (T. 21). Petitioner was also required to install pins into the lift arms by hand. (T. 22). The pins weighed anywhere from 5 pounds to 20 pounds or more. *Id.* When Petitioner installed pins to attach the lift arm to the machine, he would manually push the pin into place, and if it didn't go all the way into the machine, he would hammer the pin into place. (T. 23). Petitioner performed these duties at least 8 hours per day, 5 days per week. *Id.* Petitioner performed these duties until September 23, 2009.

Petitioner injured his left shoulder on September 23, 2009 and filed a workers' compensation claim with the Commission. Petitioner treated with Dr. Burra and underwent surgery for his left shoulder on March 9, 2011. (PX 1, pg. 10). Petitioner offered into evidence a copy of the lump sum settlement contract for Commission Case Number 11 WC 14466. (PX 4). The contract reflects a settlement in the amount of 14% loss of use of the person as a whole for injuries to Petitioner's left shoulder. The contract also states that Petitioner's Section 8(a) right to reasonable and related medical treatment to his left shoulder would remain open until such time as a Medicare Set Aside is approved by the Respondent.[1] The contract was approved on May 21, 2013. Petitioner testified that it was his understanding that his medical rights would remain open, and that "anything I needed medically done to the left shoulder would still be covered." (T. 35).

Petitioner returned to work for Respondent in 2011 without restrictions. When he returned to work, Petitioner performed sub assembly work on medium wheel loaders. (T. 24).

[1] In May of 2018 Petitioner sought additional medical treatment, recommended by Dr. Burra, pursuant to the terms of the settlement terms in case #11 WC 14466 which kept Petitioner's Section 8(a) rights open. Respondent denied the requested medical treatment based upon no causal relationship. (T. 13).

Petitioner testified the details of his job duties, when he returned to work for Respondent in 2011, were accurately set forth in *Petitioner's Deposition Exhibit #2,* contained within *Dr. Burra's Evidence Deposition. (PX 3).* Petitioner confirmed when he returned to work in 2011, he worked a lot of overtime, was installing parts weighing up to 20 pounds, and worked on six or more-wheel loaders per day. (T. 27-28). Petitioner testified while working on the medium wheel loaders, his job duties included cleaning hoses, which required him to hold his arms straight out in front of him. (T. 28). He installed wire harnesses, which required reaching out in front of his body and overhead to install the harness, using clips or bolts to attach the harness to the lift arm. (T. 29-30). Petitioner also used air guns to tighten down bolts and nuts daily. (T. 30). He would hold the air guns out in front of his body when using them.

On January 12, 2018, Petitioner returned to see his treating surgeon, Dr. Burra. (PX 1, pg. 14). At that time, Dr. Burra noted Petitioner's chief complaint was an increase in pain and stiffness in the left shoulder. Dr. Burra indicated Petitioner was last seen in November of 2011 and, at that time, his glenohumeral chondral pathology was well noted and the glenohumeral high-grade chondromalacia could have the potential to progress into significant arthritis. Dr. Burra ordered an x-ray of the left shoulder which showed significant progression in the narrowing of the glenohumeral joint compared to the plain x-ray taken in 2010. Dr. Burra indicated a reasonable goal was to consider a glenohumeral replacement after more conservative options are tired such as bone marrow concentrate injection and/or amniotic fluid injection or cortisone injections. Dr. Burra ordered additional imaging including a CT scan and an MR Arthrogram.

The CT scan was completed on January 16, 2018 and the MR Arthrogram on January 26, 2018. (PX 1, pg. 19, 21). The MRI arthrogram impression was mild supraspinatus and infraspinatus tendinosis, mild/moderate acromioclavicular joint degenerative change, mild/moderate glenohumeral joint degenerative changes and abnormal appearance of the superior and posterior labrum suggestive of a SLAP tear propagating along the chondrolabral junction through the posterior labrum to the level of the posterioinferior labrum. (PX 1, pg. 20),

Petitioner followed up with Dr. Burra on January 30, 2018. At that time, Dr. Burra noted Petitioner was able to do his activities of daily living, had some pain at rest, and was not noticing any significant limitation in his range of motion. Dr. Burra diagnosed left shoulder glenohumeral arthritis, AC joint pain and impingement. Dr. Burra noted that Petitioner had been

involved in manual work and the chongromalacia of the humeral head, noted at the time of his prior surgery, had progressed since his surgery. In his report, Dr. Burra wrote "*I am taking into consideration for his physical demands as well as the relatively young age, and explained to him the diagnosis of glenohumeral arthritis, the treatment options available…Edward is symptomatic enough, but taking into consideration all the advice and his own research about the longevity of glenohumeral arthroplasty, and worries about glenoid loosening, etc., he would like to delay the procedure as long as possible. He understands that this is a very strong possibility in his lifetime.*". Dr. Burra's records indicate Petitioner was taken off work at that time and he was to return in six weeks to decide treatment options. (PX 1, pg. 24). Petitioner testified he was not aware of Dr. Burra's work status recommendation, so he continued to work as an assembler for Respondent.

On May 7, 2018, Petitioner was examined by Dr. Craig Phillips pursuant to Section 12 of the Act.[2] Dr. Phillips noted Petitioner was a 52-year-old right-hand dominant assembler for the last 17 years. Dr. Phillips also noted Petitioner had shoulder surgery in 2011 and had grade 4 chondromalacia in his glenoid and grade 3-4 arthritis in his humeral head with superior labral tear. Dr. Phillips stated Petitioner had arthritis for many years. Dr. Phillips opined he does not believe Petitioner's activities at Caterpillar caused the arthritis but most likely made his arthritic shoulder symptomatic. In his report Dr. Phillips wrote "*At the present time his symptoms are related to his arthritis of his glenohumeral joint. The cause of his arthritis is at present unknown. I do not believe his activities at Caterpillar (using a 5 lb. hammer in his hand, hitting 15-20 pins/day or using torque guns etc.) caused his arthritis to develop, but might have caused his arthritic shoulder to become symptomatic. Given his young age at which he developed shoulder arthritis in his non-dominate arm he either would have to have a strong genetic predisposition to develop arthritis in his shoulder, which he did not admit to today, or he had an injury as a child or young adult that caused posttraumatic glenohumeral arthritis, which he did not admit to today either.*". Dr. Phillips opined Petitioner's symptoms were due to his chronic

[2] Dr. Phillips report dated May 7, 2018 was directed toward Petitioner's attempt to obtain medical treatment pursuant to Section 8(a) rights reserved in the settlement terms of Case number 11 WC 14466. In that report, Dr. Phillips opined Petitioner's glenohumeral joint arthritis was not caused or accelerated by his work activities. (RX 3).

glenohumeral arthritis, which was noted and treated in 2009-2011, and his work activities did not accelerate the arthritic process. [3] (PX 3).

In June of 2018, Petitioner started working on large wheel loaders. (T. 31). He would work on one or two large wheel loaders per day. (T. 32). Petitioner explained the job duties were like the job duties he performed on the medium wheel loaders. (T. 31). One difference was assembling guards. A guard is a piece of metal that would be attached to the outside of the lift arm to protect the hydraulic lines. Petitioner would lift the guard and attach it to the lift arm and install bolts. The guards were large, awkward parts that were between five and six feet long. (T. 32). They required more than one person to lift and hold them in place. Petitioner was also called upon to install third valve tubes, which required Petitioner to attach flanges to each end, carry the part to the lift arm, and then lift it up into position. Petitioner would have to hold the third valve tube in front of his body and hold it in position with his left hand and screw bolts in with his right hand. (T. 33). While performing these assembly duties, Petitioner continued to notice pain at the top of the left shoulder. (T. 33). Petitioner also noted popping and cracking in the left shoulder. (T. 34).

Petitioner continued to work on large wheel loaders until Respondent's plant located in Montgomery, Illinois closed. Petitioner's last day of work for Respondent was November 30, 2018.

In December of 2018, Petitioner moved to Alabama and began looking for work. Petitioner was by Moseley Technical Services, Inc. in Huntsville, Alabama. At Moseley, Petitioner was hired as an assembler working on the Stryker Army Vehicles and M-1 Abrams tanks. (T. 40). He was paid $12.50 per hour and worked approximately 40 hours per week. While performing this work, Petitioner continued to experience pain in his left shoulder that caused him to self-limit. Petitioner testified self-limiting caused him to be unable to keep up with the production schedule, and he was terminated on June 3, 2019. (T. 44). Petitioner testified was employed at Moseley Technical Services for a little less than two months. (T. 43).

After leaving Moseley Technical Services, Petitioner began looking for another job and was hired at Leadec on October 24, 2019. His first job was in production support, where he earned $12.88 per hour working 40 hours per week. (T. 46). He started out repairing door tools,

[3] On June 16, 2018 Dr. Phillips amended his prior report of May 7, 2018. In his report Dr. Phillips stated he was clarifying his opinion as to whether Petitioner's work activities had any structural effect on his shoulder. In the report Dr. Phillips wrote Petitioner's arthritis progressed over time irrespective of his work activities. (RX 4).

which weighed between 5-10 pounds. He worked on between 6-9 tools per day. (T. 47). Petitioner worked this job for 3 months before being transferred to his current job as a tow motor operator. (T. 48). Petitioner drives an electric cart around the building, delivering parts to the assembly line. Petitioner testified his job is light in nature. (T. 48-49). Petitioner continues to work as a tow operator at Leadec.

On the date of the October 29, 2020 hearing, Petitioner testified he is still employed as a tow motor operator at Leadec, earning $13.88 per hour. Petitioner also testified he has not returned to Dr. Burra since his last visit on January 30, 2018.

Dr. Burra testified he diagnosed left shoulder glenohumeral arthritis, AC joint pain and impingement. Dr. Burra opined Petitioner's arthritic condition, which was the progression of a high-grade chondral injury he sustained as a work-related accident which he underwent surgery in 2011. Dr. Burra testified the progression of the chondral pathology to arthritis was to be expected and could vary depending upon physical activities. Dr. Burra opined the kind of physical activities Petitioner was preforming at work most certainly contributed to the pace of the progression of the arthritic condition. Dr. Burra further opined the repetitive manual activities Petitioner was exposed to, after returning to work following his surgery in March of 2011, contributed to the development of arthritis. (PX 3, pgs. 29-30). Dr. Burra testified Petitioner will need further medical treatment consisting of injections including bone marrow aspirate concentrate and/or cortisone and when he becomes more symptomatic, total shoulder replacement. (PX 3, pg. 31).

Dr. Phillips, who performed the Section 12 exam, testified he diagnosed left shoulder degenerative osteoarthritis.[4] Dr. Phillips opined the arthritis was not caused by or aggravated by Petitioner's work activities. Dr. Phillips further opined Petitioner's work activities were just like any activities that might have caused his symptoms to become more severe and just because he was using his arm and it was hurting. (RX 1 pg. 24). Dr. Phillips opined he did not believe Petitioner's work activities had a bearing on the cause or the natural progression of his arthritis. Dr. Phillips also testified that "*I will qualify that he's a fairly young guy to be getting primary arthritis in his shoulder, and when he first had the arthritis, he was in his 40s. And so the*

[4] Dr. Phillips opinions were originally directed toward Petitioner's attempt to seek Section 8(a) rights reserved in case number 11 WC 14466 settlement terms. Petitioner filed the instant case claiming his left shoulder condition was aggravated and/or accelerated by the repetitive nature of the work he performed for Respondent after being released to return to work from his original left shoulder injury involving case number 11 WC 14466. (T. 11-12).

common and the most reasonable thing to assume is was this post-traumatic, but he gave me no history of any previous trauma to that shoulder and I didn't have any reason not to believe him...so when I refer to trauma, I mean something like a fracture or a dislocation not a repetitive trauma, overuse type of activity. So, yeah, it could have been something that happened many years ago for it to become symptomatic now something in his teens or 20s. And I would imagine if he had a dislocation or had fractured something or if he had a significant injury, he would have remembered it, hopefully he would have told me, but I also didn't see any medical records to suggest that either." (RX 1 pgs. 25-26).

On cross examination, Dr. Phillips testified Petitioner was an individual with an arthritic shoulder may had developed symptoms from the job activities he was performing. (RX 1, pg. 37). Dr. Phillips also testified he agreed with the reasonableness and necessity of the treatment recommendations of Dr. Burra including viscosupplementation and surgery. (RX 1, pg. 42).

The Arbitrator found Petitioner's testimony to be credible.

Conclusions of Law

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

With respect to issue "C" whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds the following:

To recover benefits under the Act, a claimant bears the burden of proving by a preponderance of the evidence that his injury "arose out of" and "in the course of" his employment. 820 *ILCS* 305/1(d) (West 2014). Both elements must be present to justify compensation. *First Cash Financial Services v. Industrial Comm'n*, 367 Ill.App.3d 102, 105, 853 N.E.2d. 799, 803 (2006).

The requirement that the injury arise out of the employment concerns the origin or cause of the claimant's injury. *Sisbro, Inc. v. Industrial Comm'n*, 2017 Ill. 2d. 193, 203. 797 N.E.2d 665, 672 (2003). The occurrence of an accident at the claimant's workplace does not automatically establish that the establish that the injury "arose out of" the claimant's employment. *Parro v. Industrial Comm'n*, 167 Ill. 2d 385, 393, 212 N.E.2d 882, 885 (1995). Rather, "[T]he 'arising out of' component is primarily concerned with causal connection" and is satisfied when the claimant has "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.

The Arbitrator finds Petitioner has proven by the preponderance of the evidence that he suffered a repetitive trauma accident with a manifestation date of January 7, 2019. Petitioner testified as to his job duties as an assembler for Respondent from the time he was released to full duty work by Dr. Burra back in 2011, until the time Petitioner returned to see Dr. Burra on January 12, 2018. Petitioner complained of a progressive increase in his symptoms and degree of symptoms.

While there is no legal 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, Petitioner offered the opinions of Dr. Burra, who described Petitioner's job duties as "repetitive manual activity" performed after his return to work following surgery in March of 2011. (PX. 3, pg. 30); *see also Edward Hines Precision Components v. Industrial Commission*, 825 N.E.2d 773, 780 (Ill.App.2005). Dr. Burra also noted that Petitioner "was involved continuously in manual work". (PX 3, pg. 22). Petitioner's description of his repetitive job duties combined with Dr. Burra describing Petitioner's job duties as "repetitive manual activity" and "continuous manual work" is sufficient to establish a compensable accident under a repetitive trauma theory of recovery. In *Peoria County Belwood Nursing Home v. Industrial Commission,* 115 Ill.2d 524, 529 (1987), the Illinois Supreme Court held that purpose behind the Workers' Compensation Act is best served by allowing compensation in a case where an injury has been shown to be caused by the performance of the claimant's job and has developed gradually over a period of time, without requiring complete dysfunction.

The Arbitrator further finds January 7, 2019 is a proper manifestation date. This date corresponds with the narrative report authored by Dr. Burra in which Dr. Burra opines the repetitive manual activity performed by Petitioner after returning to work in 2011 was a causative factor in Petitioner's current condition of ill-being. This was the first time the injury and its relationship to employment after Petitioner's return to work in 2011 became plainly apparent. The fact that the manifestation date occurs after Petitioner's employment with Respondent ended on November 30, 2018 is not problematic. As put forth in *A.C. & S. v. Industrial Commission,* 710 N.E.2d 837, 840 (Ill. App. 1999), the modern rule allows

compensation even when an injury occurs at a time and place remote from the employment if its cause is something that occurs entirely within the time and place limits of employment.

With respect to issue "F", whether 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. 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).

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. *See Edward Hines Precision Components v. Industrial Commission*, 825 N.E.2d 773, 780 (Ill.App.2005). An employee who alleges injury from repetitive trauma must still meet the same standard of proof as other claimants alleging accidental injury. *See Three "D" Discount Store v. Industrial Commission,* 198 Ill. App.3d 43, 47 (1989). The employee must still show that the injury is work related and not the result of a normal degenerative aging process. *Gilster Mary Lee Corp. v. Industrial Commission,* 326 Ill.App.3d 177, 182 (2001). 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. In fact,

a claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Commission,* 92 Ill. 2d 30, 36 (1982).

The Arbitrator finds Petitioner proved by the preponderance of the evidence that his left shoulder condition is causally related to his repetitive work activities for Respondent.

Dr. Burra performed Petitioner's prior left shoulder surgery in March of 2011, for a work injury that occurred at Caterpillar in September of 2009. Dr. Burra returned Petitioner to full duty work in 2011. (PX 3, pgs. 10-12). Dr. Burra also toured Respondent's plants twice a year and was familiar with the Aurora/Montgomery plant where Petitioner worked. (PX. 3, pg. 38). Petitioner returned to Dr. Burra on January 12, 2018, noting that Petitioner was still working at Caterpillar as an assembly tech. (PX 3, pg. 12). Dr. Burra also noted Petitioner was never pain free after returning to work in 2011, but that there had been a progressive increase in the symptoms and degree of the symptoms in Petitioner's left shoulder, and that the left shoulder pain was adversely affecting Petitioner's ability to sleep. (PX 3, pg. 15). Dr. Burra ordered an MRI, which revealed left shoulder glenohumeral arthritis. Dr. Burra's impression post MRI was left shoulder glenohumeral arthritis, AC joint pain and impingement. Dr. Burra also noted that Petitioner was involved continuously in manual work. (PX 3, pgs. 21-22).

While Dr. Burra discussed cortisone injections and stem cell injections, he also opined that Petitioner was ready for a left total shoulder replacement. (PX. 3, pgs. 22-23). Dr. Burra recommended Petitioner does not work as a manual worker, but he was not sure if Petitioner was capable to perform lighter work. (PX 3, pg. 24). Dr. Burra testified the job description put forth in the August 17, 2018 letter correlated with his understanding of Petitioner's job duties at Caterpillar. (PX 3, pg. 25); *see also Petitioner's Exhibit #3, Deposition Exhibit #2, pp. 48-49.*

Dr. Burra opined the types of physical activities Petitioner performed at work, since returning to work for Respondent in 2011, most certainly contributed to the pace of progression of his arthritic condition, and the repetitive manual activities he was exposed to at work, after his return to work following surgery in 2011, contributed to the development of arthritis. (PX 3, pgs. 29-30).

Dr. Phillips, who preformed the Section 12 examination noted Petitioner worked for Respondent for about 17 years. Dr. Phillips testified he had never toured Respondent's plant, nor did he have access to any video of Petitioner's job being performed. (RX 1, pg. 13).

Dr. Phillips diagnosed Petitioner with left shoulder degenerative osteoarthritis. (RX 1, pg. 24). Dr. Phillips opined Petitioner's work activities did not cause or aggravate his arthritis. Dr. Phillips also opined Petitioner's work activities were just like any activities that might have caused his symptoms to become more severe. (RX 1 pg. 24). Dr. Phillips further opined Petitioner's work activities had no bearing on the cause or the natural progression of his arthritis. (RX 1, pg. 24-25). Dr. Phillips testified he did not believe Petitioner's activities at Caterpillar caused the arthritis but most likely made his arthritic shoulder symptomatic. On cross-examination, Dr. Phillips testified repetitive lifting of objects between 15 and 25 pounds might aggravate glenohumeral arthritis. (RX 1, pgs. 39-40).

The Arbitrator finds the opinions of Dr. Burra more persuasive than the opinions of Dr. Phillips. Dr. Burra had a long history with the Petitioner and was the surgeon who performed the left shoulder surgery in March of 2011. He was also more familiar with the work performed by Petitioner, having a detailed job description and experience treating Respondent's work force. Dr. Phillips was not as familiar with Petitioner's job duties, had never toured the Respondent's plant and was not provided with any formal job descriptions or videos of work being performed. Dr. Phillips acknowledged that Petitioner's job duties, as he understood them, were competent to cause left shoulder pain, and that repetitive lifting of objects weighing between 15-25 pounds might aggravate an underlying arthritic condition. Dr. Phillips testified Petitioner's work activities likely made his arthritic shoulder more symptomatic and that repetitive lifting could aggravate glenohumeral arthritis.

It is for the Commission to decide which medical view is to be accepted, and it may attach greater weight to the opinion of the treating physician. *International Vermiculite Co. v. Industrial Commission,* 77 Ill. 2d 1,4 (1979). Treating physicians acquire their facts and opinions, not in anticipation of trial, but as actors and viewers of the subject matter that gives rise to the litigation. *See Tzystuck v. Chicago Transit Authority,* 124 Ill. 2d 226, 235 (1988). It may be said that the connection between a medical expert who is "retained to render an opinion at trial" and the party to the suit may be litigation-related, rather than treatment-related. *Id.* at 234. Treating physicians, on the other hand, typically are not "retained to render an opinion at trial" but are consulted, whether or not litigation is pending or contemplated, to treat a patient's physical or mental problem. *Id.* While treating physicians may give opinions at trial, those

opinions are developed in the course of treating the patient and are completely apart from any litigation. *Id.*

With respect to issue "J" were the medical services that were provided to Petitioner reasonable and necessary and has Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner has proven by the preponderance of the evidence that the medical services provided to Petitioner was reasonable, necessary and causally related to his repetitive trauma accident. Respondent has paid all medical bills but denied liability.

The Arbitrator having found Petitioner suffered a repetitive trauma accident and that Petitioner's current condition is causally related to that repetitive trauma work accident, the Arbitrator further finds Respondent responsible for and has paid for all reasonable and necessary medical bills incurred prior to the date of hearing.

With respect to issue "K" whether Petitioner is entitled to prospective medical care, the Arbitrator finds as follows:

The Arbitrator finds Petitioner has proven by the preponderance of the credible evidence that he is entitled to an award of prospective medical treatment. Specific medical procedures or treatments that have been prescribed by a medical service provider have been incurred within the meaning of the statute, even if they have not yet been paid for. *See Plantation Manufacturing Company v. Industrial Commission,* 691 N.E.2d 13, 17 (Ill. App. 1997).

The Arbitrator notes that Dr. Phillips also testified that he agreed with the reasonableness and necessity of the treatment recommendations of Dr. Burra consisting of viscosupplementation and surgery. (RX 1, pg. 42). Dr. Phillips disputed only whether the treatment was causally related to a work injury. In light of the Arbitrator's finding that Petitioner has established that his condition of ill-being is causally connected to his repetitive trauma accident, the Arbitrator awards the following medical treatment as recommended by Dr. Burra:

> *Mr. Platt will need further medical treatment. Conservative treatment options at this point to the extent they can relieve his symptoms will be in the form of injections. These were discussed, and he is interested in bone marrow aspirate concentrate injections. On a very temporary basis, cortisone injections may be considered; but in the even he becomes symptomatic, surgical intervention will have to be delayed by at least six months or so before a joint replacement may be considered. Surgical treatment for him would be in the form of a total shoulder replacement, and that is at the time of his choosing depending on the degree and intensity of his symptoms. I made it very clear to Mr. Platt while surgery would address his symptoms and would probably relieve – sorry, will probably improve*

his range of motion, total shoulder replacement is not a way or a method of treatment for him to return to a manual job; and he needs to understand this. See Petitioner's Exhibit #3, p. 31.

Petitioner testified that if Dr. Burra feels the left shoulder replacement is necessary, he would like to undergo the surgery. As such, the Arbitrator awards prospective medical as recommended by Dr. Burra consisting of injections including bone marrow aspirate concentrate and/or cortisone and total shoulder replacement if Dr. Burra, after completion of the conservative treatment since Petitioner testified that he would like to proceed with the surgery.

With respect to issue "L' whether Petitioner is entitled to TTD benefits, the Arbitrator finds as follows:

To establish entitlement to TTD benefits, a claimant must demonstrate not only that he or she did not work, but also that the claimant was unable to work. *City of Granite v. Industrial Commission,* 279 Ill. App. 3d 1087, 1090 (1996). The dispositive question is whether the claimant's condition has stabilized, that is, whether the claimant has reached maximum, medical improvement. *Freeman United Coal v. Industrial Commission,* 318 Ill.App.3d 170, 175-76 (2000). The factors to be considered in determining whether a claimant has reached maximum, medical improvement include: (1) a release to return to work; (2) the medical testimony concerning the claimant's injury; (3) the extent of the injury; and (4) "most importantly," whether the injury has stabilized. *See Mechanical Devices v. Industrial Commission,* 800 N.E.2d 819, 826 (Ill. App. 2003).

Petitioner was off work from 12/1/18 through the date he started work at Moseley on 4/08/2019. Dr. Burra's no work order was still in effect during the time period Petitioner left Respondent and was seeking work in Alabama. Petitioner had self-limited his work for the Respondent after his last appointment with Burra on January 26, 2018. Dr. Phillips also recommended that Petitioner modify or limit his activities to what he could tolerate due to his left shoulder condition.

Petitioner was able to modify his work and self-limit while he was working for the Respondent. (T. pg. 34). He would not have left his job with the Respondent but for the plant closure in November of 2018. (T. pg. 38). Petitioner's first attempt to work after leaving Respondent was as an assembler for Moseley Technical Services. Petitioner testified that the pain in his left shoulder caused him to self-limit and modify his work activities, which led to his termination for unsatisfactory job performance. Petitioner was off work again until he was able

to secure employment with Leadec performing a much lighter job. Petitioner is still employed at Leadec as a tow motor operator as of the date of the hearing.

The first period of TTD alleged by the Petitioner is from December 1, 2018 (due to Respondent plant closure) until such time as he started work for Moseley Technical Services on April 8, 2019. In applying the 4 factors as put forth by the court in *Mechanical Devices,* the Arbitrator finds as follows:

- Petitioner was not released to return to work by his treating physician, Dr. Burra. In addition, it was recommended by Respondent's Section 12 examining physician that Petitioner limit or modify his activities as needed to avoid pain in his left shoulder.
- Both doctors have testified that Petitioner is suffering with severe arthritis in his left shoulder, and requires activity modification in order to avoid pain and discomfort in the left upper extremity.
- Petitioner's arthritic condition has progressed to the point that he is in need of a shoulder replacement. Petitioner testified that the pain he experienced while working at Moseley and Leadec is the same pain he felt in his shoulder when he worked for the Respondent.
- Petitioner has not reached maximum, medical improvement and is in need of additional treatment up to and including a total left shoulder replacement.

The Arbitrator finds that based on the 4 factors, Petitioner is entitled to TTD benefits in the amount of $646.13 / week for the time periods he was not working but was looking for work from December 1, 2018 through April 7, 2019.

In applying those same factors to the time period from June 4, 2019 through October 23, 2019, the Arbitrator finds again that Petitioner was limited in his ability to work due to the left shoulder condition as put forth above. Petitioner left the job at Moseley due to his left shoulder condition, and his inability to self-limit and modify his work duties without adversely affecting production quotas. It was not until he began working at Leadec, which was a much lighter job, that he was able to sustain regular employment. Wherefore, the Arbitrator also awards TTD benefits in the amount of 646.13 / week from June 4, 2019 through October 23, 2019, the time period between being terminated by Moseley Technical Services and securing employment with Leadec.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC029976
Case Name	ZYCH, BARBARA v. HELP AT HOME
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remanded Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0034
Number of Pages of Decision	5
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	DAVID BARISH
Respondent Attorney	Allison Mecher

DATE FILED: 1/25/2022

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Barbara Zych,

Petitioner,

vs. No. 19 WC 029976

Help at Home,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, and medical expenses, and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n,* 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

The Arbitrator found Petitioner failed to prove that her October 6, 2019 accident arose out of and in the course of her employment with Respondent and therefore denied all benefits. The Commission reverses the Decision of the Arbitrator and finds that Petitioner sustained work related injuries arising out of and in the course of her employment for Respondent when involved in a car accident on October 6, 2019.

I. Findings of Fact and Procedural History

Respondent supplies home care aides to clients who require assistance with housekeeping, self-care, and errands, so that they may remain in their own homes. Petitioner had been employed by Respondent as an aide for seven years and had been assigned to her client, Mrs. Robinson, for two and a half years at the time of her accident. Petitioner's duties were outlined in a care plan set up by Mrs. Robinson's insurer, Blue Cross/Blue Shield, and included bathing, grooming, dressing, preparing meals, laundry, housework, routine health, and some undefined outside home tasks. Mrs.

Robinson had difficulty walking and required use of a walker. Petitioner testified that she accompanied Mrs. Robinson in her vehicle to doctors' appointments and shopping and assisted her by retrieving the walker from her trunk and returning it upon completion of the errand. If they were shopping, Petitioner would return to the car with a motorized scooter for Mrs. Robinson, and they would shop together, with Petitioner loading the groceries and returning the scooter.

On October 6, 2019, the 52-year-old Petitioner was riding as a passenger in the back seat of Mrs. Robinson's car, while Mrs. Robinson drove and her son rode in the front passenger seat. Petitioner testified that the three were on their way to shop at a deli and then planned to drive to the nearby church when they were involved in an auto accident. Petitioner alleged that her right shoulder was injured in the accident. An ambulance took Petitioner to NorthShore Skokie Hospital, where she was evaluated in the emergency room. Dr. Benjamin Goldberg of the University of Illinois Hospital and Health Sciences System (UIC) diagnosed her with a subscapularis tear and subluxation of the proximal biceps tendon. Dr. Goldberg performed a right shoulder arthroscopy with subacromial decompression, distal clavicle excision, biceps tenodesis, and rotator cuff repair on December 16, 2019. Petitioner performed post-operative physical therapy but continued to complain of pain and stiffness in her shoulder. A May 27, 2020 MRI showed interval repair of the subscapularis and inferior glenohumeral ligament without evidence of tendon retraction or recurrent tear, large partial-thickness tear of the supraspinatus, and probable biceps tenodesis. Dr. Awais Hussain, also of UIC, diagnosed Petitioner on June 5, 2020 with an incompletely healed rotator cuff. Dr. Hussain suggested that Petitioner could give her shoulder additional time to heal or undergo an additional surgery. Petitioner opted to continue therapy, and the doctor advised her she did not need to return to his office unless she elected to have the surgery. Dr. Hussain assigned permanent restrictions of no lifting over ten pounds.

Because of her 10-pound lifting restriction, Petitioner was unable to return to her position of home care aide with Respondent, and another aide was assigned to assist Mrs. Robinson. Petitioner testified that she had searched unsuccessfully for other employment.

The Arbitrator found that Petitioner failed to prove that her accident arose out of and in the course of her employment with Respondent and denied all benefits. The Arbitrator concluded that Petitioner's conduct in riding in the client's vehicle and accompanying her to the deli and church was not included on the care plan and had not been authorized by Respondent. At the time of the accident, Petitioner had already completed the designated amount of time allotted for outside home activities, so the Arbitrator found her conduct in riding along with Mrs. Robinson to the deli was not reasonably foreseeable and therefore did not arise out of and in the course of her employment.

Petitioner timely sought this review.

II. Conclusions of Law

To obtain compensation under the Act, a claimant must show by a preponderance of the evidence that he suffered a disabling injury that arose out of and in the course of his employment. 820 ILCS 305/2 (2014); *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 194 (2002). An injury arises out of one's 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 incident to his assigned duties.'" *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 204 (2003) (quoting *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989)); *Parro v. Industrial Comm'n*, 167 Ill. 2d 385, 393 (1995). "In the course of" employment refers to the time, place, and circumstances of the accident. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483 (1989). An injury is received in the course of employment when it occurs within the period of employment , at a place where the worker may reasonably be in the performance of his duties, and while he is fulfilling those duties or is engaged in something incidental thereto. *R.S. Masonry, Inc. v. Industrial Comm'n*, 369 Ill. App. 3d 591, 596 (2006); *Scheffler Greenhouses, Inc. v. Industrial Comm'n,* 66 Ill. 2d 361, 366-67 (1977). Therefore, 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).

In this case, Petitioner's work duties were defined by Mrs. Robinson's care plan. If Petitioner's accident occurred while she was performing one of her assigned tasks, the accident arose out of and in the course of her employment and so would be compensable under the Act.

Mrs. Robinson's care plan listed "outside home" as one of Petitioner's duties, yet the plan did not define what activities were included under this category. Respondent's witnesses testified that clients were not expected to accompany care aides during these "outside home" activities unless the aide was authorized to transport the client. Branch manager, Ricky Mercado, admitted that aides were expected to assist clients with mobility problems and would not be required to request permission to leave the client's residence unless the aide was providing transportation. Petitioner here never provided transportation and was assisting her client by accompanying her to the deli at the time of the accident. The Commission finds that Petitioner was acting within the scope of her employment at the time of her accident and that her accident arose out of her employment for Respondent.

Respondent maintains that Petitioner acted outside the scope of her employment by riding in her client's vehicle. There is no documentation of a company policy prohibiting aides from riding with clients, whereas several documents prohibiting aides from transporting clients in their own or the clients' vehicles appear in Petitioner's personnel file. The Commission finds that it was reasonably foreseeable that Petitioner would ride along with the client to appointments and on shopping errands, because she was not authorized to transport the client herself and was assigned the task of assisting Petitioner with mobility. The Commission finds Petitioner's conduct constituted an employment-related risk in that it consisted of acts that she might have reasonably been expected to perform incident to her assigned duties, as defined by the Illinois Supreme Court in *McAllister v. Illinois Workers' Comp. Comm'n*, 2020 IL 124848 ¶47. Therefore, Petitioner's accident arose out of and in the course of her employment and was compensable under the Act. The Commission further finds that Petitioner's right shoulder condition of ill-being is causally connected to this accident and awards Petitioner related medical expenses and temporary total disability to the date of hearing.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on January 26, 2021, is hereby reversed. The Commission finds Petitioner proved that she sustained an accident on October 6, 2019 that arose out of and in the course of her

employment and that her current condition of ill-being in her right shoulder is causally connected to that accident.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner temporary total disability benefits of $277.95 per week for a period of 46-1/7 weeks, commencing on October 7, 2019 through August 25, 2020, as provided by Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the reasonable and necessary medical expenses incurred for treatment and listed in Petitioner's Addendum to Request for Hearing ¶7, pursuant to Section 8(a) and Section 8.2 of the Act.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980), but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

January 25, 2022

/s/ *Marc Parker*
Marc Parker

mp/dak
o: 12/16/21
068

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC003780
Case Name	SALINAS ALVAREZ, CHRISTHIAN D v. RED LOBSTER
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0035
Number of Pages of Decision	11
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Joel Herrera
Respondent Attorney	Daniel Flores

DATE FILED: 1/26/2022

/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)
WINNEBAGO			☐ PTD/Fatal denied
	☐	Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHRISTHIAN SALINAS ALVAREZ,

Petitioner,

vs. NO: 20 WC 03780

RED LOBSTER,

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 whether Petitioner sustained an accidental injury arising out of and occurring in the course of his employment, whether timely notice was provided, whether Petitioner's current left knee condition is causally related to the work injury, benefit rates, 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, corrects the Decision of the Arbitrator as set forth below, but 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).

The Commission corrects the first sentence of the first paragraph of the Accident section to reflect a date of accident of December 12, 2019.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 12, 2021, as corrected above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $571.59 per week for a period of 21 2/7 weeks, representing March 14, 2020 through June 20, 2020 as well as July 6, 2020 through August 24, 2020, 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 temporary partial disability benefits in the amount of $1,120.71, as provided in §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,029.62 for medical expenses 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 ACL reconstruction surgery and post-surgery treatment as recommended by Dr. Hamming as provided in §8(a) of the Act.

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 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 $14,400.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

January 26, 2022

/s/ *Deborah J. Baker*

DJB/mck

O: 12/22/21

43

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION 22IWCC0035
NOTICE OF 19(b) ARBITRATOR DECISION

SALINAS ALVAREZ, CHRISTHIAN Case# **20WC003780**
Employee/Petitioner

RED LOBSTER
Employer/Respondent

On 3/12/2021, 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 0.06% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

5882 HERRERA LAW CENTER LLC
JOEL HERRERA
4252 N CICERO AVE
CHICAGO, IL 60641

2542 BRYCE DOWNEY & LENKOV LLC
TIM ALBERTS
200 N LASALLE ST SUITE 2700
CHICAGO, IL 60601

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
SECTION 19(B)

Christhian Salinas Alvarez
Employee/Petitioner

v.

Red Lobster
Employer/Respondent

Case # 20 WC 3780

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 Arbitrator Glaub, of the Commission, in the city of Chicago, on August 24, 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. ☒ 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 **December 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*** causally related to the accident.

In the year preceding the injury, Petitioner's average weekly wage was **$857.39**.

On the date of accident, Petitioner was **29** years of age, married with 1 dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

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

Respondent shall be given a credit of 0 weeks of TTD, or **$0; $0** for TPD, **$0** for maintenance, and **$ 0** for medical benefits.

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

ORDER

Respondent shall pay reasonable and necessary medical services of $1,029.62, as provided in Sections 8(a) and 8.2 of the Act directly to Petitioner. Additionally, Respondent shall pay for left knee ACL reconstruction surgery and post-surgery treatment as prescribed by Dr. Hamming.

Respondent shall pay Petitioner temporary total disability benefits of $571.59/week for 21.286 weeks, commencing 3/14/20 through 6/20/20 and 7/6/20 through 8/24/20, as provided in Section 8(a) of the Act. Respondent shall pay Petitioner a sum of $1,120.71 in temporary partial disability benefits for the periods of 6/21/20 through 7/5/20.

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

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

Signature of Arbitrator

February, 23, 2021
Date

ICArbDec19(b)
ICArbDec p. 2

MAR 12 2021

Christhian Salinas Alvarez v. Red Lobster
20 WC 3780

STATEMENT OF FACTS

At time of the accident, Petitioner was a 29-year-old married Hispanic male with one dependent child. He worked at Red Lobster located in Lincolnwood, Illinois since August 2013. In September of 2019, he transferred to the Gurnee, Illinois location and worked as a lead line cook. (Tr. p 31)

On December 12, 2019, Petitioner injured his left knee while organizing boxes in the freezer. That morning, he unloaded boxes from a truck to place and organize them in the freezer. Heather Rihacek, his supervisor, was assisting Petitioner. She testified that Petitioner was stacking and organizing the heavier boxes and she was handling the lighter boxes. (Tr. p 110) Petitioner testified that he would grab the boxes from the ground behind him, twist his body and stack the boxes. As he reached to stack a 30 lb. box at a height of about seven to eight feet, his left knee gave out when he "stepped down" on the ground. (Tr. p 14, 40, 41) As he stacked the box, he twisted or pivoted with his knee and that is when it gave out. (Tr. P 40). He testified that he fell to the ground striking his left knee. (Tr. p 42, 62, 71) He completed his shift and also went to his two other jobs at Amazon and with Uber. Petitioner testified that he scheduled to work in advance at Amazon and took a small route as his knee was sore. (Tr. p 70) He testified that he iced his knee, medicated with Aleve and took a break before driving for Uber that evening. (id, 70)

Heather Rihacek was present in the freezer at the moment of the accident. She testified that she had her back to him but heard Petitioner yell in pain. When she turned around, she saw him on the ground. (Tr. p 98) She testified that he complained of knee pain. (Tr. p 99 -100). She testified that on December 26, 2019, she completed two incident reports. One report documents a December 12, 2019 accident and states "EE alleges 2 weeks ago he was taking boxes out of a truck to put them away into the freezer and as he was reaching." (Rx 1) Heather completed a second injury report that states that Petitioner injured his knee on 12/18/19 at 12am. Despite completing the second report, Heather testified that she was unaware of an accident occurring on 12/18/19. (Tr. p 87) She could not recall or explain why a second report was prepared but testified that the information in the second report was inaccurate and unreliable. She obtained the information for both reports based on information provided by Petitioner and information from a telephonic discussion that she had with the workers compensation carrier. (Tr. p 83, 109) Heather testified that Petitioner was an honest, hard-working individual and that she had no reason to doubt that he was being honest when he testified as to his work injury. (Tr. p 100)

After the incident report was completed, Petitioner was referred to Waukegan Immediate Care by his employer. (Tr. p 17) He was seen on December 26, 2019 and reported an onset of left knee pain that began on December 12, 2019 while he was putting away boxes.

Specifically, "as he turned and pivoted with his left knee, it locked up causing him to have pain and he fell to the ground." (PX 1, p 2) He was prescribed an MRI.

The MRI was performed on January 9, 2020 at MRAD Golf Imaging Center. It revealed an ACL that was frayed and buckled from a partial tear as well as a medial meniscus posterior corner tear with associated small joint effusion. (PX 2, p 5-6)

Following the MRI, Petitioner returned to Waukegan Immediate Care with persistent knee pain and was given a referral to Dr. Hamming, an orthopedic surgeon at Illinois Bone & Joint Institute. (Tr. p 18)

Petitioner saw Dr. Hamming on January 16, 2020. Dr. Hamming noted that on December 12, 2019, Petitioner was unloading a truck lifting and pivoting on his leg. He was putting something up on a shelf and "felt his knee gave on him and he actually fell off to the side." He diagnosed Petitioner with an acute left knee injury with an ACL and medical meniscus tears. He recommended physical therapy and surgery and placed Petitioner on 20 lb lifting restrictions. (PX 3, p 69-70)

Petitioner commenced physical therapy on January 28, 2020 at IBJI. Those records reflect that Petitioner injured his left knee on December 12, 2019 when he was unloading a truck to place boxes in freezer. (PX 3, p 41) While the overall history provided in those records was accurate, Petitioner testified that he did not trip on a box as noted in those records. He had a single session of physical therapy as additional visits were not approved. (Tr. p 19)

At Respondent's request, Petitioner was evaluated by Dr. Brian Cole for a section 12 exam on February 13, 2020. Dr. Cole noted that Petitioner injured his left knee on December 12, 2019 when he was lifting a box and reached and his leg gave way. He noted that Petitioner fell hard onto his left knee. The fall was witnessed and reported that day but he did not seek care until December 26, 2019. Dr. Cole noted that the MRI showed a chronic appearing ACL tear and an old meniscus tear. After careful review of the facts and diagnostic films, he opined that Petitioner aggravated his pre-existing ACL tear and degenerative medial meniscus tear. Dr. Cole struggled with the notion that Petitioner was functional given his knee condition but ultimately concluded that Petitioner incurred an acute work-related aggravation of a pre-existing condition. In reaching his conclusion, Dr. Cole considered that Petitioner was asymptomatic prior to the accident and that he did not play sports in the recent past. He recommended an ACL reconstruction surgery and indicated that Petitioner may continue to work. (RX 3)

On July 13, 2020. Dr. Hamming re-iterated the need for surgery and continued Petitioner on the same work restrictions. Petitioner paid $99 out-of-pocket for this visit. (Tr. p 21, 22)

Petitioner testified that he had no prior left knee complaints. He testified that his knee pain has persisted since the accident and that he would like to proceed with the recommended knee surgery. (Tr. p 20, 22, 23)

ISSUES AND FINDINGS OF FACT

With regards to the issues of Accident (C), the Arbitrator finds as follows:

Petitioner testified that he injured his left knee while stacking a 30 lb. box in the freezer on December 12, 2012. He reached to stack the box above another one and as he landed, his left knee gave out and he fell to the ground. His supervisor, Heather Rihacek, was in the freezer assisting in organizing the boxes at the time of the accident. She testified that she had his back to him and that when she heard Petitioner yell in pain, she turned around and saw him on the ground. (Tr. p 97, 98)

The medical records corroborate his testimony. All the medical providers noted that on the date in question, Petitioner injured his left knee while unloading boxes from a truck and placing them in the freezer. The records from Waukegan Immediate Care note that as Petitioner turned and pivoted with his left knee, it locked up on him causing him to have pain and he fell to the ground. (PX 1, p 2) Similarly, Dr. Hamming, noted that Petitioner pivoted on his leg when putting products on a shelf and felt his knee gave on him and he actually fell off to the side. (PX 3, p 69) Respondent's IME physician, Dr. Brian Cole, took a similar history. He noted that Petitioner was lifting a box and his leg gave way when he reached and he fell hard onto his left knee. (RX 3)

Respondent's witness, Heather Rihacek, further corroborated Petitioner's testimony. While she testified that she never reached to assist Petitioner and did not see him fall, she was present at the moment of the accident and heard Petitioner yell in pain. When she turned around, she saw him on the ground. Heather further verified Petitioner's testimony as to the approximate weight of the boxes that he was handling. She testified that Petitioner was an honest, hard-working individual and that she never had to reprimand him. She testified that she believed that Petitioner was being truthful about his injuries and even completed an accident report. (Tr. p 100, See also RX 1)

Based on the above, the Arbitrator finds that Petitioner sustained a compensable accident to his left knee on December 12, 2019, which arose out of and in the course of his employment.

With regards the issue of Notice (E), the Arbitrator finds as follows:

Petitioner injured his left knee in the presence of his supervisor on the date in question. Heather testified that she completed a written report on 12/26/19. (Rx 1) For these reasons, the Arbitrator finds that Petitioner provided proper and timely notice of his accident.

With regards to the issue of Causation (F), the Arbitrator finds as follows:

Petitioner testified to a state of well-being regarding his left knee prior to the accident. He testified that he injured his knee as described above and has had persistent left knee pain

since the accident. The medical records revealed that his left knee symptoms were brought upon by the work injury of December 12, 2019. Dr. Hamming found that Petitioner sustained an acute left knee injury at work with an ACL and medial meniscus tear. (PX 3, p 70) Dr. Brian Cole, Respondent's IME physician, opined that Petitioner incurred an acute work-related aggravation of a pre-existing condition which required an ACL reconstruction surgery. (RX 3)

For these reasons, the Arbitrator finds that Petitioner's current condition of ill-being as it relates to his left knee is causally related to his work injury of December 12, 2019.

With regards to the issue of medical services (J), the Arbitrator finds as follows:

Having found in favor of Petitioner on the issues of Accident and Causation, the Arbitrator now finds that Respondent is liable for payment of the bills from Waukegan Immediate Care in the amount of $224.00 and Illinois Bone and Joint Institute in the amount of $706.62, subject to the Illinois Medical Fee Schedule. In addition, the Arbitrator finds that Respondent shall reimburse Petitioner $99 in out-of-pocket expenses as Petitioner paid for the most recent visit to Illinois Bone & Joint Institute.

In awarding the above charges, the Arbitrator notes that the charges arose from four office visits and one physical therapy session all for treatment related to the left knee. The Arbitrator finds that all treatment to date has been reasonable and necessary to cure Petitioner's left knee condition. In sum, Respondent shall pay Petitioner $1,029.62 for medical services, subject to the Illinois Medical Fee Schedule.

With regards to the issue of prospective medical care (K), the Arbitrator finds as follows:

The Arbitrator notes that both surgeons, Dr. Hamming and Dr. Cole, agree that Petitioner requires a left knee ACL reconstruction surgery as a result of the December 12, 2019 work injury. Petitioner testified that he wishes to proceed with said surgery. The Arbitrator finds that Respondent shall approve and pay for an ACL reconstruction surgery and related post-surgical treatments.

With regards to the issue of TTD and TPD (L), the Arbitrator finds as follows:

Petitioner testified that he continued working in a light duty capacity following the accident until March 13, 2020. He testified that as of March 14, 2020, Respondent closed its doors as mandated by the Governor due to Covid-19. (Tr. p 24) Petitioner testified that he remained off work until he was called back to work on June 21, 2020. (Tr. p 25) He testified that he worked minimal hours on that day and worked a very limited schedule through the pay period ending on July 5, 2020. Petitioner testified that he has not been called back in to work after July 5, 2020 and produced paystubs to that effect. (Tr. p 25, PX 5)

Petitioner was placed on restricted duty by Dr. Hamming commencing on January 16, 2020. His 20 lb. lifting restrictions were extended when he saw Dr. Hamming in July 2020. (Rx

3, p 6 & 70). Respondent's Section 12 examiner, Dr. Cole, examined Petitioner on February 13, 2020 and found that "it is ok for him to work in the meantime." (Rx 3) At that time, Petitioner continued to work in a light duty capacity.

The Arbitrator finds that Dr. Hamming's 20 lb. restrictions were reasonable given the undisputed severity of Petitioner's knee condition.

As Petitioner has not yet reached a state of MMI, he is entitled to TTD benefits for the period of March 14, 2020 through June 20, 2020 and July 6, 2020 through the date of hearing. Respondent shall pay Petitioner 21.286 weeks at a rate of $571.59 per week.

In addition, the Arbitrator finds that Respondent shall pay TPD benefits for the period of June 21, 2020 through July 5, 2020. During this 2 1/7 week period, Petitioner earned a sum of $156.32. (PX 5) Therefore, Respondent shall pay Petitioner a sum of $1,120.71 in TPD benefits.

Petitioner testified that he received unemployment benefits. In line with the Decision in Crow's Hybrid Corn Co. v Industrial Commission, 72 Ill2d 168, Respondent is not entitled to a credit for unemployment benefits collected by Petitioner. Petitioner is however liable for resolving any dispute of unemployment benefits that were paid concurrently with the awarded TTD periods.

With regards to the issue of penalties (M), the Arbitrator finds as follows:

Petitioner filed a Penalty Petition requesting an award of penalties under Sections 19k, 19l and 16 for the non-payment of TTD benefits. In review of the record as-a-whole, this matter hinged on the issue of Accident. While Respondent failed to provide a true defense on the issue of Accident, it did have a reasonable basis for non-payment of TTD benefits as Dr. Cole opined that Petitioner can continue to work. Although the Arbitrator was not swayed by this opinion, reliance on this report suffices to defeat a claim for penalties.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC021672
Case Name	LORENZEN, LISA v. DANVILLE SCHOOL DISTRICT #118
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0036
Number of Pages of Decision	30
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	John Sturmanis

DATE FILED: 1/26/2022

/s/ Deborah Baker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LISA LORENZEN,

Petitioner,

vs. NO: 19 WC 21672

DANVILLE SCHOOL DISTRICT #118,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of Petitioner's entitlement to Temporary Total Disability benefits, and being advised of the facts and law, corrects the Decision of the Arbitrator as set forth below, but 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). This case was consolidated for hearing with case number 19 WC 03142.

The Commission corrects the headings on pages 24 and 25 to reflect a date of accident of December 5, 2018.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 30, 2021, as corrected above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,088.70 per week for a period of 26 5/7 weeks, representing September 12, 2020

through March 17, 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. Respondent shall have a credit of $11,947.75 for TTD benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the reasonable, necessary and causally related medical expenses incurred for treatment of Petitioner's neck, right shoulder, and low back from December 5, 2018 through March 17, 2021, as provided in §8(a), 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 Responent shall provide and pay for cervical spine treatment recommended by Dr. Gornet as provided in §8(a) of the Act.

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 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.

Under Section 19(f)(2), 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 Circuit Court.

January 26, 2022

/s/ *Deborah J. Baker*

DJB/mck

O: 12/8/21

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC021672
Case Name	LORENZEN, LISA v. DANVILLE SCHOOL DISTRICT #118
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	27
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	Aaron Chappell
Respondent Attorney	John Sturmanis

DATE FILED: 4/30/2021

/s/Dennis OBrien, Arbitrator

Signature

INTEREST RATE WEEK OF APRIL 27, 2021 0.03%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

LISA LORENZEN
Employee/Petitioner

v.

DANVILLE SCHOOL DISTRICT #118
Employer/Respondent

Case # **19 WC 21672**

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 **Dennis O'Brien**, Arbitrator of the Commission, in the city of **Springfield**, on **March 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, **December 5, 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 $**58,790.00**; the average weekly wage was $**1,633.05**.

On the date of accident, Petitioner was **50** 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 shall be given a credit of $**11,947.75** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**11,947.75**.

Respondent is entitled to a credit of **All amounts paid by Respondent's group health insurer** under Section 8(j) of the Act.

ORDER

Petitioner's current right shoulder injury (including bursitis and irregularities of the glenohumeral joint capsule and the inferior glenohumeral ligament), current low back injury (including the extruded disc fragment at L3/4 and his condition following microdiscectomy to remove that disc fragment), and current cervical injuries (including injuries to the C3/4 disc and the C5/6 disc) are related to the accident of December 5, 2018.

Petitioner is entitled to temporary total disability benefits from September 12, 2020 to the date of Arbitration, a period of 26 5/7 weeks. Respondent is entitled to credit of $11,947.75 for amounts paid towards said period of temporary total disability.

The testing and treatment rendered by Petitioner's treating physicians to her neck, right shoulder and low back from December 5, 2018 through the date of arbitration was reasonable and was necessitated by the injuries incurred in the December 5, 2018 accident and shall be paid pursuant to the medical fee schedule.

Petitioner is entitled to the further necessary prospective medical treatment recommended by Dr. Gornet, including but not limited to diagnostic studies recommended by Dr. Gornet and the cervical spine surgery recommended by Dr. Gornet, which are to be paid pursuant to the medical fee schedule.

Based upon the need for prospective medical treatment Petitioner has not yet reached 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.

Signature of Arbitrator

ICArbDec19(b)

APRIL 30, 2021

Lisa Lorenzen vs. Danville School District #118 -- 19 WC 21672

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner Lisa Lorenzen

Petitioner testified she was currently employed by the Danville School District as a 7th grade science teacher, and had been so employed for five years. Prior to working for Respondent she had worked for 11 years for the Cahokia School District, again as a teacher.

On November 14, 2016 Petitioner said she was working as a teacher, writing on a white board which was mounted on the wall, and the white board fell from the wall and she caught it with her right hand and let it down. She said when she caught the white board she felt a pain in her right shoulder and an ache in her back. She reported the incident to an administrator and filled out an accident report. She continued working that day.

Petitioner said that the next day she went to write her schedule on the white board and it again fell, and her reaction again caused her to try to catch it, and when she did her right shoulder began to hurt severely.

Petitioner said she was seen by a workman's compensation doctor at Carle for right shoulder complaints, but could not remember his name. She subsequently underwent physical therapy and MRI testing, finally undergoing right shoulder surgery with Dr. Gurtler on October 26, 2018. She said her right shoulder did well after surgery and she returned to work. She said everything was normal after she returned to work.

Petitioner said she was back at work following the surgery when, on December 5, 2018 there was a verbal altercation between two students. She said she asked other students to get some help and at that time the girl started moving towards the young man. She said the girl was quite a bit bigger than the boy, and she did not want her to hurt him. Petitioner said she stepped in front of the boy and asked the girl to please stop, but the girl continued to go after the boy and shoved Petitioner very hard to get her out of the way. Petitioner said she was not expecting that, she tried to catch herself so she would not land on the student who was quite a bit smaller than her. She said she did catch herself, and then looked at the girl and said she had put her hands on a teacher, and she needed to stop. The girl was very angry and started throwing chairs, desks and tables across the room. Someone then arrived to secure the student.

Petitioner said that following this incident she immediately experienced pain in her neck, back and shoulder. She reported the injury to her employer and shortly thereafter went to Carle Clinic for medical treatment by Dr. Gurtler. She said Dr. Gurtler ultimately thought that her symptoms might be coming from her neck rather than the right shoulder he had operated on. He referred her to Dr. Gornet, a spine specialist she had previously treated with in 2008 or 2009. Dr. Gornet had done a two level disc replacement at C4/5 and C5/6 in 2008 or 2009. Dr. Gornet probably saw her for the last time for that previous problem on April 23, 2009.

Petitioner testified that her neck had done well between April 23, 2009 and December 5, 2018, she had experienced no problems with it. She said she had not seen any doctor during that period of time because of neck symptoms or pain.

Petitioner said her low back hurt following this second accident. She said she had some low back pain following the November 14, 2016 accident, but that the low back pain she experienced at that time had resolved without being treated. She said the only treatment she received following the November 14, 2018 accident was to her shoulder. Petitioner said that following the December 5, 2018 accident Dr. Gornet did provide treatment to her low back.

Petitioner was seen by Dr. Singh at Respondent's request for evaluation of her low back and neck. She said Dr. Singh recommended the surgery Dr. Gornet was recommending, and Dr. Gornet subsequently performed a one level microdiscectomy to her low back. She said her low back was better following that surgery as she no longer had tingling and numbness, but that her problem had not completely resolved, she continued to have pain. She said she continued to have low back pain as of the date of the accident.

Petitioner said Dr. Gornet then turned his attention and care to her neck. She said he gave her a shot which helped her symptoms a little, but it did not last, the symptoms returned. She said Dr. Gornet also ordered tests. She said Dr. Gornet was recommending disc replacement surgery for her cervical spine. Petitioner testified that she wanted to have that surgery as she was in severe pain and wanted to go back to work with her kids and to perform her job properly.

After her June 21, 2019 low back surgery, at the end of the 2019 summer break, Petitioner said she returned to work teaching in the classroom. She said that went well as far as both her neck and her low back were concerned. She said she continued to have symptoms, though. She was seen at the school district's request by Dr. Nogalski, who evaluated her right shoulder and neck. She said he performed a physical examination of her and asked her to try to get her right shoulder to pop. She said he tried to help her get it popped. He then twisted her head while examining her neck and pushed it down, causing her to ask him to stop, as it hurt and increased the symptoms in her neck.

Petitioner testified that if the medical records showed she called Dr. Gornet to tell him how she was doing and that he ordered a nerve conduction study for her, that would be accurate. She said she was having symptoms in both of her hands. She said she underwent the nerve conduction studies and that they indicated she had carpal tunnel in both hands. She noted that she was not claiming her work caused the carpal tunnel conditions. Those conditions were surgically repaired in 2020, but even after the surgeries she continued to have some symptoms in her hands. She said the thumb and fingers of the right hand were still numb. She said that made manipulation activities such as writing, taking care of her hair and other self-care difficult. Her left hand had a lot of pain in the thumb and hand making even squeezing out toothpaste difficult. She said the neck pain prevented her from fixing her hair. She said activities such as dressing, cooking, shopping and cleaning and spending time with her grandchildren were very difficult.

Petitioner said that because of these symptoms she called Dr. Gornet's office on March 6, 2020 to let him know how she was doing. At that time Petitioner was working in the classroom, and the doctor ultimately took her off work. She said the school district transitioned to E-learning, and she was then working from home. She said that even with Dr. Gornet having taken her off work she still returned to work for the school district during E-learning. She said the district asked her if she could work from home during E-learning and she said she would. She said there was no way to contact the doctor and she didn't know how long she worked doing E-learning, but she did it until she was able to contact Dr. Gornet. Petitioner said that while teaching from home she had symptoms, including while stilling at the computer, which was hard on her neck causing her headaches and moving her arms and shoulder while typing and constant writing was also very difficult. Petitioner testified that working from home with the computer was worse on her neck than doing work activities in the classroom.

She was then able to go back and see Dr. Gornet and she had a CT myelogram in April of 2020. It was after that test that Dr. Gornet recommended surgery.

Petitioner described her neck symptoms as of the date of arbitration as unbearable. She said her headaches were severe and made daily functioning difficult and would make her sick, and she had a hard time concentrating. She said as time passes it is getting more and more difficult to do anything. She said even moving a little or breathing could be very painful. Petitioner said she did not have any of these symptoms or problems prior to December 5, 2018. Petitioner said that Dr. Gornet had her off work as of the date of arbitration. She said that if the surgery recommended was authorized she would have it.

On cross-examination Petitioner said the white board was what teachers write on with dry erase markers and she did not know how much it weighed. She said that if the medical records indicated she did not get seen

for medical treatment between November 15, 2016 until November 28, 2016, she would agree. That was her basic answer to all questions about treatment provided by her physicians, she said if the medical records said something, she agreed with it, including histories given, complaints made, dates of treatment. She answered in this manner to questions about whether prior back complaints had resolved, whether March 14, 2017 was the date she was treated for her shoulder, and back pain for her November, 2016 accidents. She said the next time she had back pain was December 5, 2018.

Petitioner said she had replacement disc surgery in the past with Dr. Gornet, probably in 2008 or 2009. She said Dr. Gornet did not warn her that she might need another surgery down the road , that the artificial disc would need to be replaced. Petitioner said she had not had neck pain prior to the December 5, 2018 accident and had not spoken to any doctor about neck pain prior to that. When asked if she spoke to Dr. Gurtler on November 23 2018 about her neck, she said she did talk to him, because she had been sleeping in a recliner and got a crick in her neck. She had been sleeping in a recliner since her surgery, she could not sleep in bed, and she kept getting a crick in her neck from her sleeping position. She said she did not recall Dr. Gurtler prescribing medication for her neck and shoulder at that time, but that if the medical records showed that, she would believe the medical records.

Petitioner said she did disagree with the medical records if they said that running on a treadmill aggravated everything, as she did not run on a treadmill, she walked on a treadmill. She said she did work out a little, walking on the treadmill. She said she did not go to a gym. He said no other activities that she did hurt her neck prior to the December 5, 2018 accident. She said she was not continuing to walk and use the treadmill.

Petitioner said that she worked at home using her own computer, not a school laptop. She said she did not have the availability of a laptop from the school district. She said she knew the school gave some teachers laptops, but she had a laptop at home, her own personal laptop, as well as her own desktop. She could use her laptop for her work. It had a camera for Zoom and E-Learning. she said her desktop computer also had a camera.

Petitioner agreed that she lived on a farm, but said that she did no work on the farm. She said that when they had animals there she sometimes went out and watered them with the hose in the summertime, but she did not give them feed and water, she did nothing with the farm animals. She said that in the period before her second accident there were no pigs at the house. She said that at times she had a garden and tended flowers, but she did not intend to have a garden this year. When asked what she meant when she told Dr. Gurtler that she was a farm wife, she said that meant her husband was a farmer. She said she had not done any chores as a farm wife to help her husband farm since the 2016 accident.

Petitioner said her microdiscectomy surgery was done as an outpatient procedure.

Petitioner testified that after the 2019 summer break she returned to school that fall and was did well. She said she was not exercising at that time and it had been a long time since she had done so. She said she had not done any exercise outside of that prescribed by therapy since the 2016 accident involving her shoulder. She said she did walk on the treadmill at home, but she had not done so for a long time, certainly not since the December 5, 2018 accident.

She testified that her carpal tunnel surgery was in the fall of 2020 and she could not recall if she took time off work for that as her mother was ill and dying and she had taken time off due to that. She did not recall whether or not she gave the school a written reason for leave absence being due to her neck. She said the carpal tunnel surgery occurred after her leave of absence began. She said she did not give the school a specific reason for her medical leave of absence, she just wanted a medical leave of absence. She said to continue her insurance she had to take a FMLA medical leave. She said she was not currently on FMLA as that had ended, it is only 12 weeks a year. She said that as of the date of arbitration she was still employed by the school.

Petitioner testified that doctor Paletta had never taken her off of work. She said Dr. Gornet did take her off work on March 6, 2020. She said she did not see Dr. Gornet on that date, she spoke to him on the telephone. She said she did ask Dr. Gornet for a work slip at the time that he took her off work because she was in severe pain. She said she called Dr. Gornet because of the pain and asked him what she could do and he said there was nothing they could do except take her off work. She said she did not tell Dr.Gornet that she could teach remotely on her laptop. She agreed that her license to teach was up to date. She agreed she did not have any restrictions on her drivers license.

Petitioner agreed that she could still cook some things and she could still do some shopping and cleaning. She is able to drive herself. She agreed that she had headaches before the December 5, 2018 accident. She said that in that accident she did not fall down or hit her head. She agreed she did not fall or hit her head in the 2016 accident, either.

Petitioners said that the two students who were involved in the altercation we're not actually fighting, it was verbal. Both were 7th graders.

Petitioner agreed that she had an EMG that showed carpal tunnel syndrome and that it was after that test that she went for carpal tunnel surgery. She said that if the records reflected that the last time she saw Dr. Gornet was February 1, 2021, that would be correct. She said that the last time she saw Dr. Gornet she told him

that she was having left hip and pain in the buttock and down the leg. Counsel for Petitioner stipulated they were not claiming an actual injury to the left hip, though the pain could be referred or radicular pain.

Petitioner agreed she had medical insurance through the school district.

On redirect examination Petitioner said the white board which fell was either 6 foot by 8 foot or 4 foot by 6 foot. She said the problem with her right shoulder and neck following surgery in October 2018 was due to her sleeping in the recliner, she would wake with neck pain and could not get comfortable. After she switched how she was situated it helped her neck. She said she walked on her treadmill following her right shoulder surgery and it did not cause any aggravation or flare up in her right shoulder or her neck at that time.

Petitioner testified that when she saw Dr. Gurtler in October of 2018, prior to her December, 2018 accident, she was seeing him for her shoulder.

Petitioner said she had both a laptop and a desktop at home that she used. She attempted to use both of them when she was doing E-learning and one was no better than the other , she still had pains in her neck when she used both the laptop and the desktop computers.

Petitioner said she was a teacher, not a farmer. She said that they have pigs all the time but at certain times they are in a shed by the house. She said it was possible but unlikely that they had pigs at the house in November of 2018 when she was talking about pigs with Dr. Gurtler. She said the pigs were usually kept at the pig farm which is not at the house. She said she normally did not go up to the pig farm.

Petitioners said that prior to December 5, 2018 she did have headaches but not very often. Currently she had headaches all of the time, every day. She said the current headaches were unbearable while she was able to bear the headaches that she experienced prior to December 5, 2018. In the past she would treat headaches with Tylenol or ibuprofen and that would help , but those medications did not help with her current headaches.

Patient stated that Dr. Gornet had not changed any of her work restrictions since March 6, 2020 and he currently had her off of work. She said that her husband had driven her to the arbitration hearing. She said the symptoms she was having during the hearing were severe headaches, neck, shoulder, chest, upper back, and lower back aching. She said those complaints had gotten worse as the day had progressed. She said that at no point since December 5, 2018 had her neck symptoms and pain completely resolved.

On recross examination Petitioner said that she had taken medication for the headaches she had experienced prior to these two accident.

MEDICAL EVIDENCE

No medical evidence of physical conditions or treatment for pre-accident dates was entered by either party at arbitration.

Petitioner was seen by Dr. Bernot on November 28, 2016. She was seen due to a right abdominal pain problem but advised the physician that she also had right shoulder pain and right lower back pain which began approximately two weeks earlier while moving a board when it slipped causing her to pull her shoulder and back in an attempt to catch it. She advised him that her right arm sometimes felt weak and that she did not seek medical care immediately because she thought it would get better on its own.

Petitioner saw Dr. Verghese on November 29, 2016 again due to abdominal pain, and also complained of the right shoulder pain and her low back pain with a consistent history. Dr. Verghese felt Petitioner had right shoulder pain of an unspecified chronicity.

Physician Assistant (PA) Jacobs of Carle Clinic Occupational Medicine saw Petitioner on March 14, 2017 with a consistent history of injury. He noted that her upper back pain had resolved but that she continued to have shoulder pain. she advised him of two incidents of the whiteboard falling. He diagnosed right shoulder impingement and prescribed physical therapy.

On April 5, 2017 PA Jacobs recorded that physical therapy apparently made her feel worse so it was terminated. She had tenderness over the AC joint at that time as well as tenderness with moving her arm across the shoulder and with internal and external rotation. His diagnosis remained the same, right shoulder impingement.

Petitioner's next treatment for shoulder complaints was on October 20, 2017 by PA Cummings. She again gave the whiteboard falling off the wall history and noted that her work comp claim had been denied and she was trying to function the best she could without further aggravating her shoulder. She noted that exercise aggravated the pain in her shoulder quite a bit. She described frequent popping and grinding in her right shoulder and said she had a difficult time using the arm away from her body or above shoulder height. Physical examination at that time showed mild diffuse swelling of the right shoulder and the right shoulder was mildly retracted. She was found to have limited internal rotation while the left shoulder's internal rotation was better. A diagnosis of right shoulder rotator cuff tendonitis and rotator cuff bursitis consistent with impingement was

made and it was felt that there might be some element of tendonitis to the long head of the biceps. A cortisone injection was performed on that date and petitioner was given exercises for her shoulder alignment and health.

When next seen by Nurse Practitioner (NP) Blew on November 14, 2017 she advised that the shoulder injection seemed to be helping. PA Cummings Saw petitioner on February 19, 2018 Anne noted that an MRI had shown degenerative changes with the right AC joint but no rotator cuff tears. Petition was found to be tender over the right AC joint on that date. Because she was taking drugs for other medical problems they did not inject her AC joint with cortisone on that date.

Petitioner saw Dr. Gurtler on July 9, 2018. She can gave a consistent history of the accident and told him that her pain was becoming very serious, that she had frequent popping and grinding in the right shoulder and anything she did with the right shoulder brought on pain. She said she was having difficulty sleeping at night. He noted that the MRI showed inflammation around the AC joint and he believed that to be the cause of her pain. He again noted it did not show a rotator cuff tear. He said that it was difficult to get a needle into the small area affected so no injection was given at that time. He did talk to her about a surgical repair which would include a distal clavicle resection and he felt that would be very likely help her pain.

When Dr. Gurtler next saw Petitioner on August 4, 2018 he noted that when he had her push on a wall her scapula flipped up, she had a winged scapula. He said he had not noticed that before but that was because it was not as profound as some such conditions are. He noted that the MRI had shown that the acromion was poking down into the rotator cuff and that she had edema on both sides of the AC joint. He felt surgery could help both problems. He advised Petitioner that the winging of her scapula was from the injury and was permanent as it was caused by an injury to the long thoracic nerve, and that due to the long delay since the time of injury the long thoracic nerve would never come back.

Dr. Gurtler performed surgery on Petitioner's right shoulder on October 27, 2018. His postoperative diagnosis was right shoulder rotator cuff impingement with AC joint and spurs producing impingement. He noted that the undersurface of the rotator cuff was normal as was the labrum. He said there were obvious erosions under the acromion causing impingement. He removed 2 to 3 millimeters of the undersurface of the acromion. He noted the AC joint was very inflamed with spurs and red inflammation, though there was no evidence of rotator cuff tear on the bursal surface. When he saw Petitioner postoperatively on November 14, 2018 she was already gaining her motion back and felt better. He advised her to do no lifting for 12 weeks. He saw her again on November 23, 2018. She noted that she was having more pain in her neck and down into her scapula. He told her this could be from her cervical spine where she had previously had the two disc replacements performed but she noted that she had problems with it now, and not before, but she had been sleeping in a chair following her surgery and that had made her neck quite stiff. She also noted that in appeared

to be aggravated when she was running on a treadmill. He thought it was perhaps too early to do that as all of the bouncing might bother both her neck and her shoulder.

Petitioner's second accident, the incident with the female student who pushed her, occurred approximately two weeks following that visit with Dr. Gurtler, on December 5, 2018.

Petitioners saw Dr. Gurtler on December 6, 2018 and gave the history in regard to students fighting and being pushed with a blow at the front of her shoulder. Her pain in that area increased from a 2 to a 7 on a 10 point scale with that injury. Dr. Gurtler noted that on physical examination he saw a bruised, raised knot about four centimeters in diameter and one centimeter in height. He said this was quite visible. He said Petitioner lost some of the motion she had regained following the surgery and had definitely suffered a setback. He was hopeful that this would not be permanent damage.

Patient was seen by Dr. Gurtler again on December 9, 2018. He noted she was still in severe pain, worse than after the white board had fallen on her. Pain was in the anterior and lateral shoulder as well as neck and scapular pain. Dr. Gurtler noted, "certainly when the girl struck her, her cervical spine could have been injured. She says some of that pain predates all of this. She's had a little bit there but it is much worse now." (PX 3 p.111)

Petitioner saw PA Jacobs in occupational medicine again on December 13, 2018. She noted her right shoulder remained problematic and that her neck had some discomfort and a mild headache. The back pain she had previously described on December 6 was now across her back but she did not discuss pain radiation. Mr Jacobs put her on very strict restrictions and she said she could teach with those restrictions without issues. (PX 3 p.112)

Petitioner was seen by Dr. Rudawski on December 20, 2018. Her pain complaints in the right shoulder neck and low back continued. He noted that she had winging of the right scapula, which was suggestive of a long thoracic nerve injury causing anterior weakness. He ordered physical therapy in an attempt to confuse her nervous system to break up the spasms that was creating some of her pain. He said he thought the radicular pain was from the neck creating some of the radiating arm pain. He also thought that the piriformis might be irritating her sciatic nerve.

An MRI was performed of Petitioner's right shoulder on January 8, 2019 and was interpreted to show previous operative findings but no rotator cuff tears.

Petitioner saw Dr. Rudawski again on January 17, 2019 and told him that she felt the physical therapy was making her worse. He commented on the recent MRI of the right shoulder and was happy to see that no major structural injury had been caused by the altercation. She asked if he could send a note to her spine surgeon who she was seeing in a month to consider ordering an MRI of her neck to further evaluate her right radicular symptoms of burning, numbness, and tingling into fingers of the right hand.

Dr. Gurtler saw Petitioner on January 22, 2019. He noted that the new MRI showed postoperative changes as well as a lot of fluid in the subacromial space, noting that the amount was quite remarkable. He felt this was consistent with the dramatic event, referring to it as bursitis. He gave her an injection of cortisone on that date.

An MRI of Petitioner's low back was performed on February 11, 2019, and it revealed disc bulge at L3/4 with a central annular tear and protrusion, another central annular tear at L4/5 and a circumferential disc bulge at L5/S1 with left lateral recess stenosis and a moderate left greater than right foraminal stenosis. (PX 5 p.1,2)

Dr. Rudowski on February 14, 2019 noted that petitioner was having discomfort with radiation into her right hand as well as some radiating discomfort into her left foot.

Petitioner underwent a left L5/S1 epidural steroid injection on March 5, 2019. (PX 7)

Petitioner was seen by Dr. Gornet on April 15, 2019. He had previously performed microdiscectomy and disc replacement at C4/5 and C5/6 on December 17, 2008. He took a history of the December 5, 2018 altercation and noted that recent injections at C6/7 had helped to some extent, while injections at L5/S1 had not helped as much. He was of the opinion that her left buttock and leg pain would be helped by a microdiscectomy at L5/S1 then he noted she was having significant structural back pain which could be emanating from other levels as well. He said that if the microdiscectomy at L5/S1 on the left was not sufficient they might have to do a fusion at that level in a disk replacement at L4/5 and L3/4 . He placed treatment of her neck on hold at that time as well as shoulder treatment. He released her to work light duty if she was working from home. (PX 4 p1,3)

Petitioner had a number of telephone conversations with Dr. Gornet's physician assistants. On April 30, 2019 she told one that her low back pain had increased severely and was radiating to her left hip buttock and leg. On May 3, 2019 she told another physician assistant that she was continuing to have low back pain and a prescription was given to take at bedtime as she was having trouble sleeping. (PX 4 p.2,4)

Petitioner was seen again by Dr. Gurtler on May 28, 2019 with continued complaints of popping and catching in his shoulder which was painful. She said the subacromial injection had not made any difference. He noted that the MRI of January 8, 2019 had showed a lot of inflammation of the subacromial space but that the event she had experienced was so dramatic it could have caused a slap tear which are hard to see on regular MRI's. He noted on physical examination that she had atrophy about the musculature of her right shoulder, which was her dominant shoulder. He did not have a diagnosis that time for the catching and popping but he said he could not rule out a slap tear. (PX 3 p.114,144)

Dr. Gornet performed a laminotomy and foraminotomy and microdisectomy at L5/S1 on the left on June 21, 2019. He said a large fragment was seen and removed, and the nerve root appeared to have been decompressed. (PX 4 p.10,11)

Dr. Gornet saw Petitioner on July 8, 2019. Two weeks after her surgery she was reporting that some of the shooting pain in her left leg was gone but she still had pain in the leg at times. She also was reporting significant neck pain, headaches and right arm tingling and pain. He stated that she remained temporarily totally disabled. (PX 4 p.7,8)

An MRI/Arthrogram was performed on July 23, 2019. It was interpreted as showing the inferior glenohumeral joint capsule and inferior glenohumeral ligament appearing to be irregular and poorly defined with contrast extending beyond the margins of the inferior joint capsule. This caused him to be concerned for a chronic tear of the inferior joint capsule. There was no evidence of a glenoid labral tear and rotator cuff muscle bulk was maintained. (PX 3 p.213) Subsequent to that study Petitioner was seen by Dr. Gurtler on July 30, 2019. He stated in his office notes of that date that Petitioner had numbness from the right thumb, up the arm, into the base of the neck, which appeared to be from the cervical spine. He stated, "MRI shows the inferior glenohumeral ligament is damaged. This is what happened in this fight. The shoulder had to dislocate for a second when that happened it damaged the ligaments that hold the shoulder ball in socket." He noted that the surgery to fix that condition would involve rebuilding the front of the shoulder and could result in considerable long-term stiffness. Petitioner said she would be careful and keep it out of positions that made it slip. (PX 3 p.200,204)

Dr. Gornet saw Petitioner on August 1, 2019, six weeks after her low back surgery, and said Petitioner was still having intermittent left leg pain with prolonged sitting though her left buttock pain was actually more problematic. He released her back to work light duty so she could begin teaching August 5, 2019 with a five pound weight restriction and alternating between sitting and standing as needed. (PX 4 p.12) On September 3, 2019 Dr. Gornet had a CT scan performed on Petitioner's lumbar spine which showed degenerative Grade 1 anterolisthesis at L3/4 with the extruded disc fragment causing severe left greater than right foraminal stenosis. He then examined Petitioner and found her to complain of neck pain, shoulder pain and back pain into her left buttock and leg at times. (PX 6 p.1,2; PX 4 p.13,14)

When next seen on December 5, 2019 petitioner was still complaining to Dr. Gornet of pain at the base of her neck, right shoulder pain and pain in her right arm into the dorsal forearm and hand. She had brought an MRI arthrogram of her shoulder in with her and he said he would be in referring her to Dr. Paletta to assess it. Dr. Gornet recommended a CT/myelogram of Petitioner's cervical spine as well as nerve function studies of the arms to rule out radiculopathy versus peripheral entrapment. He noted that Petitioner's current symptoms relate to her injury on December 5, 2018, the altercation between two students. He restricted her to working with a 15

pound weight limit, no repetitive bending or lifting and alternating between sitting and standing as needed, with no overhead work. (PX 4. P.15)

Petitioner spoke with PA Collins on the phone on February 18, 2020, telling him that her neck pain and headaches were increasing and she continued to have low back pain. She told him that it was often hard to type at her job. (PX 4 p.16)

On February 18, 2020 Petitioner was examined at Respondent's request by Dr. Nogalski. After receiving a consistent history from Petitioner in regard to the accident and complaints, his physical examination revealed intermittent crepitus within the glenohumeral joint or subacromial region with decreased motor strength below shoulder level. His neck exam did not reveal any reproducible pain into the arms but he did note generalized tenderness to paraspinous muscle region around the cervical spine, mostly in the lower cervical segments. He felt that Petitioner had suffered a right shoulder strain with aggravation of acromioclavicular joint arthritis and scapular dyskinesia without documented injury to the long thoracic nerve as a result of the 2016 accident. He felt the 2018 altercation event had again caused a right shoulder strain and scapular dyskinesia as well as a possible cervical strain. He said that latter event might have aggravated her neck condition but he did not feel it caused the radicular pain she complained of 41 days later. He also did not find documentation to support a dislocation of the shoulder or significant injury to the inferior glenohumeral ligament as a result of that accident. (RX 2)

Dr. Nogalski felt Petitioner was at MMI in regard to her cervical spine and that a myelogram would not benefit her. He agreed with Dr. Gornet that an EMG would help sort out whether Petitioner had radiculopathy or neuropathy. He felt Petitioner needed to rehabilitate her right shoulder and was therefore not at MMI for that condition. Even though he had previously stated Petitioner was at MMI for the cervical spine he later said she needed physical therapy for both injuries. (RX 2)

PA Collins spoke with Petitioner via the telephone on March 6, 2020. Petitioner was having severe headaches and her symptoms had progressed to the point where she was miserable. PA Collins took her off work completely as of that date pending her March 16, 2020 appointment with Dr. Gornet. (PX 4 p.19)

While Petitioner was scheduled to get a CT scan and see Dr. Gornet on March 16, 2020, and went to his office for that purpose, she had an upper respiratory infection at that time and Covid-19 restrictions prohibited their seeing her. Dr. Gornet's office note of that date noted she was to remain off work. (PX 4 p.20)

On April 29, 2020 PA Collins again spoke with Petitioner by phone. She advised him that while she had been taken off work by Dr. Gornet, her school had started E-learning on March 30, 2020 and she wanted to see if she could tolerate that as it would be a somewhat lighter workload. She did try this for a short period of time starting on that date, doing so for three to four weeks, but her symptoms affected her quality of life and her ability to perform her work tasks. She felt that she needed to pass her work attempt on to them. Mr. Collins

again advised her to be completely off work until further diagnostic imaging could be performed upon her, though Covid-19 was keeping that somewhat in the air in regard to scheduling. (PX 4 p.21)

Petitioner again checked in with PA Juggerst and advised him on June 17, 2020 of continuing spasms in her arms and hands.

On July 27, 2020 Dr. Phillips performed EMG/NCV testing on Petitioner. He found severe, very chronic, right worse than left, sensory motor median neuropathy across the carpal tunnels, noting that the right sided median neuropathy was so severe that even with decompression residual symptoms were possible. He did find evidence of cervical radiculopathy in her left triceps, emanating from C6/7. (PX 10 p.3)

Petitioner also underwent a CT/Myelogram of the cervical spine which showed central disc protrusions at C3/4 and C7/T1 resulting in dural displacement at both levels but no central canal or foraminal stenosis. (PX 4 p.20) Petitioner saw Dr. Gornet that same date. He noted the EMG/NCV finding of bilateral carpal tunnel and referred her to Dr. Paletta for that as well as for her right shoulder condition. He said the CT/myelogram had shown a central disc herniation at C3/4 which he felt could account for Petitioner's headaches. He felt the next step would be a disc replacement at C3/4. He advised her to remain off work completely. (PX 4 p.23,24)

On August 3, 2020 an MRI - arthrogram of the right shoulder was conducted. It did not reveal any full thickness rotator cuff tear but did show tendinopathy of the supraspinatus, the upper subscapularis and the upper infraspinatus, though there was no evidence of tearing. It also showed likely tendonitis involving the biceps longhead tendon, again without definite tear. A recess capsular defect with discontinuity of the inferior glenohumeral ligament was seen, consistent with a humeral avulsion of the inferior glenohumeral ligament. (PX 5 p.3-5)

Dr. Gornet saw Petitioner on October 26, 2020. She was still having neck pain, shoulder pain and pain from her upper arms to her elbows. He noted that he continued to believe that her symptoms were related to her work injury of December 5, 2018. It was his plan at that time to replace the disk at C3/4 which he thought was injured. He would at that time consider whether or not he should remove her prosthesis at C5/6 and place a new disc at that level as there seemed to be either some inflammatory or structural pathology behind the disc itself which might be inflamed enough to cause her persistent symptoms. While she had already had her carpal tunnel releases performed by Dr. Paletta, she continued to have tingling symptoms in her fingertips which had not gone away and he felt that might be disc related. He continued to keep her off work at that point. (PX 4 p.28)

Petitioners spoke with PA Collins on November 4, 2020 and advised him that she continued to have significant neck pain with symptoms in her shoulders and upper arms, right worse than left. (PX 4 p.29)

Petitioner last saw Dr. Gornet on February 1, 2021. At that point she was still complaining of numbness and tingling in her hand which she felt might be some nerve irritation from her cervical spine or residual from the carpal tunnel. He still felt she was in need of a cervical disc replacement at C3/4 as well as possibly

replacing the C5/6 disc. He felt that both that and her low back complaints were related to her work injury of December 5, 2018. He had her continue to remain off work. (PX 4 p.30,31)

Testimony of Dr. Matthew Gornet

Dr.Gornet's testimony was consistent with the findings in his medical examinations and test results as summarized above.

Dr. Gornet testified that he was a board certified orthopedist with subspecialty in spinal surgery. His practice involves performing decompressions, fusions, and disc replacements, with the majority of his work being disc replacement as that is his area of expertise. Before Petitioner suffered the injuries in 2016 and 2018 he had last seen her on April 23, 2009, and it was his impression that she had done fairly well following her previous cervical disc replacement surgeries, working full duty. He did not recall her having significant low back problems when he had previously treated her. (PX 11 p.5,6,8,12)

Following her two current accidents he first saw her for neck and low back pain on February 11, 2019 with a history of new neck pain beginning on December 5, 2018 following an altercation between two students which resulted in her being shoved backwards. He performed a physical examination and found her to have decreased sensation to light touch in an L5 distribution on the left. After reviewing x-rays his impression was that at the minimum she had aggravated her underlying condition in her neck and her low back as result of the altercation and he stated that degenerative discs in her age group were more susceptible to injury because they were weaker. He diagnosed a disc injury in the lumbar spine, particularly at L5/S1 with possibly a new disc injury in her cervical spine. (PX 11 p.10,11 ,12-14)

Dr. Gornet felt Petitioner's work injury had caused her cervical spine condition and symptoms stating, "I believe that the cervical spine and lumbar spine symptoms and requirements for treatment are directly causally related to her work injury of 12/5 of '18." He provided her with steroid injections to the C6-7 and L5/S1 levels of her spine. (PX 11 13-15)

After examining Petitioner again on April 15, 2019 and finding continued symptomology, he noted that the injection previously given to her lumbar spine had not helped while the injection to her cervical region seemed to help to some extent. At that point he recommended a microdiscectomy at L5/S1. He performed that surgery on June 21, 2019, at which point she would have been restricted from work. During the surgery he found a large fragment of disk which was removed and correlated with her symptoms well, and he tested the nerve during the surgery and the results of that testing were consistent with chronic nerve irritation from the disk. (PX 11 p.16-18)

Dr. Gornet saw Petitioner in follow-up on July 8, 2019, and she reported some left leg improvement though she had left leg pain. She was to remain off work. He saw her again on August 1, 2019 and she noted

left buttock and leg pain with prolonged sitting and he advised her those symptoms could be from the disc injury at L5/S1 along with other disc pathologies. He released her to light duty effective August 5, 2019 with no lifting over five pounds and no repetitive bending or lifting. (PX 11 p.18,19)

Dr. Gornet said that when he saw her on December 5, 2019 Petitioner was having complaints of neck pain, right shoulder pain, right arm and forearm pain and had a mild decrease in the C6/7 dermatome. (PX 11 p.21)

Dr. Gornet said that Petitioner then had some telemedicine visits due to Covid-19 and he knew he had placed her off work. He said Petitioner had kept his office in the loop since December of 2019 through telephone conversations. He said that as of the date of his deposition he felt there was a good chance that she would need a fusion or fusion disc replacement procedure in addition to what she had already undergone in regard to the cervical spine. (PX 11 p.21-23)

Dr. Gornet said he had reviewed the IME reports of Dr. Nogalski and Dr. Singh, and he clearly did not agree with several of the opinions of those doctors, saying he did not believe Petitioner had sustained a soft tissue muscular strain to her cervical spine which had resolved by June of 2019 as her symptoms were ongoing and were those of a fairly classic disc injury in the cervical spine , and she clearly had a left L5/S1 disc herniation. He said Petitioner had fairly classic symptoms of a structural disc injury and her symptoms had progressed overtime, and she was having more radicular complaints into the right arm. He did not feel the symptoms were consistent with the cervical strain. (PX 11 p.23-26)

Dr. Gornet said that in the past Petitioner had always been fairly straightforward with him. He felt the only way to evaluate that was to move forward with further diagnostics. He disagreed with Dr. Singh's belief that the epidural injection in the cervical spine was not appropriate and reasonable and while he felt that Dr. Singh was an excellent doctor, he did not feel that that physician saw patients of this sort as much as he did. He noted he had seen some patients have dramatic relief from these injections, but it unfortunately did not work long term for this Petitioner, as her symptoms returned. (PX 11 p.26,27)

In regard to Dr. Nogalski's opinions, Dr. Gornet said he was familiar with that physician, believing him to be a sports medicine orthopedic surgeon who did not perform spine surgery, or cervical disc replacement surgery. He did not believe Dr. Nogalski had treated a spinal condition in the 27 years Dr. Gornet had been in St. Louis. He disagreed with Dr. Nagolski in regard to whether Petitioner had reached maximum medical improvement for her cervical spine and did not require a myelogram as that was not Dr. Nogalski's area of expertise. (PX 11 p. 28-30)

On cross-examination Dr. Gornet said that Petitioner's 10 year old artificial disk looked almost identical to how it had looked 10 years earlier, based on x-rays. He noted that the diagnosis of cervical radiculopathy in

his records was a reference to her condition ten years earlier, he had not made that diagnosis in this case as she had not been making radicular complaints. He said he did not have a recommendation for cervical surgery for Petitioner as he still had to do further work up on her. (PX 11 p.37,39,45)

He thought the off work slip for March 16, 2020 through May 16, 2020 was provided at her request as they could not see her at that time, Covid had prevented them from seeing patients. (PX 11 p.46

On re-direct examination Dr. Gornet said Petitioner made complaints consistent with cervical radiculopathy, but her physical examination did not show that. He said her symptoms, complaints and pain diagram were all consistent with radiculopathy. He noted the had detected a neurologic deficit in her upper extremities for the first time at her last visit on December 5, 2019, before the Covid situation hit. He said the abnormalities he detected at that time could still be related to her work accident that she described to him, and she had been consistent with where her pain was, it had finally been revealed on the neurologic examination. (PX 11 p.49)

Testimony of Dr. Kern Singh

Dr. Singh is a board certified spinal orthopedist whose practice is limited to the spine. He saw Petitioner for an examination at the request of Respondent on June 5, 2019. As of the date he saw her she was suffering from neck, mid back, low back, right arm, and left leg pain. She had a history of two prior neck surgeries in 2008 and 2009. (RX 1 p.5,8,10)

During his physical examination of Petitioner Dr. Singh said Petitioner had a full range of motion of her neck and lower back, as well as normal sensation, motor strength and reflexes in her arms and legs. He interpreted her February 11, 2019 lumbar MRI as showing mild degenerative changes and a left-sided L5/S1 disc herniation. (RX 1 p.10,11)

Dr. Singh diagnosed Petitioner as having a cervical muscle strain, a lumbar muscular strain, a left sided L5/S1herniated nucleus pulposus and status post-cervical disc replacement at C4/5 and C5/6. He felt her lumbar spine complaints were likely caused by the lumbar disc herniation, but he could not find any objective findings in regard to her neck and arm pain complaints. (RX 1 p.13,14)

Dr. Singh testified that Petitioner was not displaying any symptom magnification in regard to her neck and her low back. (RX 1 p.13,14)

On cross-examination Dr. Singh said that he saw no inconsistencies in Petitioner's history to him and other medical providers. He said he was of the opinion that Petitioner's herniated lumbar disc was causally related to the work incident of December 5, 2018 and that surgery was indicated for that S1 radiculopathy. (RX 1 p.19,20)

Dr. Singh said Petitioner told him that she was working at the time of the accident and did not have any significant cervical complaints or symptoms. She further told him that after her prior surgery but prior to this accident she had no pain. He said he did not detect any signs of symptom magnification in Petitioner, nor did he detect any indication that she was trying to deceive him or be untruthful. He said he had no reason to doubt the subjective complaints of Petitioner. Dr. Singh said there was no reason to doubt Petitioner's reported pain complaints, he just could not objectify them. (RX 1 p.21,23,24,27)

Dr. Singh said that a person could have neck pain without any neurologic deficits or cord compression findings. He said that hypothetically if there was a neurological finding it is appropriate to suggest imaging. He agreed that this type of injury can cause discs in the cervical and lumbar spine to herniate and can aggravate existing problems in the cervical spine, causing them to become symptomatic. (RX 1 p.12,32,34,35)

ARBITATOR'S CREDIBILITY ASSESSMENT

Petitioner's rendition of the facts at arbitration is, with very minor and inconsequential differences, consistent with the histories given to medical providers throughout her treatment. While Petitioner on numerous occasions replied to questions about her medical care by saying she agreed with whatever the medical providers' records stated, the Arbitrator did not feel this was to avoid answering questions or to deny facts in the record but rather was a way to prevent herself from being confused by dates and what she may or may not have said on specific dates to specific providers or what they may have told her on those dates. There were some occasions when she may have remembered a conversation, but she was simply relying on they accuracy of the records. Petitioner's complaints at the time of the hearing also appeared to be similar to those she had been making to her treating physicians and not embellished for trial purposes. The Arbitrator finds Petitioner to have testified credibly.

The testimony of both Dr. Gornet and Dr. Singh appeared credible and consistent with their records and reports. Neither seemed to expand on previously stated opinions in an unreasonable manner and both made statements on cross-examination which narrowed the breadth of their stated opinions, not arguing with the cross-examining attorney.

CONCLUSIONS OF LAW AS TO 19 WC 21672:

In support of the Arbitrator's decision relating to whether Petitioner's current condition of ill-being is causally related to the accident of December 5, 2018, the Arbitrator makes the following findings:

The summary of testimony and medical evidence, above, is incorporated herein.

Petitioner testified that prior to her accident of December 5, 2018, she had undergone disc replacement surgery in her cervical spine at the C4/5 and C5/6 levels, with those surgeries taking place in 2008 and 2009. She said that between April 23, 2009 and December 5, 2018 she had not experienced problems with her neck and she had not seen any doctor during that period of time because of neck symptoms or pain. She did note some neck discomfort following her shoulder surgery in 2018 due to her having to sleep in a recliner following that surgery, but she noted that discomfort resolved after a change in her positioning in the recliner suggested by Dr. Gurtler.

Petitioner testified that immediately following the December 5, 2018 incident with the student she experienced pain in her neck, back and right shoulder. She promptly received treatment from Dr. Gurtler, who on his initial physical examination observed a bruised, raised knot on Petitioner's right shoulder. He said this was quite visible. He felt that the new accident had caused petitioner to lose some of the motion she had regained following her recent shoulder surgery, saying she definitely had suffered a set-back though he hoped it would not have caused permanent damage. Petitioner also complained of low back pain to Dr. Gurtler on December 6, 2018. As early as December 9, 2018 Dr. Gurtler was noting that as a result of being struck by the student Petitioner may have suffered an injury to her cervical spine.

A right shoulder MRI of January 8, 2019 was interpreted as showing no rotator cuff tears, but Dr. Gurtler noted that it showed a great deal of fluid in the subacromial space, which he felt was consistent with a traumatic event. He diagnosed bursitis and injected the area with cortisone.

Dr. Gurtler ultimately felt that some of Petitioner's symptoms might be coming from her neck rather than the right shoulder he had performed surgery on just weeks before this December 5, 2018 accident. Petitioner was therefore referred to Dr. Gornet, the spine specialist who had performed the previous disc replacement surgeries on her. Dr. Gornet saw Petitioner on April 15, 2019. After examining Petitioner he was of the opinion that her left buttock and leg pain would be helped by a microdiscectomy at L5/ S1. He put her neck treatment on hold at that point. Dr. Gornet performed a laminotomy and foraminotomy and microdiscectomy at L5/S1 on June 21, 2019.

On July 23, 2019 an MRI/arthrogram of the right shoulder showed irregularities of the glenohumeral joint capsule and the inferior glenohumeral ligament. Dr. Gurtler opined that this damage happened during the fight with the student.

A September 3, 2019 CT scan showed an extruded disc fragment at L3/4 which was causing left greater than right foraminal stenosis. Petitioner was continuing to complain of neck, shoulder and back pain at that time.

As of December 5, 2018, Dr. Gornet was noting that Petitioner's cervical spine complaints were related to her December 5, 2018 altercation between two students and he was recommending a CT/myelogram of the cervical spine as well as nerve function studies.

Dr. Nogalski performed a Section 12 examination of Petitioner at Respondent's request on February 18, 2020 and he felt Petitioner's 2018 accident had caused a right shoulder strain and scapular dyskinesia as well as a possible cervical strain, though he did not feel it had caused the radicular pain she complained of 41 days after the event. He did not see documentary support for the accident causing a dislocation of her right shoulder or significant injury to the inferior glenohumeral ligament.

A subsequent CT/Myelogram showed central disc protrusions at C3/4 and C7/T1. Dr. Gornet opined that the central disc herniation at C3/4 could account for Petitioner's headaches.

An MRI/Arthrogram of the right shoulder was performed on August 3, 2020 and it revealed tendinopathy of the supraspinatus, the upper subscapularis and the upper infraspinatus without evidence of tearing, and it did not reveal any full thickness rotator cuff tear. A recess capsular defect with discontinuity of the inferior glenohumeral ligament was seen.

As of October 26, 2020, Dr. Gornet believed Petitioner's neck pain, shoulder pain, and upper arm pain were related to the work injury of December 5, 2018. He wanted to replace the disc at C3/ 4 which he thought was injured and would at that time consider whether he should remove her prosthesis at C5/ 6 and place a new disc at that level.

When last seen by Dr. Gornet on February 1, 2021, Petitioner was still complaining of numbness and tingling in her hand which Dr. Gornet felt might be from nerve irritation in the cervical spine or a residual from the carpal tunnel. He continued to believe that a disk replacement was required at C3/4 as well as a potential replacement of the C5/6 disc. He noted that those conditions and Petitioner's low back complaints were related to her work injury of December 5, 2018.

In addition to the notations and opinions contained in his medical records, Dr. Gornet testified via deposition that Petitioner's accident of December 5, 2018 was the cause of Petitioner's cervical spine condition and symptoms , saying, "I believe that the cervical spine and lumbar spine symptoms and requirements for treatment are directly causally related to her work injury of 12/5 of '18." He also noted, after reviewing her x-rays, that at a minimum she had aggravated her underlying condition in her neck and her low back as a result of the altercation with the student, noting that degenerative discs in her age group are more susceptible to injury as they are weaker.

Dr. Singh testified via deposition on behalf of Respondent. On June 5, 2019 he performed a Section 12 examination of Petitioner at Respondent's request. He did not, apparently, review all of the radiographic tests performed on Petitioner as they were performed following his examination of Petitioner. He did review the

February 11, 2019 lumbar MRI which he felt showed mild degenerative changes and a left-sided L5/S1 disc herniation. He diagnosed a cervical muscle strain, a lumbar muscular strain, a left-sided L5/S1 herniated nucleus pulposus and status post-cervical disc replacement at C4/5 and C5/6. He was of the opinion that Petitioner's lumbar complaints were likely caused by the lumbar disk herniation and he felt that was causally related to the December 5, 2018 incident and surgery indicated, but he had no objective findings in regard to Petitioner's neck and arm complaints. Dr. Singh did not find any inconsistencies in Petitioner's history to him and to other medical providers, nor did he feel she was displaying any symptom magnification in regard to her neck or low back when he saw her. He acknowledged that Petitioner had advised him of her prior surgeries and that she was having no pain prior to the December 5, 2018 accident. He said there was no reason to doubt Petitioner's reported pain complaints, and that a person could have neck pain without neurologic deficits or findings. He said that hypothetically if there was a neurological finding it would be appropriate to suggest imaging.

Dr. Gornet testified that during his last visit with Petitioner on December 5, 2019, he detected a neurologic deficit in her upper extremities for the first time, and that her symptoms, complaints and pain diagram were all consistent with radiculopathy.

The Arbitrator finds that Petitioner's current right shoulder injury, including bursitis and irregularities of the glenohumeral joint capsule and the inferior glenohumeral ligament are related to the accident of December 5, 2018. The Arbitrator further finds that Petitioner's current low back injury, including the extruded disc fragment at L3/4 and her condition following microdiscectomy to remove that disc fragment, are related to the accident of December 5, 2018. The Arbitrator further finds that Petitioner's cervical injuries, including injuries to the C3/4 disc and the C5/6 disc, are related to the accident of December 5, 2018. This finding is based on the testimony of Petitioner and the medical records of Dr. Gurtler and Dr. Gornet which together set out the requirements of a finding of causal connection based upon a chain-of-events. Petitioner testified that while she had undergone neck surgeries involving cervical disc replacements nearly ten years prior to the December 5, 2018 accident, she was not suffering anything other than occasional mild discomfort prior to the date of this accident. She had advised Dr. Gurtler of some neck discomfort while trying to sleep in a recliner following her October 2018 right shoulder surgery, but it resolved after he made suggestions of a change in her manner of sleeping in the chair. She therefore was in a previous condition of good health as far as her cervical spine was concerned prior to the date of this accident. Petitioner then suffered a significant subsequent injury as evidenced by her complaints of immediate pain and by Dr. Gurtler's physical examination the next day where he saw a bruised, raised knot on Petitioner's right shoulder, and she voiced complaints and had consistent physical examination findings which continued from that date

through the date of arbitration. *Shafer vs. Illinois Workers' Compensation Commission,* 2011 IL App (4th) 100505WC, 976 N.E.2d 1 (2011). This finding is also based upon the medical records of Dr. Gurtler and Dr. Gornet which both during the course of their treatment of Petitioner opined that the conditions they were treating had been caused by the accident of December 5, 2018, and by the testimony of Dr. Gornet where he again opined that the cervical and lumbar injuries were caused by this accident. While the Arbitrator discounts the opinion of Dr. Singh in regard to the causal connection between the accident and Petitioner's cervical condition, as he had only seen her on one occasion as opposed to Dr. Gornet's history of treating and performing surgery on Petitioner in the past as well as seeing her and directing her treatment over an extended period of time following this accident, Dr. Singh did believe Petitioner's low back disc herniation and the need for corrective surgery were due to this accident, and he was of the opinion that Petitioner had been consistent in her history to him and to other medical providers, and he did not feel she was displaying any symptom magnification in regard to her neck or low back when he saw her. He said there was no reason to doubt Petitioner's reported pain complaints, and that a person could have neck pain without neurologic deficits or findings.

In support of the Arbitrator's decision relating to what temporary benefits Petitioner is entitled to as a result of the accident of June 1, 2020, the Arbitrator makes the following findings:

The findings of fact and conclusions of law relating to causal connection, above, are incorporated herein.

The summary of testimony and medical evidence, above, is incorporated herein.

"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, 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 upon the above findings as to causal connection, the Arbitrator finds Petitioner entitled to temporary total disability benefits for the time Petitioner was placed off work for her cervical spine complaints. Respondent paid temporary total disability benefits through September 11, 2020, but disputed liability for temporary benefits from September 12, 2020 to the date of Arbitration. Respondent shall therefore pay temporary total disability benefits for a further period of 26 5/7 weeks, for Petitioner's continued disability from September 12, 2020, through March 17, 2021. Respondent shall have credit for the overpayment of benefits during the time Petitioner received her full regular salary.

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.

In support of the Arbitrator's decision relating to whether the medical services that were provided to Petitioner were reasonable and necessary as a result of the Accident of June 1, 2020, and whether Petitioner is entitled to any prospective medical treatment, the Arbitrator makes the following findings:

The findings of fact and conclusions of law relating to causal connection and temporary total disability, above, are incorporated herein.

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, 1273 (2009). Upon establishing causal connection and the reasonableness and the 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).

Despite conservative care through injection and therapy, Petitioner's condition remains symptomatic and continues to deteriorate. Dr. Gornet has recommended surgery in the form of a disc replacement at C3/4 and, depending upon the findings during that surgery, the replacement of the prosthesis at C5/6. Claimants are entitled to necessary care to cure and relieve them of the effects of their work injury, and Dr. Gornet has recommended this surgical procedure to accomplish same.

The Arbitrator finds that the testing and treatment rendered by Petitioner's treating physicians to her neck, right shoulder and low back from December 5, 2018 through the date of arbitration was reasonable and was necessitated by the injuries incurred in the December 5, 2018 accident and shall be paid pursuant to the medical fee schedule. Respondent shall have credit for expenses paid provided that it indemnifies and holds Petitioner harmless from any claims made by the provides arising from the expenses for which it claims credit.

The Arbitrator further finds Petitioner entitled to further necessary prospective medical treatment recommended by Dr. Gornet, including but not limited to diagnostic studies recommended by Dr. Gornet, and the cervical spine surgery recommended by Dr. Gornet, which are to be paid pursuant to the medical fee schedule. Respondent shall have credit for expenses paid provided that it indemnifies and

holds Petitioner harmless from any claims made by the provides arising from the expenses for which it claims credit.

The Arbitrator further finds that based upon the need for prospective medical treatment Petitioner has not yet reached maximum medical improvement.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC011779
Case Name	DUNN,JONATHON v. KRAFT FOODS
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0037
Number of Pages of Decision	19
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	James Clune

DATE FILED: 1/26/2022

/s/ Deborah Simpson, 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

JONATHON DUNN,
Petitioner,

vs. NO: 19 WC 11779

KRAFT-HEINZ,
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, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. However, the Commission notes that the Arbitrator's inclusion of remand language on page 14 appears to be an error, as this matter did not proceed under §19(b) and a permanent partial disability award was rendered. As such, the Commission removes the sentence on page 14 of the Decision of the Arbitrator that states: "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." 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 June 30, 2021 is hereby affirmed and adopted with the exclusion of the remand language stated herein.

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.

January 26, 2022

O- 1/12/21
DLS/met
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	19WC011779
Case Name	DUNN, JONATHON v. KRAFT-HEINZ
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	James Clune

DATE FILED: 6/30/2021

INTEREST RATE FOR THE WEEK OF JUNE 29, 2021 0.05%

/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

JONATHON DUNN
Employee/Petitioner

v.

KRAFT-HEINZ
Employer/Respondent

Case # **19** WC **011779**

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 **April 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 _____

FINDINGS

On **March 22, 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 $**52,023.92**; the average weekly wage was $**1,000.46**.

On the date of accident, Petitioner was **33** years of age, ***single*** with **1** dependent child.

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

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

Respondent shall be given a credit of $**29,203.86** for TTD, $**-** for TPD, $**-** for maintenance, and $**-** for other benefits, for a total credit of **any benefits paid**.

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

ORDER

Respondent shall pay 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 through its group carrier, 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 Petitioner temporary total disability benefits of $**666.97**/week for **48 2/7** weeks, for Petitioner's period(s) of disability from April 3, 2019, through August 11, 2019, (18 3/7 weeks) and January 6, 2020, through August 2, 2020 (29 6/7 weeks), as provided in § 8(b) of the Act. Respondent shall have credit as stated above for benefits paid.

Respondent shall pay Petitioner permanent partial disability benefits of $**600.28**/week for **100** weeks, because the injuries sustained caused the **20**% loss of the **body as a whole**, as provided in § 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.

Jeanne L. AuBuchon

Signature of Arbitrator

JUNE 30, 2021

PROCEDURAL HISTORY

This matter proceeded to trial on April 29, 2021. The issues in dispute are: 1) the causal connection between the accident on March 22, 2019, and the Petitioner's left shoulder conditions; 2) liability for medical bills; 3) entitlement to TTD benefits from April 3, 2019, through August 11, 2019, and from January 6, 2020, through August 2, 2020; and 4) the nature and extent of the Petitioner's injury.

FINDINGS OF FACT

At the time of the accident, the Petitioner, who was 33 years old, was employed by the Respondent as a filler operator. (T. 9) On March 22, 2019, he was opening up the door on the filler when the guide popped off, causing the door to come off at an angle. (Id.) This pulled his arm up, back and out, at which time he heard a loud pop. (Id.)

The Petitioner testified that he never had any injuries or treatment to his left arm before the accident. (T. 9-10)

On the day following the accident, the Petitioner went to the emergency room at St. Joseph's Hospital, complaining of pain in his left shoulder. (PX3) An X-ray of the shoulder was negative, and the Petitioner was given discharge instructions for shoulder sprain and was told to continue taking ibuprofen and follow up with a doctor. (Id.)

On March 25, 2019, the Petitioner was seen by Dr. Christopher Knapp, an occupational medicine physician at Gateway Regional Occupational Health Services. (PX4) He diagnosed the Petitioner with left shoulder strain, prescribed Skelaxin and ordered work restrictions of no lifting more than 10 pounds or lifting overhead and no climbing ladders. (Id.) The Petitioner followed up with Dr. Knapp on March 28, 2019, at which time Dr. Knapp recommended physical therapy. (Id.) Work restrictions were continued. (Id.)

The Petitioner saw Dr. Felix Ungacta, an orthopedic surgeon at Midwest Bone and Joint Surgery, on April 3, 2019. (PX5) Dr. Ungacta examined the Petitioner and ordered X-rays of the Petitioner's left shoulder and cervical spine and an ultrasound of the Petitioner's left shoulder. (Id.) The only abnormality shown on the X-rays was degenerative disc disease in the Petitioner's cervical spine. (Id.) The ultrasound showed intact rotator cuff tendons, but the biceps tendon was not visualized within the bicipital groove. (Id.) Dr. Ungacta ordered an MRI and ordered the Petitioner off work. (Id.)

The MRI was performed on April 15, 2019, and the Petitioner returned to Midwest Bone and Joint Surgery on April 17, 2019, where he saw Dr. Matthew Bradley, another orthopedic surgeon. (Id.) Dr. Bradley performed another ultrasound, with similar results as the first, and interpreted the MRI as showing significant irregularity to the superior and anterior labrum and lack of visualization of the biceps in the bicipital groove. (Id.) He found the rotator cuff to be intact with some subacromial impingement. (Id.) His physical examination revealed positive Speed's/Yergursons tests. (Id.) Dr. Bradley diagnosed left shoulder unstable biceps tendon with labral tear and subscapularis strain. (Id.) He recommended arthroscopic labral repair and biceps tenodesis, which were performed May 6, 2019, along with a subacromial decompression. (PX5, PX3) During the surgery, Dr. Bradley found the Petitioner's left rotator cuff to be "pristine." (PX3)

On May 22, 2019, the Petitioner had a follow-up visit with Dr. Ungacta, who ordered physical therapy and restricted the Petitioner to light duty work. (PX5) The Petitioner testified that his condition improved after the surgery at first. (T. 11) However, he did not immediately participate in physical therapy because of his son's severe illness. (T. 11) He had one physical therapy visit on May 30, 2019, and resumed therapy on June 13, 2019. (PX6) He attended 54

sessions from June 13, 2019, through November 1, 2019, during which time his improvement ebbed and flowed, but overall, he made progress. (Id.)

At a follow-up appointment at Midwest Bone and Joint Surgery on June 12, 2019, the Petitioner reported continued shoulder pain and popping and spasms in his biceps. (PX5) On July 11, 2019, he reported increased motion but also pain and that the anterior shoulder felt stiff. (Id) He received a Kenalog injection. (Id.) On August 7, 2019, he reported that his therapy was going well until recently when he experienced increasing pain and a sensation of separation at his shoulder after therapy. (Id.)

On August 26, 2019, the Petitioner reported that when he was reaching into his back pocket, he felt immediate pain in his anterior shoulder near his tenotomy incision, then stiffness, tingling and loss of strength. (Id.) Dr. Bradley noted that the Petitioner likely had a slight stretching of the biceps tenotomy, causing some pain but no new injury. (Id.) Dr. Bradley was concerned about the development of adhesive capsulitis and gave the Petitioner another injection. (Id.) The Petitioner had additional follow-ups on September 9, 2019, and November 27, 2019, with reports of continuing pain. (Id.) On November 27, 2019, Dr. Ungacta ordered an MRI arthrogram. (Id.)

On December 18, 2019, Dr. Bradley interpreted the MRI as showing a complex tear and/or postsurgical changes of the superior labrum, with an intra-articular loose fragment appearing to arise from the posterior aspect of the superior labrum. (Id.) He also noted a high-grade partial tear of the distal rotator cuff tendon and partial rim rent tear at the insertion of the infraspinatus portion of the tendon. (Id.) Dr. Bradley's notes gave further detail as to the onset of the increased pain by stating that the incident regarding reaching into the back pocket was preceded by an aggressive therapy session. (Id.) He opined that the Petitioner had a significant amount of adhesive capsulitis from the delay in initiation of physical therapy and that, along with chronic inflammation and

aggressive manipulation during therapy, led to a high-grade partial rotator cuff tear. (Id.) Dr. Bradley recommended arthroscopic rotator cuff repair of the supraspinatus tendon. (Id.) The surgery was performed on January 7, 2020, repairing a full-thickness tear. (PX7)

On January 20, 2020, Dr. Bradley ordered physical therapy. (PX5) The Petitioner attended 47 sessions from January 21, 2020, through May 29, 2020, with the last 27 being virtual due to COVID concerns. (PX6) He had follow-up visits at Midwest Bone and Joint Surgery on February 6 and 12, 2020, reporting increasing pain after therapy. (PX5) At a visit on March 9, 2020, physician assistant Derek Lambert assessed the Petitioner as suffering from postoperative adhesive capsulitis. (Id.) New physical therapy orders were given to address this condition. (Id.) The Petitioner had additional follow-up visits with Midwest Bone and Joint Surgery on April 7, 2020, May 5, 2020, and June 2, 2020, and with DB Orthopedic Institute (Dr. Bradley's new practice) on June 24, 2020. (Id.) The Petitioner's treatment was delayed due to the necessity of leg amputation below his knee. (Id.) Dr. Bradley found the Petitioner to be at maximum medical improvement regarding his shoulder on November 16, 2020, and released him to work with no restrictions. (Id.)

At a deposition on September 1, 2020, Dr. Bradley testified consistently with his reports. (PX9) He stated that on his examination of the April 25, 2019, MRI images, he could "clearly" see a tear in the left shoulder labrum. (Id.) He also explained that the Speed's and Yerguson's tests, which were positive, were designed specifically for testing for labral tears. (Id.) He opined that the work accident was at least a contributing factor, if not the prevailing factor, in the labral tear, and said the injury was consistent the mechanism described by the Petitioner. (Id.) Dr. Bradley said he opted for surgery as opposed to conservative measures because the Petitioner had been suffering for a month without improvement and because torn labrums do not heal on their own. (Id.)

Regarding the rotator cuff tear, Dr. Bradley characterized it as acute and concluded that the stretching during physical therapy contributed to tear – given that the Petitioner had a lot of scarring and stiffness from his lack of therapy after the first surgery. (Id.) He believed that the Petitioner developed adhesive capsulitis after the first surgery and that the process of aggressive manipulation during therapy caused the tear in the rotator cuff. (Id.) He stated that he and the Petitioner went over possible mechanisms that could have caused the rotator cuff tear, and there were none. (Id.) As to why the rotator cuff tear did not show up on the ultrasounds he performed during the follow-up visits after the first surgery, Dr. Bradley explained that the scar tissue and the fact that the Petitioner had a muscular shoulder can make it very difficult to see a rotator cuff tear on an ultrasound. (Id.) He added that 75 percent of the time, a rotator cuff tear can be clearly visualized on an ultrasound. (Id.) He said that in his 10-year career, he has seen a couple of instances in which physical therapy resulted in rotator cuff tears. (Id.)

Dr. Bradley testified that he did not believe the Petitioner had reached maximum medical improvement at the time of the deposition, although he did not believe there was anything that he could do medically to make the Petitioner any better. (Id.) He thought that over the next month or two, the Petitioner would gain improved strength and that his pain would decrease. (Id.) He believed the Petitioner's condition would have gotten worse without the surgeries. (Id.) Dr. Bradley testified that he did not detect any malingering or symptom magnification by the Petitioner. (Id.) He said the Petitioner was straightforward and always had the goal of getting back to work as soon as possible. (Id.)

On April 30, 2020, the Petitioner underwent a Section 12 examination by Dr. Lyndon Gross, an orthopedic surgeon at The Orthopedic Center of St. Louis. (RX2, Deposition Exhibit 2) He reviewed records from HSHS Emergency Department (St. Joseph's Hospital, Gateway

Regional Occupational Health Services and Midwest Bone and Joint Surgery, as well as X-rays from March 23, 2019, and April 30, 2020; the MRI scan from April 15, 2019; the MRI arthrogram from December 13, 2019; and photocopied arthroscopic pictures from January 7, 2020. (Id.) In his report, Dr. Gross noted that the Petitioner's pain complaints with range of motion of his shoulder appeared to be out of proportion to what would be expected at that point in time after the two surgeries. (Id.)

Dr. Gross opined that it did not appear from the April 15, 2019, MRI that the Petitioner had any rotator cuff or labral pathology. (Id.) He diagnosed a shoulder strain and possible exacerbation of underlying acromioclavicular (AC) joint arthritis but did not believe the accident on March 22, 2019, accelerated or aggravated an underlying condition of the Petitioner's shoulder. (Id.) He believed that based on the MRI and ultrasound, it did not appear that a labral tear could have been diagnosed. (Id.) Dr. Gross disagreed with Dr. Bradley's course of treatment, stating that the more appropriate treatment would have been nonoperative management related to a diagnosis of a rotator cuff strain with the use of a corticosteroid injection, an anti-inflammatory and physical therapy. (Id.) He opined that if the Petitioner did not respond to this treatment over four to eight weeks, it would have been reasonable to proceed with an MRI arthrogram for a better indication of a significant labrum tear, biceps tendon tear or subluxation of his biceps tendon. (Id.) He did state that he believed the physical therapy the Petitioner underwent was appropriate with regards to the standard of care for his injury. (Id.)

Regarding the rotator cuff injury, Dr. Gross stated that it would be impossible to state with medical certainty that a delay in undergoing physical therapy in any way caused or worsened the state of wellbeing of the Petitioner's shoulder. (Id.) He was unable to give an etiology as to the cause of the rotator cuff tear but said it did not appear directly related to the work injury. (Id.)

Regarding the Petitioner's complaints at the time of his evaluation, Dr. Gross recommended that the Petitioner undergo an MRI scan of his shoulder to access the repair of his rotator cuff and to make sure there is no other significant pathology that could be causing his continued complaints. (Id.) He reported that the Petitioner was not at maximum medical improvement at the time of his examination and that it is not uncommon to take from twelve to twenty-four weeks to have complete improvement after the surgeries. (Id.) He said he would give the Petitioner temporary work restrictions of activities below shoulder level, no lifting greater than 10 pounds and avoiding lifting above shoulder level. (Id.)

On June 22, 2020, Dr. Gross authored another report after having examined an MRI from June 10, 2020, which showed the surgical repairs and AC joint degeneration but no recurrent rotator cuff tear. (RX1, Deposition Exhibit 3) He again stated that the Petitioner's shoulder pain at that time was out of proportion to what would be expected after the two surgeries. (Id.) He was unsure of the source of the pain, as no significant anatomic abnormality appeared on the most-recent MRI. (Id.) He did not recommend any further treatment and found the Petitioner to be at maximum medical improvement and able to return to work without restrictions. (Id.) The rest of his second report remained unchanged from the first. (Id.)

At a deposition on November 12, 2020, Dr. Gross testified consistently with his reports. (RX2) On cross-examination, Dr. Gross stated that the pain levels the Petitioner reported at the April 30, 2020, evaluation would have been "not uncommon" for someone who had undergone surgery a few months prior. (Id.) When questioned about whether positive Speed's and Yerguson tests would be a sign of a labral tear, he said they could be a sign, but not necessarily. (Id.) He admitted that the work accident the Petitioner described could potentially cause a tear of the labrum

and that he has previously identified labral tears intraoperatively that were not seen on an MRI. (Id.)

Regarding the rotator cuff tear, Dr. Gross said that in 20 years of practice, he had never seen a rotator cuff tear caused by physical therapy. (Id.) He added that the Petitioner's rotator cuff tear was an intrasubstance tear, which usually occurs over time with degeneration, and that the intraoperative photos from the second surgery did show some partial tearing of the cuff. (Id.) However, he said he could not dispute what Dr. Bradley saw during the surgery that led him to believe the tear was acute. (Id.) Dr. Gross testified that it is possible that a partial-thickness rotator cuff tear would not show up on an ultrasound. (Id.) He opined that either a degenerative tear developed in the months following the first surgery, or the tear was caused during the first surgery. (Id.)

Dr. George Paletta, an orthopedic surgeon at the Orthopedic Center of St. Louis, performed a records review on July 27, 2020. (PX12) Although he expressed some criticisms of the treatment the Petitioner received and tests that were conducted (especially the ultrasounds), Dr. Paletta did not give any opinions as to causation of the Petitioner's injuries. (Id.) Dr. Bradley testified in his deposition that he used the ultrasound tests to check for infections and evaluate healing after surgery and to evaluate a new injury. (PX9) He said he uses the ultrasound to say "something is there" but never uses it to say "something's not there." (Id.)

The Petitioner testified that after the second surgery, he noticed much improvement and even more after the second round of physical therapy. (T. 15-16) He returned to work but had to quit due to other health conditions. (T. 16-17) He testified that he still experiences stiffness and soreness in his shoulder, especially in the mornings, but this improves with medication and exercises. (T. 18-19) He stated that his left arm and shoulder are still weak and he experiences

pain and discomfort – especially in performing overhead tasks. (T. 19) His woodworking hobby has been affected by his shoulder limitations, and he has difficulty in caring for his paralyzed son. (T. 20-21)

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

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

There are two sets of injuries at issue: 1) the unstable biceps tendon with labral tear and subscapularis strain and 2) the rotator cuff tear.

Regarding the first, Dr. Bradley saw a "significant irregularity" in the labrum on the MRI. Dr. Gross stated that it did not appear that a labral tear could be diagnosed from the initial MRI and ultrasound. The surgery revealed that the labrum was torn and that the biceps and subscapularis needed repair, supporting Dr. Bradley's opinion that the injuries were caused by the accident. Because of Dr. Bradley's familiarity with the Petitioner as his treating physician following the accident and his observations during surgery, the Arbitrator gives greater weight to his opinion.

In addition, the Petitioner, whom the Arbitrator finds to be credible, reported no shoulder complaints prior to the work accident but had symptoms immediately afterwards. Circumstantial evidence may also be used to prove a causal nexus between an accident and the resulting injury. *Gano Electric Contracting v. Industrial Comm'n*, 260 Ill.App.3d 92, 631 N.E.2d 724 (1994); *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982). 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, 728 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982). A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the workers' compensation claimant's injury. *Shafer v. Illinois Workers' Comp. Comm'n*, 2011 IL App (4th) 100505WC, 976 N.E.2d 1 (2011).

Regarding the torn rotator cuff, an employee is entitled to benefits where a second injury occurs due to treatment for the first. *See Shell Oil Co. v. Indus. Comm'n*, 2 Ill. 2d 590, 119 N.E.2d 224 (1954); *International Harvester Co. v. Indus. Comm'n*, 46 Ill.2d 238, 263 N.E.2d 49 (1970); *Lincoln Park Coal & Brick v. Indus. Comm'n*, 317 Ill. 302, 148 N.E. 79 (1925); *Harper v. Indus. Comm'n*, 24 Ill.2d 103, 180 N.E.2d 480 (1962), *Brookes v. Indus. Comm'n*, 78 Ill.2d 150, 399 N.E.2d 603 (1979); *Tee Pak, Inc. v. Indus. Comm'n*, 141 Ill.App.3d 520, 490 N.E.2d 170 (1986). Courts have consistently held that for an employer to be relieved of liability by virtue of an intervening cause, the intervening cause must completely break the causal chain between the original work-related injury and the ensuing condition. *Vogel v. Indus. Comm'n*, 354 Ill.App.3d 780, 821 N.E.2d 807, 813 (2005). "Every 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." *Id*. Where the second injury occurs due to treatment for the first, there is no break in the causal chain. *International Harvester supra*.

Dr. Gross opined that the rotator cuff tear was caused by degeneration or was caused during the first surgery. The Arbitrator is unpersuaded by the theory that a "pristine" rotator cuff would degenerate to the point of full-thickness tearing in such a short time. Dr. Bradley's opinion that the delay in physical therapy (the reason for which should not be held against the Petitioner), scarring and adhesive capsulitis, caused the rotator cuff to tear during aggressive physical therapy is more persuasive. Whether the tear occurred during the surgery, as Dr. Gross contended, or physical therapy, as Dr. Bradley contended, there was no break in the causal chain.

Therefore, the Arbitrator finds that the Petitioner has met his burden of proving by a preponderance of the evidence that the accident of March 22, 2019, and the consequences that flowed therefrom caused the Petitioner's current 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, 1273 (2009).

Dr. Gross opined that the first surgery was premature and that conservative measures should have been tried first. But this opinion is premised on him not seeing the labral irregularities that Dr. Bradley saw on the MRI. There was no evidence to rebut Dr. Bradley's opinion that a labral tear would not heal on its own but required surgery. Therefore, the testing, treatment, surgery, follow up and therapy was reasonable and necessary.

There also was no evidence presented that the rotator cuff surgery was unreasonable or unnecessary. The Respondent's objection to treatment for the rotator cuff is based on causation,

rather than necessity. Because the Arbitrator has found this injury to be causally related to the work accident, the testing, treatment, surgery, follow up and therapy 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. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

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

According to the Request for Hearing (AX1), the parties dispute temporary total disability benefits for the periods of April 3, 2019, through August 11, 2019, and January 6, 2020, through August 2, 2020.

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).

Based upon the above findings as to causal connection, the Arbitrator finds the work restrictions given Petitioner and the time he was taken off work reasonable and related to his work accident. Respondent shall therefore pay temporary total disability benefits for 48 2/7 weeks for Petitioner's periods of disability from April 3, 2019, through August 11, 2019, (18 3/7 weeks) and January 6, 2020, through August 2, 2020 (29 6/7 weeks). The Respondent is entitled to a credit of $29,203.86 for TTD paid.

Issue L: 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 was unable to return to his employment for reasons unrelated to his work injury. The Arbitrator places no weight on this factor.

(iii) **Age.** The Petitioner was 33 years old at the time of his injury. He is very young and must live with his disability for an extended period of time. The Arbitrator places significant weight on this factor.

(iv) **Earning Capacity.** The Petitioner was unable to return to return to his employment for reasons unrelated to his work injury. The Arbitrator places no weight on this factor

(v) **Disability.** Although the Petitioner received surgical and therapeutic care for his injuries, he continues to experience problems, including pain, stiffness and weakness. His daily activities, hobbies and ability to care for his disabled son have been affected. The Arbitrator puts significant weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 20 percent of the body as a whole.

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.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC020746
Case Name	PIPPEL, KERRY v. TRI-DIM FILTER CORP
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0038
Number of Pages of Decision	14
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Tracy Jones
Respondent Attorney	Terrence Donohue

DATE FILED: 1/27/2022

/s/Maria Portela, Commissioner

Signature

22IWCC0038

STATE OF ILLINOIS)	☐ Affirm and adopt (no changes)
) SS.	☐ Affirm with changes
COUNTY OF)	☐ Reverse
WINNEBAGO	
	☒ Modify down

☐ 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

KERRY PIPPEL,

Petitioner,

vs. NO: 17 WC 20746

TRI-DIM,

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, notice, medical expenses and 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.

Notice

Respondent acknowledges that Petitioner had the right to amend, at the hearing, the date of accident listed on the Application for Adjustment of Claim, but argues that Petitioner failed to provide a specific person, date and time of when he gave notice that his repetitive trauma injuries were causally related to his job. On cross-examination, Respondent's attorney asked Petitioner questions about when he provided notice to Respondent. *T.41-44*. Although Petitioner could not identify specific dates, he testified that "[f]or some time I had been telling my site manager and three of my supervisors that they were -- I was getting hurt from all the work." *T.41*. He identified Elsworth Dismuke, Lance Harper and Diane Pride as the supervisors he notified. *T.42-44*. Petitioner testified:

Q: And when you notified these people, did you specifically advise them that you had a hand injury at work from working?
A: I told them about the pain that I was experiencing from my hands, my shoulders,

elbows.
Q: Okay. Did you indicate it was from work activities?
A: Doing the work that I was doing, that's where it came from, yes.
Q: But did you indicate that to them?
A: Yes, I did, working on pumps. *T.44*.

On redirect examination, Petitioner testified he notified those supervisors that he was having symptoms related to his work activities both before and after he received his diagnoses. *T.64-66*.

Although Petitioner's attorney did not list, on the Request for Hearing form, to whom and when notice was provided, it appears that Respondent's attorney did not inquire about that omission prior to the hearing. If Petitioner's attorney had been unwilling to provide that information, Respondent's attorney could have requested a bifurcation of the hearing to have Petitioner's supervisors testify about notice. As it stands, Respondent's witness, Jay Burzynski testified:

Q: Do you have any knowledge regarding these individuals Mr. Pippel identified as somebody he told about his work condition and work injury?
A: I know each one of those individuals.
Q: Do you know whether or not they received such notice from Mr. Pippel as he testified to?
A: I would not know that. *T.78*.

Therefore, Mr. Burzynski was unable to contradict Petitioner's testimony that he gave notice to his three supervisors.

We note that Respondent does not dispute the validity of October 26, 2016 being the manifestation date of Petitioner's repetitive trauma injuries. Although Respondent argues that Petitioner's testimony that he gave notice on multiple, unspecified occasions is insufficient, §6(c) of the Act states, "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."

Respondent argues it "is prejudiced if the finding of notice is upheld because Respondent has not been provided a date when the notice was given, had no way to investigate the claim when it occurred, and prior to trial had no way of knowing to whom notice was allegedly given, and thereby was not in a position to produce alleged witnesses to whom notice was given." *R-brief at 11.*

Significantly, Petitioner does not allege that he sustained a discrete injury on a specific date (such as a slip and fall) that might involve witnesses or other environmental factors (such as the presence of ice, etc.) which would necessitate a timely investigation. Rather, Petitioner alleges repetitive trauma injuries. We question what different steps Respondent could have taken if, for example, Petitioner had been able to identify a specific date on which he told Elsworth Dismuke (or one of the other supervisors) that his hands were hurting due to his work activities.

In this case, Respondent had its General Manager, Jay Burzynski, make a list of Petitioner's job duties as evidence that they were not repetitive or forceful. Respondent also had Petitioner

examined by Dr. Vender, who opined that Petitioner's job activities did not cause his bilateral carpal tunnel syndrome. We do not believe Respondent's defense of this claim was dependent on knowing the exact date upon which Petitioner provided notice to his three supervisors. We, therefore, conclude that Respondent was not unduly prejudiced by any alleged inability to investigate Petitioner's claim.

Furthermore, although not mentioned in the Arbitrator's decision, FMLASource sent paperwork to Petitioner on November 25, 2016, indicating that "FMLASource has received your request for leave from your position at Tri-Dim Filter Corporation for your own serious health condition" from November 30, 2016 through January 16, 2017. *Px2 at 95*. This would indicate that FMLASource was acting as Respondent's agent for the purpose of medical leave issues and was aware of Petitioner's medical issues.

Dr. Milos completed this FMLA paperwork on November 29, 2016 as indicated by the date of his signature. *Px2 at 100*. The form indicated Petitioner would need to be off work from November 30, 2016 to January 11, 2017 (estimated) because he was unable to perform his job duties due to "limited use left hand." *Px2 at 99*. The headers on these pages state, "Scan on 12/6/2016 by Rita M Sanderson of FMLASource, FMLA form, 11/29/16, 6 pgs." *Px2 at 91-100*. This would indicate that FMLASource, as Respondent's agent, received the FMLA paperwork by December 6, 2016, at the latest, because that is when it was scanned by Rita Anderson of FMLASource.

Therefore, Respondent had notice of Petitioner's need to be off work due to "limited use left hand" at least by December 6, 2016, which is 42 days after his alleged manifestation date. Since this is within the 45 days required under §6(c) of the Act, notice was timely provided. Although this notice could also be considered defective or incomplete, we find that Respondent failed to prove it was "unduly prejudiced" for the same reasons outlined above.

Based on the above, we find that both Petitioner's testimony and the FMLA paperwork are sufficient to provide notice and that Respondent failed to prove any undue prejudice as a result of any defect or inaccuracy.

Permanent Partial Disability

We modify the analysis of three of the permanency factors in §8.1b(b) of the Act. Regarding factor (ii), occupation, we generally agree with the Arbitrator's analysis but replace the word "constant," in reference to Petitioner's use of his hands, with "frequent, repetitive and forceful." We give this some weight.

For factor (iii), age at the time of injury, we disagree with the Arbitrator's finding that "[g]iven that he is older and unable to heal as quickly, his age does adds [sic] value." *Dec. 7*. There is no evidence that Petitioner was unable to heal as quickly. Quite the contrary. Petitioner's left carpal tunnel release surgery was performed on November 30, 2016, and he was released to full duty on January 16, 2017, which seems to be a normal recovery period. However, for the right hand, Petitioner underwent surgery on August 30, 2017. According to Petitioner's testimony (because no records are in evidence), he was released by Dr. Milos a mere two days later, on

September 1, 2017, and he has not had any treatment since. This would suggest a remarkably fast healing process. We therefore find there is no evidence that Petitioner's age affects his disability and we give this factor no weight.

Regarding factor (v), evidence of disability corroborated by the treating medical records, we agree with the Arbitrator's analysis regarding the left hand. However, although Petitioner testified that at his visit with Dr. Milos on January 16, 2017, Dr. Milos was still recommending surgery on the right hand (*T.27*), that record makes no mention of a surgical recommendation. *Px2 at 82*. Petitioner testified that he followed up with Dr. Milos for further right hand treatment after Petitioner retired on March 1, 2017 (*T.28*), but none of these medical records are in evidence. Petitioner testified that he had right carpal tunnel release surgery on August 30, 2017. *Id*. Although there is a bill for those services in evidence, there is no operative report in evidence. Petitioner also testified that he was released from care by Dr. Milos on September 1, 2017, only two days after surgery, but, again, this record is not in evidence. Since there are no post-operative records to corroborate any residual right-hand symptoms or disability, we give the fifth factor no weight regarding the right hand.

We therefore affirm the permanent partial disability award of 10% loss of use of the left hand but reduce the award for the right hand to 7.5% loss of use of the right hand.

We note that, although Respondent's Petition for Review listed the issues of causal relationship of Petitioner's medical expenses along with the reasonableness of the charges, it did not review the reasonableness of Petitioner's treatment. In fact, its brief acknowledged, "This proceeding is centrally over the issue of causal connection between the Petitioner's employment and his carpal tunnel condition and subsequent surgeries. **There is no dispute over the reasonableness of the medical treatment which the Petitioner undertook**, and it also appears from the medical evidence and testimony that Petitioner underwent a successful recovery from those procedures with good results." *R-brief at 12 (Emphasis added)*. Therefore, since we affirm the Arbitrator's findings regarding accident and causation, we affirm the medical award despite the missing medical records related to the right hand. We note that Respondent did not make any specific arguments about the reasonableness of the charges and the charges themselves are subject to the fee schedule in §8.2 of the Act.

Correction of Clerical Errors

Finally, we modify the decision to correct several clerical errors. The Arbitrator wrote, "Petitioner testified he used hand tools about 75% of his work day," (*Dec. 3*) and "The Petitioner testified his job duties required him to use hand tools day [sic] that required constant bilateral gripping, grasping, pulling and pushing at least 75% of his work day." (*Dec. 5*). We note that Petitioner actually testified that the *majority* (not 75%) of his time was spent on "repair work." *T.21*. He did testify that, of the time he was performing activities with his hands fixing things, 75% was done using hand tools as opposed to power tools (*T.60, 69*) but it all involved use of his hands. *T.69*. We hereby modify the decision to accurately reflect Petitioner's testimony.

On page 4, paragraph 5, the Arbitrator wrote, "Petitioner continued to work for Respondent until he retired at the end of March 2017." However, Petitioner testified he retired from Respondent

on March 1, 2017. *T.27-28*. We hereby modify the decision to accurately reflect Petitioner's retirement date.

We modify the first sentence on page 6, to reflect Petitioner testified that his remodeling activities were completed in 2016 (not 2015) in accordance with his testimony that, "My house was done basically in the spring of '16." *T.49*.

On page 6, in the second sentence of the Notice section, we insert the word "not" between "did" and "recall," to reflect that Petitioner did not know the exact date he provided notice.

At several locations throughout the decision, the Arbitrator referred to Respondent's General Manager as Jay Bryzinski. We modify the decision to reflect that the witness's name is Jay Burzynski. *T.71*.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $516.47 per week for a period of 33.25 weeks, as provided in §8(e)9 of the Act, for the reason that the injuries sustained caused the loss of use of 10% of the left hand and 7.5% of the right hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $7,589.25 for unpaid 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 is entitled to a credit under §8(j) of the Act for payments made by its group insurance carrier; provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $24,900.00. 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.

January 27, 2022

/s/ *Maria E. Portela*

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

SE/
O: 12/21/21
49

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

PIPPEL, KERRY
Employee/Petitioner

Case# **17WC020746**

TRI-DIM
Employer/Respondent

On 10/28/2019, 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 1.60% 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:

2489 BLACK & JONES AAL
TRACY L JONES
308 W STATE ST SUITE 300
ROCKFORD, IL 61101

2337 INMAN & FITZGIBBONS LTD
TERRENCE DONOHUE
33 N DEARBORN ST SUITE 1825
CHICAGO, IL 60602

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

KERRY PIPPEL
Employee/Petitioner

Case # **17** WC **20746**

v.

Consolidated cases: _____

TRI-DIM
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 **Hegarty**, Arbitrator of the Commission, in the city of **Rockford**, on **4/24/19**. 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 **10/26/16**, 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*** 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 **$44759.52**; the average weekly wage was **$860.76**.

On the date of accident, Petitioner was **61** years of age, ***single*** with **0** dependent children.

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

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

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

Respondent is entitled to a credit of **$19,642.28** under Section 8(j) of the Act.

ORDER

Respondent is to pay to Petitioner permanent partial disability benefits of $516.47/week for 42.75 weeks as the petitioner has sustained 10% loss of his left hand and 12.5% loss of his right hand for the bilateral carpal tunnel syndrome.

Respondent is liable for unpaid medical bills of $7,589.25 subject to the Illinois Workers Compensation Fee Schedule and subject to a credit for all sums paid by the health insurance carrier pursuant to section 8(j).

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.

Jason C. Mozuch

Signature of Arbitrator — 10-21-19 Date

OCT 28 2019

BEFORE THE
ILLINOIS WORKERS COMPENSATION COMMISSION

State of Illinois)
)
County of Winnebago)

KERRY PIPPEL,)
Petitioner,)
)
v.) No. 17 WC 20746
)
)
TRI-DIM)
Respondent.)

ADDENDUM TO THE DECISION OF THE ARBITRATOR

FINDINGS OF FACT

Petitioner worked for Respondent for 4½ years working 8 hour shifts prior to the alleged date of accident. Respondent is a commercial cleaning/maintenance staffing business that placed Petitioner to work at Tri-Dim's Belvidere location inside the Fiat Chrysler Automobile facility. His duties included operating a large Zamboni-type, floor scrubbing machine, the size of a small car. Petitioner testified he would drive the machine, which vibrated, up and down the isles of the facility scrubbing and polishing floors up to 4 hours a day. He last operated the machine in 2014 or 2015 when he moved on to the maintenance department where he was the only repairman for his shift. Petitioner testified his maintenance department duties included inspecting, diagnosing, and repairing all equipment and machines in the facility. He used a variety of hand tools including ratchets, hammers, impacts, torque guns, wrenches, air and pneumatic tools. He often repaired 40,000PSI water pumps, golf carts, electric carts, electric flatbeds, walk behind floor scrubbers, riding floor scrubbers, and the like. This work entailed the constant gripping and grasping of tools and parts in both hands. He often had to utilize large sized tools such as a 42" wrench which he gripped similar to a baseball bat with both hands wrapped tightly around the end which he held at shoulder height. He would forcefully pull the wrench down or push it upwards. Petitioner testified he used hand tools about 75% of his work day. He further testified he also spent some time doing paperwork or computer work to order parts although most of his work day was spent actively repairing equipment.

Respondent's witness Jay Bryzinski testified the Petitioner's duties did not involve replacing engines. According to Bryzinski, if Petitioner determined he could not fix a particular machine or part, Petitioner would contact an outside vendor for repair. Mr. Bryzinski testified he knew Petitioner's job duties but was unable to quantify how much time he spent doing paperwork or computer work verses using hand tools.

Petitioner developed symptoms in his bilateral hands and arms and presented to his primary doctor who referred him to Dr. Sliva. Petitioner testified underwent a prior cervical surgery by Dr. Sliva and was concerned the symptoms in his hands stemmed from his neck.

On 10/26/16 Petitioner presented to Rockford Spine Center where Dr. Christopher Sliwa noted a history of shoulder pain and bilateral hand numbness and tingling, left greater than right, mainly in the thumb, index and middle finger. (PX1, p. 9). Petitioner's symptoms had been present for three to four months, gradually increasing since September. Petitioner complained his left-sided hand numbness was always present and had progressed to a point where he could not feel his fingers when he used wrenches at work. (Id.). Petitioner complained of a sharp, stabbing pain in his anterior shoulders at a 7/10, worse with shoulder movements. The doctor noted a history of heart attack, high blood pressure, high cholesterol, and diabetes as well as a C3 to C6 anterior cervical discectomy and fusion performed by Dr. Sliva in February 2013 as well as two knee surgeries performed by Dr. Milos in January of 2016. (Id). Dr. Sliva noted an impression of bilateral AC joint arthritis, biceps tendonitis and bilateral carpal tunnel syndrome ("CTS") left greater than right. Injections were administered to Petitioner's right carpal tunnel and bilateral AC joint/biceps tendon and Petitioner was referred to Dr. Milos for consideration of a left carpal tunnel release. (Id.). An EMG, performed that day, was interpreted as showing severe left CTS and mild right CTS. (Id.).

On 11/21/16, Petitioner presented to Lundholm Orthopedics where Dr. Steven Milos agreed with Dr. Sliva's diagnosis of bilateral CTS. (PX2, p. 67).

On 11/30/16 Dr. Milos performed a left hand carpal tunnel release at Swedish American Hospital. (Id. p. 116). Postoperatively, Petitioner followed-up and was released at MMI on 1/16/17 for his left hand.

Petitioner continued to work for Respondent until he retired at the end of March 2017.

In August of 2017 Petitioner returned to Dr. Milos regarding his right hand which continued to be symptomatic.

On 8/30/17 Dr. Milos performed a right carpal tunnel release at Swedish American Hospital. Petitioner was released by Dr. Milos at MMI on 9/1/17 and hasn't been seen since for his hands.

Petitioner was evaluated for a section 12 exam by Dr. Vender at the request of the Respondent. He also underwent a section 12 exam at his attorney's request with Dr. Coe. Both reports were offered into evidence as well as their testimony.

The case proceeded to trial with the issues in dispute being accident, causation, notice, medical bills, and nature and extent of the injury.

CONCLUSIONS OF LAW

Did an accident occur that arose out of and in the course of petitioner's employment with respondent? Was the condition causally related to the work injury?

The Arbitrator finds the Petitioner suffered a bilateral repetitive hand injury that arose out of and in the course of his employment with Respondent, manifesting on 10/26/16.

The Petitioner testified his job duties required him to use hand tools day that required constant bilateral gripping, grasping, pulling and pushing at least 75% of his work day.

Respondent offered no evidence to suggest that Petitioner's job did not require frequent use of hand tool nor did Respondent present evidence that Petitioner's use of hand tools did not require some amount of force. Respondent's witness, Mr. Bryzinski confirmed the Petitioner's job required frequent use of both hands and involved the use of gripping and grasping tools and parts. He was unable to quantify how much time Petitioner used tools as opposed to administrative tasks.

Petitioner offered the testimony of Dr. Jeffrey Coe on the issue of causation who testified in detail about Petitioner's job description as provided by the Petitioner. (PX 5, page 11-12). Dr. Coe opined, based on Petitioner's job description, that the bilateral carpal tunnel syndrome was caused by his repetitive work duties for Respondent. (Id., p. 32). He was questioned on cross examination about references in the records to remodeling a home. Dr. Coe testified it was his understanding that any remodeling Petitioner did was not beyond ordinary home maintenance and certainly wasn't done every day for 8 hours a day like Petitioner's work duties would have been. In Dr. Coe's opinion, the references to home remodeling did not change his opinion on causation. (Id., p. 37). Petitioner did testify at trial about the references to remodeling two homes and how much he did outside of work. Petitioner testified he organized the remodeling of his home by hiring outside contractors to come in do the work. He further testified to performing tasks like clearing out debris, painting trim, and installing a countertop. He testified he also helped with a few small projects at his daughter's home where he put in a new door casing and cut and nailed some trim and installed a vanity in a bathroom. He testified it was just a few hours of work done sporadically and was not performed 8 hours per day like his job for Respondent.

Dr. Vender testified on behalf of Respondent regarding his opinions following his section 12 exam. Dr. Vender testified that when looking at causation in carpal tunnel claims, "you look at work potentially could contribute to carpal tunnel syndrome, you look for activities that involve forceful exertion on a regular and persistent basis…and if there's significant activities such as construction work where your persistently doing forceful activities, that could be considered a contributing factor." (RX3, p 12-13). Dr. Vender went on to opine that Petitioner's job duties were not forceful and repetitive enough, although he suggested Petitioner's activity of remodeling 2 homes may be forceful and repetitive enough. Dr. Vender could not quantify the amount of time Petitioner spent doing the remodeling work verses working for respondent.

Petitioner credibly testified his remodeling activities performed in his home and his daughter's home was very infrequent and completed in 2015.

Based on a review of the evidence, the Arbitrator finds the Petitioner sustained his burden that the repetitive duties he performed for Respondent were of a causative factor in his bilateral CTS.

Was timely notice given?

The Arbitrator finds the Petitioner gave timely notice within 45 days of the manifestation date as required by Section 4(c) of the Act. Petitioner testified that although he did recall the exact date, he does recall giving verbal notice to Elsworth Dismuke, site manager, Lance Harper, plant supervisor, and Diane Pride, janitorial supervisor after he found out from Dr. Sliva and Dr. Walker that he had bilateral CTS on 10/26/16. Petitioner also recalls that he gave that notice to each of those people before he had his first surgery on 11/21/16, after which, he missed a few days of work.

Respondent's witness, Mr. Bryzinski testified he became aware of the alleged claim when the case was filed with the IWCC. However, he confirmed the 3 people Petitioner named were working for Respondent during the relevant time period and none of them were present to testify on the issue of notice.

A preponderance of the evidence supports a finding that Petitioner gave timely notice of the injury within 45 days of 10/26/16 to respondent.

Has respondent paid all appropriate charges for all reasonable and necessary medical services?

Having found the Petitioner sustained an injury that arose out of and in the course of his employment with Respondent which caused bilateral carpal tunnel syndrome, the Arbitrator orders the Respondent to pay to petitioner $7,589.25 for unpaid medical bills pursuant to Section 8(a) and the fee schedule. The parties did not dispute the reasonableness and necessity of the treatment. Bills were disputed only as to liability for the accident.

What is the nature and extend of the injury?

The Arbitrator finds that Petitioner has sustained 10% loss of his left hand for the operated carpal tunnel syndrome and suffered 12.5% loss to the right hand for the operated carpal tunnel syndrome. Pursuant to Section 8.1b:

> *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.*

There was no impairment rating offered by either party into evidence. Therefore, no weight was given to that factor. Petitioner is employed as a class 4 mechanic doing maintenance and repair work for respondent. This occupation involves constant use of his hands and gripping and grasping. Therefore, this injury caused more permanent partial disability to him than it would to someone who has a less hand intensive job. Petitioner was 61 years old at the time of the injury. Given that he is older and unable to heal as quickly, his age does adds value. Petitioner testified that he retired between his surgeries but was working his normal job at the time of his manifestation date. There was no testimony regarding his earning capacity when he retired or at the time of trial, therefore, little weight is given to this factor. The final factor is evidence of impairment in the records. Based on the records of Dr. Milos, it is apparent that Petitioner was not symptom free when he was released at MMI. Petitioner testified that he was still having pain at the time of trial including a dull ache in both hands and pain after activities or working. Although the numbness and tingling had improved, it was apparent that he still had residual symptoms as noted in the medical records. Therefore, greater weight is given to this factor. Given full consideration of the five factors, the Arbitrator finds that Petitioner's permanent partial disability is 10% loss of the left hand and 12.5% loss of the right hand.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC011168
Case Name	BRADLEY, DERENDA L v. UNIVERSITY OF ILLINOIS AT CHICAGO
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0039
Number of Pages of Decision	16
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Michael E. Mahay
Respondent Attorney	Brad Antonacci

DATE FILED: 1/31/2022

/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

DERENDA L. BRADLEY,

Petitioner,

vs. NO: 10 WC 011168

UNIVERSITY OF ILLINOIS AT CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability, and permanent partial disability, and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below.

I. FINDINGS OF FACT

In the instant case No. 10 WC 011168, Petitioner alleged a repetitive trauma injury with a claimed manifestation date of December 22, 2009. This case was tried with a companion case, No. 10 WC 011169, involving repetitive trauma injury with a claimed manifestation date of March 4, 2009. The Commission hereby adopts and incorporates by reference the findings of fact contained in its Decision and Opinion on Review in No. 10 WC 011169.

II. CONCLUSIONS OF LAW

The Arbitrator found that that Petitioner failed to prove a causal connection between her work activities for Respondent and her bilateral carpal tunnel syndrome and ulnar neuritis/cubital tunnel syndrome condition. Accordingly, the Arbitrator also found there was a failure of proof on the issue of accident with the alleged manifestation date of December 22, 2009.

Regarding the issues of accident and causal connection in this matter, the Commission hereby adopts and incorporates by reference the conclusions of law contained in its Decision and Opinion on Review in No. 10 WC 011169 finding that Petitioner sustained a repetitive trauma

injury arising out of and in the course of her employment and manifesting on March 4, 2009, and that Petitioner's current condition of ill-being is causally related to that accident.

Accordingly, the Commission also concludes that the remaining issues of medical expenses, temporary total disability, and permanent partial disability are rendered moot by the Commission's award in its Decision and Opinion on Review in the companion case of No. 10 WC 011169.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner sustained an accident manifesting on March 4, 2009, that arose out of and occurred in the course of her employment.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner's current conditions of ill-being regarding her right hand, right arm, left hand, and left arm are causally related to the accident manifesting on March 4, 2009.

IT IS FURTHER FOUND BY THE COMMISSION that the issues of medical expenses, temporary total disability, and permanent partial disability are rendered moot by the Commission's award in its Decision and Opinion on Review in the companion case of No. 10 WC 011169.

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

January 31, 2022

d: 1/20/22
CMD/kcb
045

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

/s/ *Marc Parker*
Marc Parker

/s/ *Deborah L. Simpson*
Deborah L. Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC011168
Case Name	BRADLEY, DERENDA L v. UINVERSITY OF ILLINOIS AT CHICAGO
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Michael E. Mahay
Respondent Attorney	Brad Antonacci

DATE FILED: 6/1/2021

INTEREST RATE FOR THE WEEK OF JUNE 1, 2021 0.03%

/s/ Jeffrey Huebsch, Arbitrator
Signature

D. Bradley v. U of I at Chicago, 10 WC 011168

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

Derenda L. Bradley
Employee/Petitioner

v.

University of Illinois at Chicago
Employer/Respondent

Case # **10** WC **011168**

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 **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **March 23, 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 _____

D. Bradley v. U of I at Chicago, 10 WC 011168

FINDINGS

On **12/22/2009**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did 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 $**35,954.36**; the average weekly wage was $**691.43**.

On the date of accident, Petitioner was **41** years of age, ***single*** 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 $**460.57** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**460.57**, per the stipulation of the Parties.

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

ORDER

Claim for compensation denied. Petitioner failed to prove that she sustained accidental injuries which arose out of and in the course of her employment by Respondent on December 22. 2009 and failed to prove a causal connection between her work activities for Respondent and her current condition of ill-being regarding her right and left hands.

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/ Jeffrey B. Huebsch

Signature of Arbitrator

JUNE 1, 2021

INTRODUCTION

This case was tried with a companion case, No. 10 WC 011169, involving the claimed date of accident of March 4, 2009. The Findings of Fact in this case shall operate as the Findings of Fact in Case No. 10 WC 11169.

FINDINGS OF FACT

In 2009, Petitioner was employed by Respondent as a Customer Service Representative II and had been so employed been since 2006. Petitioner testified her job duties consisted of being a registrar, essentially registering patients for medical appointments. She testified she had a daily schedule of 56 patients and, additionally, would also take 20 to 25 phone calls throughout the day. She typed the registration information into a computer program. She testified the program was a series of tabs and pulldown screens. She would add the patient's name, date of birth, encounter information (selecting from a list of patient types), address, primary language, insurance (selecting from a list), fill in boxes regarding schedule date, time of appointment, visit type, visit reason, primary physician and referring physician. If the patient was an existing patient, after typing in the patient's name, a lot of the fields in the program would auto-populate and Petitioner would only type in these areas if changes were necessary. She would then click "okay" and the registration was complete. She would also call patients to obtain missing information.

Petitioner testified she completed 3-4 registrations per hour in this manner plus registering patients over the phone. She testified she was typing 90% of her shift. The other 10% of the time, she was sending or receiving faxes. Petitioner worked 37.5 hours per week. She was able to take breaks as necessary, such as for restroom breaks or to talk with co-workers.

Petitioner testified her workstation was a "regular desk" and she had no headset when she started in 2006 and up through 2012, when the department moved to a different building. She said she had a "regular" chair on which she would rest her arms on armrests that were not padded, up until 2012. She did not have a pad for her wrists until 2012. She testified that she did not have a chair with an adjustable height until 2012.

Respondent presented the testimony of Paula Lagioia. She testified that she is retired, having worked for Respondent for 27 years, up until 2017. She was the Assistant Director of Patient Access and would oversee day-to-day operations in Respondent's call center for patient registration. She oversaw the Customer Service Representative II's and was familiar with Petitioner. She testified that Resp. Ex. No. 8 is an accurate description of Petitioner's job duties. The Arbitrator finds this job description to be consistent with Lagioia's

testimony regarding the job duties. Lagioia oversaw Petitioner in 2009. Petitioner registered patients either based on printed patient schedules or over the phone. Petitioner would enter patients' personal information into the computer system. If it was an established patient, she would only complete the registration portion. If it was a new patient, she would also enter demographic information.

Lagioia testified Petitioner's position did not require constant typing because the majority of the fields in the computer program were dropdown menus and based on the fact that existing patients' files had information that was pre-populated. Most of the input work was utilizing a mouse to click on drop-down menus. For over-the-phone registrations, Petitioner was asking questions, listening for answers, then updating information in the program.

Lagioia testified Resp. Ex. No. 10 accurately illustrates print screens from the registration process. She testified regarding the 6 screens that Petitioner would complete to register a patient, noting the majority of the information would auto-populate for existing patients, where Petitioner would be confirming the information rather than typing. She testified Petitioner would only complete three registrations per hour, including the phone call registrations.

According to Lagioia, Petitioner was allowed to take 2 15 minute breaks and had a one-half hour lunch break, or was allowed a one hour lunch break. Petitioner was allowed intermittent breaks between patient contacts, consistent with the ergonomics reports. Petitioner lifted no weights as part of her job duties and her work did not involve highly repetitive and forceful use of her hands or arms. She was not required to grip or pinch with her hands and fingers. She did not perform heavy, forceful gripping or grasping. Petitioner was provided with a headset in 2010 following an ergonomics assessment.

Paula Lagioia would observe Petitioner performing her job duties, as Petitioner's cubicle was ten feet from Lagioia's office. She would observe Petitioner approximately twice per day and never noticed any excessive or chronic pressure on Petitioner's elbows while she worked. Lagioia testified Petitioner's elbows did not touch the arms of her chair. The arms of Petitioner's chair were padded, like a pad underneath leather, back in 2009 and 2010. Petitioner had a mouse pad and keyboard pad for resting her wrists prior to 2012. She never noticed Petitioner's elbows, hands, or wrists in extremely flexed or extended positions while Petitioner worked at her job.

Respondent submitted into evidence two ergonomics assessments of Petitioner's work station. Resp. Ex. Nos. 6, 7. The first assessment, dated February 3, 2010, noted the industrial hygienist (Dennis Terpin) would help ensure Petitioner's workstation was set up in the appropriate work zones so the keyboard and mouse could be used without reaching. A headset was recommended. It was recommended that Petitioner be allowed to take micro-breaks lasting ten to fifteen seconds every ten minutes and take mini-breaks lasting three to five minutes every thirty to sixty minutes. (RX 6)

In the second ergonomic assessment from May 12, 2011, Petitioner reported, to Keith Hronek, from Environmental Health and Safety, that data entry took up about 80% of her time, contrary to her testimony that she typed 90% of the time. Hronek noted Petitioner had wrist rests for both the keyboard and mouse, contrary to Petitioner's testimony that these were not provided until 2012. The report noted Petitioner utilized an adjustable chair with an upper support for her back and had a headset to answer calls, contrary to Petitioner's testimony that she did not have a headset or adjustable chair until 2012. The only adjustments suggested were to raise the height of Petitioner's computer monitor and that a footrest may be needed. The chair height was noted to be appropriate for the workstation. (RX 7)

Petitioner testified she began experiencing tingling and numbness in her right hand on March 4, 2009. She notified Barbara Burnett, her supervisor. She also testified she presented to Respondent's Health Services, but there are no medical records in evidence to support this claim. The submitted records document that Petitioner presented to Dr. Morgan on August 18, 2008, approximately 6 months earlier, complaining of right elbow pain that radiated to her hand for one month. There was no mention of her work duties or of the patient relating her complaints to her work duties. (RX 9)

After March 4, 2009, Petitioner continued to work her regular job. On December 22, 2009, she noticed that her left hand started experiencing the same symptoms as her right hand, and the symptoms progressed up her elbow. Petitioner presented to University Health Services on December 22, 2009, complaining of numbness, tingling and pain in her bilateral wrists for the past few months which had worsened. She noted the pain radiated bilaterally to the elbows. She was not complaining of any specific elbow pain. She further noted she did not rest her elbows on her armrests at work. Petitioner was noted to be morbidly obese on examination and she had full range of motion of both wrists with some medial wrist pain with lateral flexion. Her right elbow was tender to palpation on the inferior edge of the epicondyle. The doctor recommended a workstation evaluation and noted Petitioner may require splints. (PX 2)

Petitioner's next sought treatment by Dr. Jablon at the Illinois Bone and Joint Institute on January 28, 2010. (PX 3) She was complaining of discomfort in her right elbow and to her forearm and hand over the past few months. There were complaints of pain and numbness in the little and ring fingers and some symptoms on her left side. X-rays of the hands/wrists and right elbow were negative. Dr. Jablon assessed probable ulnar neuritis. He recommended an EMG/NCV for possible cubital tunnel syndrome. He also recommended an ergonomic evaluation of Petitioner's workspace. (PX 3) Petitioner then presented to Respondent's Health Services on February 1, 2010, noting a worsening of her symptoms. The doctor noted further diagnostic testing would be beneficial and placed her on temporary work restrictions. She was to follow up with her primary care physician. (PX 2)

The February 16, 2010 EMG/NCV was abnormal and consistent with mild right ulnar neuropathy at the right medial elbow with no findings at the ulnar wrist, incidental findings of a right mild carpal tunnel syndrome and evidence of potential early findings of a left ulnar neuritis. Carpal tunnel syndrome was noted in the left hand. Dr. Jablon reviewed the test results on March 4, 2010 and recommended an elbow block splint for sleeping. He charted he was considering kenalog injection v. surgical intervention. He allowed Petitioner to return to full duty work with no restrictions. (PX 3) In follow-up treatment at University Health Services in February and March of 2010, Petitioner was noting improvement in her symptoms since the ergonomic assessment improvements in her work station. (PX 2)

On April 15, 2010, Dr. Jablon diagnosed ongoing ulnar neuritis-like symptoms, as well as findings consistent with thoracic outlet syndrome. He referred Petitioner to therapy. He continued to allow Petitioner to work full duty with no restrictions. (PX 3) Petitioner continued to follow-up at University Health Services, in April and May of 2010, with an assessment of symptomatic right carpal tunnel and cubital tunnel syndromes, ulnar neuropathy and reported thoracic outlet syndrome. She was allowed to continue full duty work. (PX 2) Petitioner also continued to follow-up with Dr. Jablon in 2010 and he continued to allow her to work at full duty. Petitioner was noting gradual improvement with therapy. Dr. Jablon provided an injection of the right cubital tunnel region on July 22, 2010. Petitioner again noted symptoms in both hands, forearms and fingers. She did note some improvement in the left right and left little finger numbness following the injection, but with short term relief. Dr. Jablon noted ongoing peripheral neuropathy in the upper extremities consistent with mild carpal tunnel syndrome, mild cubital tunnel syndrome and thoracic outlet syndrome. Dr. Jablon recommended a neurological consultation for the thoracic outlet syndrome and continued to allow Petitioner to work at full duty.

Petitioner testified that, in September of 2010, she went to the emergency department due to intolerable levels of neck and arm pain. She had follow-up at Health services. (PX 2) Dr. Jablon recommended an EMG/ NCV on September 28, 2010. (PX 3) Petitioner also received medical treatment by her PCP, Dr. Herman Morgan on September 20, 2010. Dr. Morgan referred her to Dr. Jough for an NCV and for treatment. (PX 5) Dr. Jough noted no electromyographical evidence of abnormality on October 4, 2010. (PX 3) In follow up on October 11, 2010, Dr. Jablon confirmed the EMG/NCV showed no abnormalities and assessed fibromyalgia, early right carpal tunnel and cubital tunnel syndrome. He recommended that Petitioner lose weight. He further recommended that Petitioner obtain a cervical spine MRI to exclude cervical disk disease in October of 2010. He noted Petitioner may require carpal tunnel and cubital tunnel release surgeries, if her symptoms persisted. PX 3) Petitioner also continued to follow-up with University Health Services in the fall and winter of 2010. (PX 2) University Health Services continued to allow Petitioner to work at full duty, without restrictions. Dr. Jablon noted on December 10, 2010 that the cervical spine MRI was normal. (PX 3) Petitioner followed up on

occasion throughout 2011 with University Health Services and with Dr. Herman Morgan, complaining bilateral wrist and elbow pain that were increasing. (PX 2 and 5)

Petitioner did not follow-up again with Dr. Jablon until August 15, 2011 complaining of left worse than right bilateral hand numbness and tingling. Dr. Jablon recommend a right carpal tunnel release and right cubital tunnel release. He allowed Petitioner to continue to work full duty with no restrictions prior to surgery. (PX 3)

Previously, Petitioner had begun treating with Dr. Sonnenberg at Midland Orthopedic Associates on April 6, 2011. Dr. Sonnenberg assessed Petitioner with a combination of carpal tunnel and cubital tunnel syndromes on the right side and probably the left side as well. He recommended another EMG/NCV. The study was completed on November 11, 2011 and was consistent with mild left carpal tunnel syndrome and suggested right carpal tunnel syndrome and left ulnar neuropathy. After reviewing the EMG/NCV results, Dr. Sonnenberg provided Petitioner with an injection to the median nerve at the right wrist on November 23, 2011. (PX 4) Petitioner noted her wrist was better after the injection but it did not last. Dr. Sonnenberg recommended surgery. (PX 4)

On January 13, 2012, Dr. Sonnenberg performed a right carpal tunnel release and anterior transposition of the right ulnar nerve at the elbow. (PX 4) He described the surgery as successful. In follow-up, he noted Petitioner was doing well and by March 26, 2012, she had no more symptoms of median nerve disorder on the right. She had some numbness in the ulnar nerve distribution, but her major problem was tenderness around the scar in the right elbow. He recommended deep friction massage. On April 25, 2012, Dr. Sonnenberg noted that Petitioner was back to near normal levels but still complaining of scar tenderness on the right elbow. On June 6, 2012, Dr. Sonnenberg noted Petitioner was doing very well following the right upper extremity surgery. Her range of motion in the right elbow was within normal limits and her hand range of motion was normal. She had no numbness over her fingers and she was no longer having any scar related pain. She was very happy with her progression. Dr. Sonnenberg recommended the same surgery on the left upper extremity. (PX 4)

Dr. Sonnenberg performed the left carpal tunnel release and anterior transposition of the left ulnar nerve at the elbow on June 29, 2012. In follow-up in 2012, Dr. Sonnenberg noted Petitioner was doing very well. By July 30, 2012, he noted most of her symptoms had completely disappeared. He noted on August 27, 2012 that Petitioner was coming along well with therapy. Petitioner was discharged from occupational therapy on October 2, 2012 with increased left elbow flexion, grip strength and range of motion. She was reporting no pain during her occupational therapy visits and decreased tenderness and sensitivity. On October 22, 2012, Dr. Sonnenberg noted full range of motion in both of Petitioner's elbows. She had some sensitivity over the scars, but she was overall happy with the results of surgery. Dr. Sonnenberg noted, Petitioner "feels she can do anything; has no disability." Dr. Sonnenberg discharged Petitioner in good condition and release her from care. (PX 4)

Petitioner testified that she returned to Dr. Sonnenberg in 2013 because she experienced some pain and wanted a checkup. Dr. Sonnenberg did not place her under any active treatment. Dr. Sonnenberg's notes from 2013 indicate Petitioner's handwriting on the right hand deteriorated after surgery, which he thought was not unexpected. He noted she had fairly good relief from the ulnar neuropathy after the cubital tunnel releases and anterior neurolysis. She was noting some tenderness over the scar on the left elbow, which had formed somewhat of a keloid, and Dr. Sonnenberg noted that she may want to consider plastic surgery consult. He noted Petitioner had developed intersection syndrome of the left wrist, which could be treated conservatively. Dr. Sonnenberg noted Petitioner was doing well and recommend she continue to do normal duties at work. He also suggested that her keyboard at work should be lowered or her chair should be raised to the keyboard level to take stress off her elbow. (PX 4)

Petitioner saw Dr. Sonnenberg again in the spring of 2015 for another checkup. He did not place her in active treatment. Dr. Sonnenberg's records confirm some treatment in 2015, where he believed Petitioner had periscapular myositis and evidence of cervical radiculitis. He recommended a steroid injection over the scapula, which he performed on April 20, 2015. The injection reduced a lot of the symptoms of the myofascial pain syndrome. Dr. Sonnenberg noted on September 30, 2015 that Petitioner attempted to return to work, but apparently was not successful. She had been taking Gabapentin and her symptoms seemed to be related to a neck issue. Dr. Sonnenberg recommended physical therapy, which Petitioner underwent. This treatment was directed to Petitioner's cervical spine. Dr. Sonnenberg began to assess cervical radiculitis. Petitioner was eventually discharged from physical therapy to her cervical spine on November 4, 2015 due to a plateau in her progress. (PX 4)

Petitioner testified she returned to Midland Orthopaedics for a follow-up with Dr. Strugala but no active treatment was planned. There is no documentation of this treatment in the records.

Petitioner testified she has not been under any real, active treatment plan since October 2012. She has no follow-up appointments scheduled. Petitioner testified she was off work from the date of her first surgery (January 13, 2012) until Dr. Sonnenberg released her from care on 10/22/2012. She returned to work in her same position as a Customer Service Representative II until 2015. She testified that when she returned, she now had headphones, a new workstation, a new chair, and wrist pads. She stopped working for the Respondent in 2016, but returned in 2018 after performing temp work. She continues to work for Respondent as a Medical Office Associate, registering patients for the surgery clinic, using a different computer system which she testified requires 70-80% typing. She works full time, full duty with no work restrictions.

Petitioner testified it is hard for her to grip and hold a pen and write. She still "every now and then" feels tingling in her fingers with typing. She testified her elbows are numb. She testified she takes gabapentin and uses a heating pad . She is happy with the results of the surgery.

Petitioner is a former smoker. She has asthma and has been diagnosed with hypertension. She was also noted to be obese (PX 2, RX 1, p. 17).

Petitioner presented Dr. John Sonnenberg for his evidence deposition on January 16, 2014. (PX 1) Dr. Sonnenberg is a board certified orthopedic surgeon. He reviewed 16 photographs of Petitioner's workstation. Dr. Sonnenberg testified he diagnosed Petitioner with bilateral carpal tunnel syndrome caused by the posture of her wrists with repetitive movements He diagnosed bilateral cubital tunnel syndrome, and he felt it was caused by her repetitive work duties (typing), hyperflexion of the elbow (90 degrees of flexion) and force on her elbow at her work station. On cross-examination, Dr. Sonnenberg admitted he did not review any written job description and only knew Petitioner typed, answered phones, and performed fairly minimal lifting activities. He did not know the amount of time she performed these activities. He agreed that Petitioner was not performing forceful, gripping activities. Petitioner has several risk factors, including being female, a prior smoking history and being obese, that would predispose her to carpal tunnel and cubital tunnel syndrome. He testified he was not recommending any further treatment because Petitioner had great results. (PX 1)

Dr. Charles Carroll examined Petitioner on May 23, 2011 at Respondent's request and prepared multiple reports. (RX 2, 3, 4, and 5) Respondent presented Dr. Carroll for his evidence deposition on December 10, 2014. (RX 1) Dr. Carroll is a board certified orthopedic surgeon, fellowship trained in upper extremity surgery. Petitioner related the numbness in her fingers to her constant keyboarding and phone use all day at work as a service representative in patient registration. She was also noting elbow symptoms. Dr. Carroll noted Petitioner's cervical spine and shoulder exams were normal. The elbow exam showed some tenderness over medial aspect of the right elbow and none over the left. Dr. Carroll diagnosed bilateral right greater than left ulnar neuritis and bilateral carpal tunnel syndrome, right greater than left. In his initial report, Dr. Carroll relied solely on Petitioner's description of her work duties of chronically placing pressure/leaning on her elbows, and endorsed causal connection. He felt her treatment had been reasonable and necessary and she might consider a corticosteroid injection of the carpal tunnel and medial elbow, then potentially consider carpal tunnel release and possibly ulnar nerve release and transposition. He opined she could return to work without restrictions at the time of the exam. (RX 1)

Dr. Carroll authored an August 5, 2011 report after he reviewed Dr. Sonnenberg's records and additional job information. This information did not change his causation opinions. He did not see the need for new electro-diagnostic studies, as Dr. Sonneburg had recommended. This was based on positive studies taken on February 16, 2010.

Dr. Carroll generated a September 23, 2011 report after reviewing the ergonomics reports and a copy of the Petitioner's job description as a Customer Service Representative II. After reviewing the additional documentation, He concluded that Petitioner's bilateral upper extremity complaints were not causally related to

her work activities for Respondent. He noted the records indicated Petitioner was not continuously typing and that she performed varied activities. She managed phone calls and gathered intake information, which was different than what Petitioner had reported to him. He did not see any activities that would cause, aggravate, or accelerate a diagnosis of carpal tunnel syndrome. There was no vibration, no use of tools, the keyboard activities were not continuous or forceful in nature, and there was no awkward positions and no compression of the elbows. He noted there were no activities that would cause, aggravate, or accelerate a diagnosis of ulnar neuritis (cubital tunnel syndrome) because there was no awkward posturing or pressure on the elbows and no continuous, forceful repetition. Petitioner's elbows were positioned around 60 degrees of extension, according to the ergonomics report, and not chronically flexed at 90 degrees. This would minimize the likelihood that her work played any role in the development of her cubital tunnel syndrome. Her wrists, per the ergonomics report were in a neutral position and supported. He opined that any complaints, medical treatment, or time off work would not be related to her work duties. He opined that Petitioner's sex, obesity, and medical history would have been the cause for her bilateral carpal tunnel and cubital tunnel syndrome. (RX 1)

Dr. Carroll also reviewed the pictures of Petitioner at her workstation, which were attached to Dr. Sonnenberg's deposition transcript and they did not change his opinions. Her wrists were in extension and her elbows were not flexed greater than 90 degrees. Dr. Carroll noted that the pictures did not show any compression going on anywhere in particular. (RX 1)

Subsequent to the deposition, Dr. Carroll prepared an August 7, 2015 report. (RX 5) He noted Petitioner returned to work as a Customer Service Representative. He noted her treatment had been reasonable and necessary. He noted Petitioner had new neck and right arm complaints (numbness and tingling), and Dr. Carroll did not relate these to her work duties. Nothing changed his opinions on causality based on his review of the ergonomics evaluations. He did not relate the ulnar nerve findings or related care to her work activities. His opinions regarding carpal tunnel syndrome also did not change. (RX 5)

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 her claim (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980)), including that there is some causal relationship

between her employment and her injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989)).

Decisions of an arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e)

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? and F. Is Petitioner's current condition of ill-being causally related to the injury?

The Arbitrator finds that Petitioner failed to prove a causal connection between her work activities for Respondent and her bilateral CTS and ulnar neuritis/cubital tunnel syndrome condition. Accordingly, there is a failure of proof on the issue of accident, as well.

The claimed accident date in this case is December 22, 2009. This is the date that Petitioner testified that she began experiencing symptoms of numbness, tingling and pain in her left upper extremity and right upper extremity, having had these symptoms before in her right upper extremity. On December 22, 2009, Petitioner was sent to University Health Services, where her symptoms were noted and it was charted that Petitioner did not rest her elbows on her armrests at work.

The Arbitrator finds Dr. Carroll's opinions to be persuasive and correct in this case. Petitioner's described job duties do not appear to be sufficiently heavy, repetitive and forceful, such that causation regarding her CTS and ulnar neuritis, cubital tunnel syndrome conditions is apparent to the finder of fact. Certainly, Petitioner is not working with vibratory tools. or in a cold environment. Petitioner's job duties involve different keystrokes being used for different calls and are the keystrokes are interrupted by the use of her mouse for drop down entries on the documents she was completing. Dr. Carroll would not endorse causation, based upon the ergonomic evaluations, which do not demonstrate pressure on Petitioner's wrists or elbows and do not document awkward positioning of the wrists or elbows. Keyboard work alone is not sufficient to establish causal connection in this case.

Dr. Sonnenberg's opinions on causation are not persuasive. He thought that Petitioner's wrist posture with repetitive motion associated with keyboarding was the likely cause of Petitioner's CTS condition. Hyperflexion of Petitioner's elbows and force placed on Petitioner's elbows as a result of her workstation's layout contributed to the ulnar neuritis condition. As is set forth below, the Arbitrator finds that Petitioner's elbows were not in hyperflexion while typing and there was not excessive pressure on the elbows due to Petitioner's work station. Dr. Sonnenberg's opinions are not supported by the evidence adduced, other than Petitioner's uncorroborated testimony.

Petitioner's testimony regarding her work activities is not corroborated by the other evidence adduced. The pictures do not demonstrate awkward positioning or noticeable pressure points. Petitioner's testimony of

typing 90% of the time is not consistent with the testimony of Lagioia, or the ergonomic studies. If there are inconsistencies in the descriptions of Petitioner's job activities and frequency of typing in the testimony of Petitioner and Lagioia, the Arbitrator finds the testimony of Lagioia to be more accurate and credible. Lagioia did not see Petitioner putting pressure on her elbows when working. She did not see Petitioner's elbows or wrists in extremely flexed positions as she worked. Finally, the December 22, 2009 chart from Health Services persuades the Arbitrator that Petitioner's ulnar neuritis condition is not related to her work station. Petitioner was asked whether she rested her arms on her armrests at work (presumably a likely cause of a compressive neuropathy at the elbow) and she denied same.

A chain of events analysis cannot be employed to find causation in this case, given Petitioner's significant risk factors for CTS (age, sex, obesity, prior tobacco use). Indeed, Dr. Carroll's testimony was that the etiology of nerve compression conditions such as CTS is often idiopathic.

There was a failure of proof on causation, accordingly, there is a failure of proof on accident and the claim for compensation is denied.

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

Petitioner testified that she noticed increasing upper extremity symptoms on December 22, 2009 and presented to Health Services for treatment. PX 2 contains a record of this visit and shows that a note regarding to return to work at full duty and a next visit of 1/12/2010 was sent to a supervisor, Karen Valencia. Respondent submitted no evidence on this issue.

Timely notice was proven.

J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonably and necessary medical services? , K. What amount of compensation is due for temporary total disability? and L.What is the nature and extent of the injury?

As the Arbitrator has found that Petitioner failed to prove a causal connection between her work activities and her bilateral CTS and ulnar neuritis/cubital tunnel conditions and that Petitioner failed to prove that she sustained accidental injuries which arose out of and in the course of her employment by Respondent on December 22, 2009, the Arbitrator needs not decide the above issues.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC011169
Case Name	BRADLEY, DERENDA L v. UNIVERSITY OF IL AT CHICAGO
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0040
Number of Pages of Decision	26
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Michael E. Mahay
Respondent Attorney	Brad Antonacci

DATE FILED: 1/31/2022

/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

DERENDA L. BRADLEY,

Petitioner,

vs. NO: 10 WC 011169

UNIVERSITY OF ILLINOIS AT CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability, and permanent partial disability, and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below.

I. FINDINGS OF FACT

A. Background

Petitioner testified that in 2009, she was employed by Respondent as a Customer Service Representative II. She described her duties as registering existing and new patients, which included gathering demographic information, employment information, and insurance information. She added that in the case of an automobile accident, she would have to gather the accident information, dates, times, which police were involved, and which body parts were injured. Petitioner also stated that she would obtain information about referrals. She stated that she had worked for Respondent in this position since 2006 and previously for Respondent's surgery clinic.

Petitioner further testified that her shift was from 7:00 a.m. to 3:00 p.m., but that she had to log in by 6:46 a.m. so that she could be on the phone at 7:00 a.m. ready to take calls. She stated that she would receive a daily schedule of 56 patients and take at least 20 to 25 phone calls throughout the day from patients that may have needed same-day registration. Petitioner testified that sometimes she would input full registrations, in other instances updating the

patient's insurance information. She also stated that she would obtain referral information, listing for example whether it was a workers' compensation case, or a referral from Peoples Gas case, and so forth. She estimated that 90% of her shift was spent typing on her keyboard, with the remainder of the time spent on tasks such as collecting information by facsimile. She described taking information while typing through eight or nine screens with fields that had to be filled in when they did not fill automatically. Petitioner later explained that she would review patient information and use pull-down screens and click on tabs to input data into the program. She agreed that for many existing patients, when she typed in a patient's name, the fields would auto-populate. She added that she would still review the information and update it as necessary. She stated that she would fill out information including the scheduled date and time of the appointment, the visit type, visit reason, the primary physician and referring physician. Petitioner acknowledged that she processed three or four registrations per hour, while also receiving telephone calls from patients that were in the clinic or coming into the clinic.

Petitioner later testified that she worked approximately 37.5 hours per week. Petitioner testified that she had a lunch break and could get up for a restroom break or to talk to co-workers.

According to Petitioner, when she started working for patient access in 2006, she had a regular desk and her computer, lacking a stand, sat on stacks of paper. Petitioner stated that she did not have a headphone at that particular time and was constantly putting the telephone on her shoulder and leaning her head while typing. She added that she did not have any foot rest. She described her chair as a regular chair with wheels and unpadded armrests that she used to rest her elbows. She added that her workstation lacked a little pad to rest her wrists. Petitioner further testified that the workstations were updated when Respondent moved to a new building in 2011 or 2012.

Paula Lagioia, the retired former Assistant Director of Patient Access for Respondent's medical center in 2009, testified on behalf of Respondent. She stated that she oversaw day-to-day operations in the call center for patient registration. She testified that she oversaw Customer Service Representative II's, including Petitioner.

Ms. Lagioia testified that patient access would occur by advance scheduling, walk-in patients who would reach the call center using a red "bat phone," and face-to-face registration with four floors of registrars in the building. She opined that Petitioner's job did not require typing eight hours per day. She explained that the majority of the fields were drop-down menus in the application, such that with an established patient, all the demographic information comes up immediately and completing the registration is a matter of clicking on drop-down windows and making selections. She agreed that for the over-the-phone registrations or new patients, Petitioner would be listening to the answers and then typing the responses. Ms. Lagioia testified that she created Respondent's Exhibit 10, depicting print screens of the registration process when she was notified that there was a case pending. She also testified that she created Respondent's Exhibit 8, a description of Petitioner's job duties.

Ms. Lagioia further testified that she never noticed Petitioner putting excessive or chronic pressure on her elbows while she worked. She did not see how Petitioner's elbows could have

been touching the armrest, given the position her arms were in for typing. She also described the armrests as having a pad under the leather in 2009-10. She additionally stated that Petitioner also had a mouse pad and a wrist pad in front of her keyboard prior to moving in 2012, though she could not recall when Petitioner had them. Ms. Lagioia testified that Petitioner had a lunch hour, could take bathroom breaks, and could take breaks for 10- to 15-seconds every 10 minutes, and for 3 to 5 minutes every 30 to 60 minutes, based on a study conducted by ergonomics. When asked whether Petitioner's job involved highly repetitive, forceful use of her hands, arms, or upper extremities, Ms. Lagioia opined: "Not forceful, no." She also testified that Petitioner's job did not require gripping or pinching with her hands and fingers.

On cross-examination, Ms. Lagioia testified that she supervised approximately 30 staffers who worked in cubicles. She stated that she would walk around the office twice daily to check in on and talk to her staff for a few minutes. She later testified that she remembered that Petitioner completed three or four registrations hourly because she worked with Petitioner to increase her productivity.

B. Accident

Petitioner testified that she began experiencing numbness and tingling in her right hand which became progressively worse. She stated that she notified her department of this condition on March 4, 2009. According to Petitioner, her supervisor, Barbara Burnett, sent her to University Health Services (UHS) because an incident report needed to be completed. Petitioner testified that she was evaluated and returned to work after the incident report was completed. Petitioner also testified that she was treated by Dr. Michael Jablon during this period and was advised she probably had carpal tunnel syndrome, but continued to work until December 22, 2009.

Petitioner testified that on December 22, 2009, she began experiencing numbness, tingling, and pain starting in her left hand which progressed into her elbow. She stated that she sought treatment and was again advised that she had carpal tunnel syndrome.

C. Medical Treatment

On December 22, 2009, Petitioner presented to UHS complaining of numbness, tingling and pain in her bilateral wrists for the past few months which had worsened. The note states that Petitioner worked in patient access with constant computer work. Petitioner reported numbness in the fourth and fifth digits of the right hand, and the left wrist in the medial proximal area. She also reported that the pain radiated bilaterally to the elbows. Petitioner did not complain of any specific elbow pain. She further stated that she did not rest her elbows on her armrests at work. Dr. Susan Buchanan noted that Petitioner was morbidly obese and had full range of motion of both wrists with some medial wrist pain with lateral flexion. Petitioner's right elbow was tender to palpation on the inferior edge of the epicondyle. Dr. Buchanan recommended a workstation evaluation and noted that Petitioner may require splints.

On January 28, 2010, Petitioner was seen by Dr. Michael Jablon at the Illinois Bone and Joint Institute, complaining of discomfort in her right elbow into her forearm and hand over the

past few months, which was aggravated by working and typing activities. Petitioner reported pain and numbness in the little and ring fingers and some symptoms on her left side. Dr. Jablon's examination included an elbow flexion test positive on the right and negative on the left, a negative Froment's sign weaker on the right than the left, and an equivocal cubital tunnel Tinel's sign more positive right than left. X-rays of the hands/wrists and right elbow revealed no fractures, dislocations or osseous abnormalities. In a letter to the University of Illinois Office of Claims Management, Dr. Jablon assessed probable ulnar neuritis. He recommended an EMG/NCV for possible cubital tunnel syndrome. He also recommended an ergonomic evaluation of Petitioner's workspace.

On February 1, 2010, Petitioner followed up at UHS, reporting a worsening of her symptoms, especially when resting her elbows on the desktop or the arms of her chair. Petitioner also stated that she had an ergonomic mouse and a keyboard wrist pad at her workstation. Nurse Gerard Bedore noted that Petitioner needed an ergonomic assessment of her workstation, "esp evaluating elbow rests." Following an examination, Petitioner was assessed with: (1) bilateral upper extremity neuropathy and radiculopathy along the ulnar distribution, right greater than left; and (2) differentials including medial epicondylitis/cubital tunnel syndrome, Guyon's canal syndrome, and/or cervical radiculopathy. It was noted that further diagnostic testing would be beneficial for more definitive diagnoses and treatment. The doctor placed Petitioner on temporary work restrictions and advised follow-up with her primary care physician.

On February 16, 2010, Petitioner underwent an EMG/NCS at the Suburban PainCare Center. Dr. Elton Dixon's impression was of an abnormal EMG/NCS of the upper extremities. Dr. Dixon found a right mild ulnar neuropathy at the right medial elbow with no findings at the ulnar wrist, incidental findings of a right mild carpal tunnel syndrome, possible early findings of a left ulnar neuritis.

On February 23, 2010, Petitioner returned to UHS, reporting some improvement since an ergonomic assessment, improvements in her work station, and an accommodation of two 15-minute breaks per shift. Nurse Ann Naughton continued the accommodation scheduled a follow-up visit after Petitioner saw a hand specialist, and noted to discuss the case with Dr. Buchanan. The note then reads: "This case was discussed with me after emp had left the clinic. OK to follow up after seeing hand surgeon. Needs restrictions on keyboarding."

On March 4, 2010, Dr. Jablon examined Petitioner, finding a positive elbow flexion test, a negative Phalen's test, a negative wrist compression test, a positive cubital tunnel Tinel's sign on the right, and a negative Froment's sign. Dr. Jablon reviewed the electrophysiologic studies, which revealed mild ulnar neuropathy at the elbow and incidental findings of mild right carpal tunnel syndrome. The doctor recommended an elbow block splint for sleeping and noted that he was considering a kenalog injection versus surgical intervention.

On March 11, 2010, Petitioner followed up at UHS, where she was assessed with right carpal tunnel syndrome and cubital tunnel syndrome, but was allowed to return to full-duty work, maintaining the recommended ergonomic adjustments to her workstation.

On April 15, 2010, Petitioner followed up with Dr. Jablon, who found a mildly positive elbow flexion test greater on the right, a bilaterally positive Phalen's test, negative wrist compression test, and negative Froment's sign. Adson's maneuver was performed bilaterally and was markedly positive on the right. In a letter to the University of Illinois Office of Claims Management, Dr. Jablon's impressions were of ongoing ulnar neuritis-like symptoms and findings consistent with thoracic outlet syndrome.

On April 16, 2010, Petitioner returned to UHS, reporting that she was tolerating work fairly well. Gerald Bedore, APRN/CNP, noted that Petitioner would remain on restricted duty and start physical therapy and occupational therapy.

On April 22, 2010, Petitioner began a course of physical therapy at Accelerated Rehabilitation Centers which concluded on July 19, 2010 after 21 sessions, though Petitioner attended additional sessions and was discharged on both August 19, 2010 and October 26, 2010. The latter discharge note indicated that Petitioner tests remained positive for thoracic outlet syndrome and negative for a Tinel's sign for the ulnar nerve.

On April 30, 2010, Petitioner was seen again at UHS, stating that she had completed but forgot to bring forms for a new chair as advised by Nurse Bedore. Petitioner also reported a new diagnosis of thoracic outlet syndrome for which she was prescribed physical therapy. Petitioner's treatment was unchanged.

On May 27, 2010, Dr. Jablon wrote to the University of Illinois Office of Claims Management that Petitioner reported gradual improvement of her symptoms in physical therapy, which the doctor continued. On May 28, 2010, Petitioner reported minimal improvement in her symptoms to UHS.

On July 22, 2010, Petitioner revisited Dr. Jablon, reporting continuing pain in her right upper extremity and numbness in her ring and little fingers. Following an examination, Dr. Jablon administered a kenalog injection of the right cubital tunnel region. The doctor also noted that if Petitioner's symptoms remained unchanged, further consultation regarding thoracic outlet syndrome may be required. He further noted that ulnar nerve transposition surgery may still be considered, but not at this time because there was a likely "double crush" syndrome involving thoracic outlet as well as cubital tunnel.

On August 19, 2010, Petitioner presented to Dr. Jablon with newer complaints of numbness in her left palm, discomfort over the radial aspect of the forearm, and cramping in her left little finger. Petitioner still had complaints of pain and tingling in all of the fingers of her right hand. She also reported relief from the injection, but only for a short period of time. Following an examination, Dr. Jablon's impressions were of ongoing peripheral neuropathy in the upper extremities and findings consistent with mild carpal tunnel syndrome, mild cubital tunnel syndrome and thoracic outlet syndrome. Dr. Jablon recommended a neurological consultation for the thoracic outlet syndrome.

On September 17, 2010, Petitioner made an unscheduled follow-up visit to UHS, complaining of severe right neck and arm pains which were inhibiting her job performance.

Petitioner was sent home and would seek further care.

On September 20, 2010, Petitioner saw Dr. Herman Morgan complaining of neck pain as a follow-up to an emergency room visit. Noting that Petitioner had been diagnosed with entrapment syndrome of the elbow and been given an injection one month prior with no improvement, Dr. Morgan's assessment was of carpal tunnel syndrome and possible peripheral neuropathy. Dr. Morgan referred Petitioner to Dr. Young Jough for an NCV.

Petitioner returned to UHS on September 21, 2010, reporting that she went to the emergency department and her primary care physician, obtained a referral to a neurologist and a new prescription for pain medication, and felt able to return to work. Petitioner was released to return to work and advised to follow up with the neurologist and her primary care physician.

On October 4, 2010, Petitioner underwent an EMG/NCS at Advocate Trinity Hospital. Dr. Young Jough's impression was that there was no electromyographical evidence of abnormality.

On October 11, 2010, Dr. Jablon wrote to Dr. Morgan about Petitioner's continuing complaints. Following an examination, Dr. Jablon found evidence of cervical radiculopathy, thoracic outlet syndrome, cubital tunnel syndrome, and mild right carpal tunnel involving the right upper extremity. He compared the electrophysiologic studies from October 4, 2010 (indicating no abnormality) with those from February 10, 2010 (an abnormal study), noting that the numbers in the reports showed some improvement over the eight-month period. He further noted that a neurology consultation on September 28, 2010 indicated bilateral carpal tunnel and cubital tunnel syndromes, with an October 11, 2010 note additionally assessing fibromyalgia and recommending weight loss. Dr. Jablon recommended that Petitioner obtain a cervical spine MRI to exclude cervical disc disease. He noted Petitioner may require carpal tunnel and cubital tunnel release surgeries if her symptoms persisted.

On October 28, 2010, Petitioner followed up with Dr. Morgan, who assessed Petitioner with possible cervical radiculopathy and referred Petitioner to an orthopedist.

On November 2, 2010, Petitioner visited UHS complaining of a flare-up of her carpal tunnel syndrome and ulnar neuropathy and was taken off work until the following Friday. On November 5, 2010, Petitioner reported that she saw Dr. Jablon, was advised to see an orthopedic doctor, and was awaiting approval of treatment and an MRI. Petitioner stated that she felt ready to work and was returned to work that day. On December 16, 2010, Petitioner had a follow-up visit with Dr. Morgan, who assessed that Petitioner had carpal tunnel syndrome.

On February 24, 2011, Petitioner presented to UHS, complaining that she was unable to work due to the pain in her wrists, which she rated at 8/10. Petitioner was released to finish her shift, which was almost over, with the notation that she would follow up with her orthopedic doctor regarding carpal tunnel release surgery. During a March 24, 2011 check-up, Dr. Morgan noted that Petitioner's carpal tunnel syndrome was unchanged.

On April 6, 2011, Petitioner was seen by Dr. John Sonnenberg at Midland Orthopedic

Associates for an evaluation of the persistent pain in her right arm and her problem with dropping items. A physical examination disclosed a positive flexion test at the right elbow and a negative flexion test at the left elbow. The doctor also noted a positive Tinel's sign and positive Phalen's test at the median nerve at the carpal tunnel of the right wrist. He further noted a positive Tinel's sign but a negative Phalen's test over the medial nerve on the left. Dr. Sonnenberg assessed Petitioner with a combination of carpal tunnel and cubital tunnel syndromes on the right side and probably the left side as well. He recommended another EMG/NCV.

On May 13, 2011, Petitioner followed up at UHS, complaining of increasing symptoms in her right arm and wrist over the prior few months, including increased swelling of her arm, elbow pain, numbness in her wrist and fourth and fifth digits, and tingling in her other fingers. It was noted that Petitioner continued to work without restrictions. It was also noted that her workers' compensation claims had been denied and was scheduled for an independent medical evaluation on May 23, 2011. Petitioner was released to work.

On May 23, 2011, Petitioner underwent a Section 12 examination by Dr. Charles Carroll on behalf of Respondent (see below).

On June 30, 2011, Petitioner presented similar complaints as on May 13, 2011 at UHS and was taken off work for the remainder of the day.

On August 15, 2011, Petitioner returned to Dr. Jablon, complaining of right worse than left bilateral hand numbness and tingling. Petitioner also reported that her neck had not been problematic in the recent past. Dr. Jablon reviewed Dr. Carroll's Section 12 report. Given the failure of conservative care, Dr. Jablon recommended a right carpal tunnel release and right cubital tunnel release with ulnar nerve transposition.

On October 24, 2011, Petitioner presented at UHS, complaining of bilateral wrist pain which Petitioner rated at 9.5/10, greater on the right than the left. A resident noted that Petitioner reported that she wore a splint at night, but had not used it in eight months. Petitioner was taken off work for the rest of the day. On October 25, 2011, Petitioner rated her pain at 6/10, accepted extra-strength Tylenol and returned to work.

On November 11, 2011, Petitioner underwent an EMG/NCS at Trinity Advocate Hospital. Dr. Juan Valdez's impression was that the study was consistent with mild left carpal tunnel syndrome, and suggestive of right carpal tunnel syndrome and left ulnar neuropathy.

On November 23, 2011, Dr. Sonnenberg reviewed the EMG/NCS results and administered to Petitioner a differential injection to the median nerve at the right wrist to check whether it relieved pain running up Petitioner's shoulder. On December 7, 2011, Petitioner reported that her wrist was better after the injection but the relief did not last. Dr. Sonnenberg recommended surgery.

On January 13, 2012, Dr. Sonnenberg performed a right carpal tunnel release and anterior transposition of the right ulnar nerve at the elbow. His pre- and post-operative diagnoses were of

right carpal tunnel syndrome and right cubital tunnel syndrome.

On January 23, 2012, Petitioner followed up with Dr. Sonnenberg, who started her on an exercise program. On February 13, 2012, Dr. Sonnenberg noted that Petitioner was doing quite well for one month after surgery and provided additional exercises. On March 26, 2012, Dr. Sonnenberg noted that Petitioner had no more symptoms of median nerve disorder on the right. Petitioner had some numbness in the ulnar nerve distribution, but her major problem was tenderness around the scar in the right elbow. Dr. Sonnenberg recommended deep friction massage. On April 25, 2012, Dr. Sonnenberg noted that Petitioner was back to near normal levels but still complained of scar tenderness on the right elbow, though the doctor believed the massage had been effective. On June 6, 2012, Dr. Sonnenberg noted Petitioner was doing very well, with a range of motion in the right elbow within normal limits and a normal hand range of motion. Petitioner had no numbness over her fingers and she was no longer having any scar related pain. Dr. Sonnenberg recommended the same surgery on the left upper extremity.

On June 29, 2012, Dr. Sonnenberg performed a left carpal tunnel release with neurolysis and anterior transposition of the left ulnar nerve with neurolysis. His pre- and post-operative diagnoses were of left carpal tunnel syndrome and left cubital tunnel syndrome.

On July 9, 2012, Dr. Sonnenberg removed Petitioner's sutures and began Petitioner on a stretching program for her elbow, as well as a strengthening program for the carpal tunnel. On July 30, 2012, Dr. Sonnenberg noted that Petitioner was doing very well and that most of her ulnar symptoms had disappeared. On August 27, 2012, the doctor noted that Petitioner was engaged in a therapy program and felt quite good after her surgery.

On October 22, 2012, Dr. Sonnenberg noted that Petitioner had a full range of motion in both elbows. Petitioner reported some sensitivity over her scars, but was happy "by and large" with the results of the surgery. Dr. Sonnenberg noted that Petitioner feels she can do anything at this point and "has no disability." Dr. Sonnenberg discharged Petitioner in good condition and released her from care. On October 26, 2012, Petitioner presented to UHS and was cleared to return to work on October 29, 2012.

On June 26, 2013, Petitioner returned to Dr. Sonnenberg, reporting that her handwriting on the right hand deteriorated after surgery, which the doctor thought was not unexpected. Dr. Sonnenberg noted that Petitioner had fairly good relief from the ulnar neuropathy after the cubital tunnel releases and anterior neurolysis. Petitioner reported some tenderness over the scar on the left elbow, which had formed somewhat of a keloid, for which Dr. Sonnenberg noted that she may want to consider a plastic surgery consult. He also noted that Petitioner had developed intersection syndrome of the left wrist, which could be treated with an ice pack. Dr. Sonnenberg further noted that Petitioner was doing well and continued her normal duties at work.

On October 23, 2013, Petitioner revisited Dr. Sonnenberg's office, complaining of irritation in her right arm with the work she was performing. Some mild irritation of the right ulnar nerve and decreased sensation in the ulnar nerve distribution were noted, with no significant irritation of the median nerve at that point. Petitioner was advised to either lower her keyboard or raise her chair so that the keyboard was at the level of her navel. She was also

advised to sleep with bath towels wrapped around her arms.

On October 22, 2014, Petitioner returned to Dr. Sonnenberg, complaining of some pain in her right elbow scar and pain radiating from her neck down her arm. The doctor noted persistent decreased sensation in the fourth and fifth digits of Petitioner's right hand following cubital tunnel surgery. The doctor was as concerned about cervical radiculitis as much as recurrent cubital tunnel syndrome and ordered an EMG/NCS. On November 10, 2014, Petitioner underwent an EMG/NCS, with Dr. Mengala Yeturu's impression being of a normal examination.

On December 3, 2014, Dr. Sonnenberg reviewed the EMG/NCS results and assessed Petitioner with right cubital tunnel syndrome, though he could not prove it electrically. The doctor recommended a neurological evaluation to see whether it would confirm his findings before embarking on surgery. Dr. Sonnenberg further noted that he believed this was a work-related phenomenon because Petitioner kept her elbows bent at a 90-degree or greater angle when typing at work on an extended basis. He added that he recommended raising her chair such that her elbows were no more than 60 degrees in flexion.

On February 4, 2015, Dr. Sonnenberg noted that Petitioner had consulted a neurologist who felt that the recurrent pain in her right cubital tunnel was probably due to her constantly flexing her arms while at work. The doctor advised Petitioner that repeat ulnar nerve surgery is usually not very effective as long as she keeps her elbow in a flexed posture during the course of the day. He advised her that it would be prudent to try a different type of job. Petitioner indicated that she would consult with Dr. Yeturu about the matter and the possibility of disability.

On April 20, 2015, Petitioner began a course of treatment with Dr. Sonnenberg for continuing significant issues with her shoulder girdle. The doctor believed Petitioner had periscapular myositis and evidence of cervical radiculitis. He administered a steroid injection over the scapula. On May 20, 2015, Petitioner reported that the injection reduced a lot of the symptoms of the myofascial pain syndrome. Dr. Sonnenberg wanted to follow up after a month of therapy. On June 11, 2015, Petitioner began a course of physical therapy which extended to 10 sessions ending on November 4, 2015. On June 24, 2015, Dr. Sonnenberg noted that Petitioner was doing well in therapy. On September 30, 2015, Petitioner reported that she had tried to return to work but lasted only two or three weeks. Dr. Sonnenberg assessed Petitioner had cervical radiculitis, probably at the C8 level and recommended further therapy. On November 2, 2015, Dr. Sonnenberg noted that the therapy had been unsuccessful and advised Petitioner to consult with Dr. Yeturu regarding a referral to a spinal specialist for possible ESIs.

D. Respondent's Ergonomic Evaluations

Respondent submitted into evidence without objection Respondent's Exhibits 6 and 7, which are ergonomic assessments of Petitioner's workstation.

Respondent's Exhibit 6 is dated February 3, 2010 and was prepared by industrial hygienist Dennis Terpin of Respondent's Environmental Health and Safety Office. The document includes an illustration, "Ergonomics for the Computer Workstation," which depicts a

person slightly reclining in an adjustable office chair with his forearms resting on armrests, with the keyboard at navel-level such that there is no flexion of the wrists, and the top of the monitor at eye-level. Mr. Turpin recommended that Petitioner's workstation be set up in "work zones," so that the frequently used devices (keyboard, telephone, and mouse) would be located in the "primary work zone" of repetitive access. There is an accompanying illustration of primary, secondary and tertiary work zones for a workstation. Mr. Turpin also recommended that a mouse be located next to the dominant-hand side of the keyboard. He recommended that Petitioner have a Bluetooth headset due to the amount of time she used the telephone. He further recommended taking micro-breaks of 10-15 seconds every ten minutes, mini-breaks lasting 3-5 minutes every 30 to 60 minutes, and alternating work activities and postures throughout the day. The document also contains general information regarding leg space and document holders.

Respondent's Exhibit 7 is a follow-up assessment dated May 12, 2011 and was prepared by Keith Hronek on referral from UHS. In this document, Petitioner reported that data entry takes up approximately 80% of her time. Mr. Hronek observed that Petitioner's desk was equipped with a keyboard and mouse holder, both of which have wrist rests and a document holder. He also wrote that Petitioner had a headset and used an adjustable chair with an upper pad for back support. Mr. Hronek recommended that Petitioner's computer monitor needed to be raised to reduce neck discomfort or pain and was raised at the time of the assessment. He also recommended that a footrest may be needed. He concluded that Petitioner's chair height was appropriate. Mr. Hronek's assessment attached general information including the "Ergonomics for the Computer Workstation" illustration. The document also included screenshots demonstrating the operation of the application Petitioner used to register patients, as well as Petitioner's job description.

E. Section 12 Examination and Deposition Testimony by Dr. Charles Carroll

On May 23, 2011, Petitioner underwent a Section 12 examination by Dr. Charles Carroll. Petitioner reported numbness and tingling in her bilateral ring and small fingers, some numbness in the other digits, with symptoms much worse on the right. She related her symptoms to her constant keyboard usage and telephone usage. Petitioner also reported that increased use of her hands caused more numbness. She further reported that pain was noted with pressure on the elbow. She additionally reported some burning and tingling in the ulnar nerve distribution, right hand weakness, and occasional radial numbness, with symptoms remaining prominent in the elbow, wrist, and hand region.

Dr. Carroll briefly summarized Petitioner's treatment by Dr. Jablon, her electrodiagnostic studies, and her job duties. His examination of Petitioner disclosed no impingement, instability, or thoracic outlet syndrome. An examination of the right elbow revealed tenderness on the medial aspect, as well as pain over the ulnar nerve and medial epicondyle. A neurologic examination showed evidence of some ulnar nerve irritability on the right to direct compression. Phalen's, Tinel's, and median nerve compression tests were positive on the right for carpal tunnel syndrome, but not on the left. Grip strength was 25 pounds on the right and 60 pounds on the left.

Dr. Carroll concluded that Petitioner presented with evidence of bilateral carpal tunnel

syndrome. He also concluded that there was evidence of ulnar neuritis by history. He described the symptoms as prominent on the right and quiescent on the left at that time. Dr. Carroll opined that Petitioner had received timely, appropriate, and reasonable care from Dr. Jablon in particular, and that Petitioner's care was generally appropriate, including therapy. Dr. Carroll found a causal connection between the work activities that Petitioner described, the issues relative to putting pressure on the elbows Petitioner noted, and the diagnoses of carpal tunnel syndrome and ulnar neuritis in each extremity. He described the symptoms as mild on the right and minimal on the left. He expected that Petitioner might reach maximum medical improvement (MMI) in 12 months. He opined that Petitioner could work without restrictions and had a good prognosis.

Given the failure of conservative care, Dr. Carroll also opined that Petitioner might consider a corticosteroid injection in the carpal tunnel, if that had not been done. He further opined that Petitioner might consider a medial epicondylar injection. If injections were not successful, Dr. Carroll would consider carpal tunnel release surgery with ulnar nerve release and possible transposition. The doctor anticipated three months of post-surgical therapy and that Petitioner would reach a point of medical quiescence six months later. He would reserve a final determination of whether Petitioner reached MMI until a review of her final treatment. He added that it would be premature to asses any permanent partial disability.

On August 5, 2011, Dr. Carroll authored an addendum to his Section 12 report after reviewing additional material, including treatment records from Dr. Sonnenberg recommending new electrodiagnostic studies. Dr. Carroll opined that Petitioner continued to receive appropriate care, although he did not see indications for new electrodiagnostic studies given the positive studies on February 16, 2010. He concluded that the additional material did not change his prior opinions.

On September 23, 2011, Dr. Carroll authored another addendum to his Section 12 report after reviewing additional material, including a job description and the initial and supplemental ergonomic evaluations of Petitioner's workstation. Dr. Carroll wrote that the job description matched his understanding and that it was "not a continuous keyboard type of job." He also observed that the ergonomic evaluations did not document significant pressure on the elbows. Dr. Carroll noted that the diagnoses of bilateral carpal tunnel and cubital tunnel syndromes that appeared to be worse on the right had not changed.

However, Dr. Carroll did change his opinion on causality, writing that if he assumed there was no pressure on Petitioner's elbows, he would not find causality between her carpal tunnel and cubital tunnel syndromes and her work activities. He opined that the keyboard work by itself would not be a clear cause or aggravating factor because that work was not continuous. He added that these opinions were based on the information provided and that differences in the two sets of information needed to be clarified and rectified as the matter developed. He reiterated that if he assumed that there was no pressure on the elbows, her job duties were carefully documented and that there were no ergonomic issues involved, he would not find causality or an aggravation of Petitioner's conditions.

On December 10, 2014, Dr. Carroll, a board-certified orthopedic surgeon with an added

qualification in hand surgery, testified by deposition on behalf of Respondent. He generally testified consistent with his Section 12 report and addenda. Dr. Carroll also testified that carpal tunnel syndrome could be caused, aggravated, or accelerated by activities that cause significant vibration, repetitive forceful gripping and grasping, and trauma like a broken wrist. He also stated that experts argue about keyboard activities and that there is not a clear association between keyboard activities and carpal tunnel syndrome. Dr. Carroll added that he once said that one thing that has done it is being a legal secretary, though this comment was "somewhat in mirth" during a deposition. He opined that carpal tunnel is often idiopathic, or due to degenerative or metabolic conditions, such as thyroid disease, diabetes, obesity, and metal exposures. He also opined that females appeared to be more likely to have carpal tunnel syndrome. He further stated that smoking was a relative risk factor, though not necessarily a causative factor and would diminish over time after quitting. Dr. Carroll offered similar opinions regarding the activities that would cause, aggravate, or accelerate cubital tunnel syndrome, adding that it might be seen with lesser activities in cases of poor ergonomics.

Dr. Carroll testified that he changed his causation opinion in part because Petitioner's job description indicated that the keyboarding activity was not chronic or forceful in nature, and did not involve vibration or use of tools. He also testified that the ergonomic information asserted that there was no awkward posturing or pressure on the elbows. He added that the information provided appeared to show that Petitioner's elbows were at 60 degrees of extension, rather than chronically flexed at a right angle, which would minimize the likelihood that Petitioner's work played any role in the development of her problem. Dr. Carroll also concluded that the position of Petitioner's wrists appeared to be neutral and somewhat supported.

Dr. Carroll further testified he reviewed the photographs which were attached to Dr. Sonnenberg's deposition, though he did not read the testimony. Dr. Carroll opined that the photographs did not change his opinions, but the Arbitrator apparently sustained an objection that the opinions were not disclosed prior to the deposition and were barred pursuant to *Ghere v. Industrial Comm'n*, 278 Ill. App. 3d 840, 845 (1996).

On cross-examination, Dr. Carroll agreed that he only examined Petitioner once. He also agreed that as of August 5, 2011, he had not changed his opinion that Petitioner's conditions were work-related. He clarified that in his September 23, 2011 addendum, he had stated that the job description matched his understanding, but explained that the nature of the keyboard work was different. He agreed that the ergonomic reports depicted a male sitting at a computer desk, not Petitioner seated at her workstation. He also agreed that the depiction in the reports contained no specific measurements of the height between the keyboard and the desktop, or the height of the chair or monitor. Dr. Carroll had no independent confirmation that the workstation depicted in the reports accurately represented the workstations for Petitioner prior to January 1, 2010. He acknowledged that Respondent's First Report of Injury or Illness, dated February 2, 2010, includes "armless chair" among its recommendations for prevention. He also acknowledged that on February 1, 2010, Petitioner reported worsening pain when resting her elbows on the desktop or arms of her chair. He agreed that if Petitioner was engaged in data entry 80 percent of her time and that her elbow rests caused compression of the elbows, the conditions of carpal tunnel and cubital tunnel syndromes would be work-related. Otherwise, he believed Petitioner's conditions would be related to her age, sex, obesity, and other medical risk

factors.

On August 7, 2015, Dr. Carroll authored an addendum to his prior reports and testimony. He noted that Petitioner had returned to work as a Customer Service Representative. He continued to opine that Petitioner's treatment had been reasonable and necessary. He also noted Petitioner's new neck and right arm complaints, but opined that they were not related to her work exposure. Accordingly, he did not believe that the cervical MRI obtained on April 14, 2015 was related to Petitioner's work activities. He also did not relate the ulnar nerve findings or related care to Petitioner's work activities. Dr. Carroll's opinions regarding carpal tunnel syndrome were unchanged.

F. Report and Deposition Testimony by Dr. John Sonnenberg

On October 28, 2013, Dr. Sonnenberg authored a report to Petitioner's counsel after reviewing his treatment records for Petitioner, as well as records of treatment by Dr. Jablon, "minimal" records of treatment by Dr. Richard Egwele, records from UHS, and Dr. Carroll's Section 12 reports and addenda. Dr. Sonnenberg additionally reviewed photographs of Petitioner's workstation. He observed that the photographs were not compatible with the illustrations in the ergonomic assessment by Mr. Turpin, which depict a person sitting slightly reclined, resting elbows on forearm pads, with the keyboard at navel level with no flexion of the wrists, and including a footrest. Dr. Sonnenberg's review of the photographs indicated that Petitioner's workstation had no footrest. He also observed that Petitioner's keyboard was almost at chest height, which would necessitate flexing the elbows on a regular basis and also flexing the wrists in order to reach the keyboard, both of which have been shown to be causative in the conditions of carpal tunnel and cubital tunnel syndromes. Dr. Sonnenberg added that the way Petitioner positioned her elbows at the workstation according to the picture led him to believe that there is intermittent if not constant pressure over the medial aspect of her elbows directly where the ulnar nerve courses in the carpal tunnel, which would be another ergonomic cause for concern.

Dr. Sonnenberg's current diagnosis was of carpal tunnel syndrome and cubital tunnel syndrome status post-surgery with resolution of her symptoms. He opined that her prognosis was good, but that she may need additional treatment for overuse syndromes if she persisted in the type of activities she was performing. He believed that Dr. Carroll's change in opinion regarding causation was based on information provided to him indicating that Petitioner did not put pressure on her elbows at work. Dr. Sonnenberg opined that based on the photographs he was provided, there certainly seemed to be the potential for pressure on the medial aspects of both elbows by the armrests of her chair. He also opined that it was more important that the posture Petitioner assumes in her workstation of frequent flexion of her elbows and wrists to reach her keyboard. He reiterated that ideally, the keypad should be at the level of the navel and not higher towards chest level.

On January 16, 2014, Dr. Sonnenberg, a board-certified orthopedic surgeon who practices exclusively in the hand and upper extremity, testified by deposition on behalf of Petitioner. Counsel initially agreed that Dr. Sonnenberg could testify regarding the photographs he had reviewed without objection, subject to the right of Respondent to have them reviewed by

an independent examiner, including the rendering of supplemental reports or testimony. Dr. Sonnenberg generally testified consistently with his treatment records and report. He also testified that carpal tunnel syndrome can be caused by: the flexed posture of the wrist; repeated forceful gripping; repetitive activities such as typing and keyboarding; trauma to the nerve; inflammatory disorders of the flexor tendon such as rheumatoid arthritis, gout, and amyloid; and blood in the carpal tunnel.

Dr. Sonnenberg opined that the posture of Petitioner's wrists with repetitive movements was the most likely cause of Petitioner's carpal tunnel syndrome. He also stated that Petitioner's sex and obesity were also risk factors, but they would not eliminate her work activities as contributing to her development of carpal tunnel syndrome. He estimated that Petitioner's work activities were 90% responsible for her problem. Dr. Sonnenberg similarly testified that Petitioner's cubital tunnel syndrome was caused by hyperflexion of the elbows, pressure over the elbows, and repetitive work with the elbow in a flexed posture, due to typing with the elbows in a flexed posture for a long period of time. He stated that the classic case would be 90 degrees of flexion and that resting the elbow on an arm rest would be another potential risk factor. Dr. Sonnenberg further testified that his disagreement with Dr. Carroll was that Petitioner's body habitus, the pictures of her chair, and the relative height of the workstation indicated to his eye evidence of persistent flexion of the elbows and possible pressure on the elbows resting on the armrests of the chair. He testified that his treatment of Petitioner was reasonable and necessary.

On cross-examination, Dr. Sonnenberg agreed that he had never received a job description from either party and had relied on Petitioner's description of her duties, which did not include an estimate of the amount of time she would spend on each of them daily. He agreed that if Petitioner's descriptions of her duties or workstation were inaccurate, it could affect his opinions. Dr. Sonnenberg later testified that he read the job description that was referenced in Dr. Carroll's Section 12 report. He agreed there were studies which failed to show a correlation between work activities and carpal tunnel syndrome unless those activities involved vigorous vibration. He also agreed that Petitioner's description of her work did not involve such work, or highly repetitive forceful gripping. He later testified that he disagreed with the studies suggesting that there was no correlation between repetitive keyboard activity and the development of carpal tunnel syndrome, adding that there were studies on both sides of the issue.

Dr. Sonnenberg agreed that Petitioner's medical records did not state that Petitioner's elbows were bent to approximately 90 degrees. He did not know when the photographs he reviewed were taken or who took them. He agreed that the chair appeared to be adjusted to a low position and that Petitioner was approximately five feet tall. He also agreed that the keyboard was a little bit below her chest in the pictures. He further agreed that if the photographs did not accurately depict Petitioner's workstations, it could affect his opinions. He was unaware that Petitioner had been a smoker or when she quit smoking. Dr. Sonnenberg testified that risk factors do not in and of themselves cause carpal tunnel syndrome.

G. Additional Information

Petitioner testified that she began to lose work following her first surgery in January 2012. She stated that after Dr. Sonnenberg released her back to work on October 22, 2012, she

resumed working for Respondent in her former position. She also stated that she received benefits from SURS during this period. She added that when she returned to work, there were new workstations with headphones, better chairs with adjustable heights and padded armrests, footrests, wrist pads and wrist rests. She later testified that following an ergonomic assessment of her workstation in 2010, it was suggested that her monitor sit on two stacks of paper instead of one, and that she obtain a backrest for her chair, which she did on her own.

Petitioner also testified that she currently worked for Respondent as a medical office assistant. She described the job as part of the registration process, but with less work. She stated that she works only for the surgery clinic and the registration program is more advanced, not requiring as much work. Petitioner testified that she now used the keyboard perhaps 70 to 80 percent of her shift. She later added that she performed temporary work for a clinic at Northwestern in 2015 because Respondent was unable to find alternate work for her. She further explained that she was terminated by Respondent on June 16, 2016, but returned to work for Respondent on November 19, 2018.

Petitioner additionally testified that she had previously been a smoker, but had stopped in 1998. She later explained that she had smoked perhaps one pack of cigarettes per week for five or six years. Petitioner also acknowledged that she has asthma and had been diagnosed with hypertension.

Regarding her current condition of ill-being, Petitioner testified that it is difficult for her to write with her dominant right hand. She also testified that she still occasionally feels tingling in her fingers and hands when she types. She further stated that she experiences numbness in both elbows. Petitioner testified that she takes gabapentin and uses a heating pad to alleviate her symptoms.

II. CONCLUSIONS OF LAW

A. Accident/Causal Connection

The Arbitrator found that that Petitioner failed to prove a causal connection between her work activities for Respondent and her bilateral carpal tunnel syndrome and ulnar neuritis/cubital tunnel syndrome condition. Accordingly, the Arbitrator also found there was a failure of proof on the issue of accident.

In a repetitive trauma case such as this one, issues of accident and causation are intertwined. See, *e.g.*, *Boettcher v. Spectrum Property Group and First Merit Venture*, Ill. Workers' Comp. Comm'n, 97 WC 44539, 99 IIC 0961. Nevertheless, the employee must allege and prove a single, definable accident. *White v. Workers' Compensation Comm'n*, 374 Ill. App. 3d 907, 911 (2007). The date of an accidental injury in a repetitive-trauma compensation case is the date on which the injury "manifests itself," meaning "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 Comm'n*, 115 Ill. 2d 524, 531 (1987).

It is well-settled that there is no legal requirement that a certain percentage of the workday be spent on repetitive tasks in order to establish the repetitive nature of a claimant's job duties. *Edward Hines Precision Components v. Industrial Comm'n*, 356 Ill. App. 3d 186, 194 (2005). The Commission is allowed to consider evidence, or the lack thereof, of the repetitive "manner and method" of a claimant's job duties. *Williams v. Industrial Comm'n*, 244 Ill. App. 3d 204, 211 (1993) (citing *Perkins Product Co. v. Industrial Comm'n*, 379 Ill. 115, 120, 39 N.E.2d 372 (1942)). The question of whether a claimant's work activities are sufficiently repetitive in nature as to establish a compensable accident under a repetitive trauma theory will be decided based upon the particular facts in each case, and it is the province of the Commission to resolve this factual issue. *Williams*, 244 Ill. App. 3d at 210-11.

An employee who alleges an injury based upon repetitive trauma also must "show [] that the injury is work-related and not the result of a normal degenerative aging process." *Peoria County Bellwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 530 (1987); *Glister Mary Lee Corp. v. Industrial Comm'n*, 326 Ill. App. 3d 177, 182 (2001). However, "[i]t is axiomatic that employers take their employees as they find them." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). A claimant need only prove that her work for the employer "was *a* causative factor in the resulting condition of ill-being." (Emphasis in original.) *Id*.

In repetitive trauma cases, the claimant "generally relies on medical testimony establishing a causal connection between the work performed and claimant's disability." *Nunn v. Industrial Comm'n*, 157 Ill. App. 3d 470, 477 (1987); see *Johnson v. Industrial Comm'n*, 89 Ill. 2d 438, 442-43 (1982). It is the function of the Commission to resolve conflicts in medical evidence; greater weight may be attached to the opinion of treating physicians. See *ARA Services, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 225, 232 (1992) (citing *International Vermiculite Co. v. Industrial Comm'n*, 77 Ill. 2d 1, 4 (1979)).

In this case, Petitioner's injury manifested on March 4, 2009. Petitioner testified that she began experiencing worsening numbness and tingling in her right hand, notified her department of this condition on March 4, 2009, and was evaluated by UHS. Although Petitioner returned to work, she also testified that she was treated afterward by Dr. Jablon and was advised she probably had carpal tunnel syndrome.

Regarding causal connection, the Commission relies on the opinions of the treating surgeon, Dr. Sonnenberg, over those of Dr. Carroll, Respondent's Section 12 examiner. The expert opinions were largely in agreement that Petitioner suffered from carpal tunnel syndrome and ulnar neuritis. Initially, the doctors also agreed regarding the existence of a causal connection to her work activities. Dr. Sonnenberg reviewed photographs of Petitioner's workstation and observed that they were not compatible with the illustrations in Respondent's ergonomic assessments. In particular, Petitioner's keyboard was almost at chest height, which would necessitate flexing the elbows on a regular basis and also flexing the wrists in order to reach the keyboard, both of which have been shown to be causative of carpal tunnel and cubital tunnel syndromes. Dr. Sonnenberg added that the way Petitioner positioned her elbows at the workstation according to the picture led him to believe that there is pressure over the medial aspect of her elbows directly where the ulnar nerve courses in the carpal tunnel, which would be another ergonomic cause for concern.

Dr. Carroll changed his causation opinion based on Respondent's job description and the initial and supplemental ergonomic evaluations of Petitioner's workstation, but later testified that he had no independent confirmation that the workstation depicted in the reports accurately represented the workstations for Petitioner prior to January 1, 2010. Dr. Carroll also viewed the photographs and did not change his ultimate opinion, despite the difference from the illustrations in the ergonomics assessments (which in any event were created after the claimed manifestation date and are somewhat generic in their content). Dr. Carroll also opined that the keyboard work by itself would not be a clear cause or aggravating factor because that work was not continuous. However, Dr. Carroll further stated that experts argue about keyboard activities and opined that there is not a clear association between keyboard activities and carpal tunnel syndrome. Reviewing Dr. Carroll's opinions as a whole, it appears that he believes that the causes of carpal tunnel syndrome are limited to activities that cause significant vibration, repetitive forceful gripping and grasping, and trauma. Dr. Sonnenberg disagrees with the studies suggesting that keyboard activities are not associated with carpal tunnel syndrome and testified that there are studies to the contrary. Moreover, Illinois law has recognized that repetitive data entry may be the basis of a workers' compensation claim since at least the Illinois Supreme Court's decision in *Durand v. Industrial Comm'n*, 224 Ill. 2d 53 (2006). Petitioner estimated that 90% of her shift was spent typing, and reported to Mr. Hronek that data entry takes up approximately 80% of her time. Upon initial treatment, UHS noted that Petitioner stated she did not rest her elbows on her armrests at work. However, as early as February 1, 2010, Petitioner reported worsening symptoms, especially when resting her elbows on the desktop or the arms of her chair. Nurse Gerard Bedore noted that Petitioner needed an ergonomic assessment of her workstation, "esp evaluating elbow rests." Dr. Carroll noted that the assessments did not refer to the armrests, which seems unusual in light of Petitioner's treatment records.

Given the record as a whole, the Commission finds that Petitioner sustained a repetitive trauma injury arising out of and in the course of her employment and manifesting on March 4, 2009.

B. Medical Expenses

The Commission next addresses Petitioner's medical expenses. Section 8(a) of the Act requires employers to pay all necessary medical, surgical, and hospital services that are reasonably required to cure or relieve the effects of the work-related injury. 820 ILCS 305/8(a) (West 2008). An employer's liability under this section of the Act is continuous so long as the medical services are required to relieve the injured employee from the effects of the injury. *Second Judicial District Elmhurst Memorial Hospital v. Industrial Comm'n*, 323 Ill. App. 3d 758, 764 (2001) (citing *Efengee Electrical Supply Co. v. Industrial Comm'n*, 36 Ill. 2d 450, 453 (1967)). However, the employee is only entitled to recover for those medical expenses which are reasonable and causally related to his industrial accident. *Second Judicial District Elmhurst Memorial Hospital*, 323 Ill. App. 3d at 764 (citing *Zarley v. Industrial Comm'n*, 84 Ill. 2d 380, 389 (1981)). The claimant has the burden of proving that the medical services were necessary, and that the expenses incurred were reasonable. *City of Chicago v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 258, 267 (2011). However, if the employer fails to introduce any evidence to suggest that services rendered were not necessary or that the charges

were not reasonable, an award to a claimant who presents some evidence in support of the award will be upheld. *Max Shepard, Inc. v. Industrial Comm'n*, 348 Ill. App. 3d 893, 903 (2004); *Ingalls Memorial Hospital v. Industrial Comm'n*, 241 Ill. App. 3d 710, 718 (1993).

In this case, Petitioner claimed medical expenses incurred by: UHS in the amount of $12,448.10; Dr. Jablon in the amount of $1,932.00; and Dr. Sonnenberg in the amount of $14,547.20. The Commission also notes that Petitioner did not incur medical expenses until after December 22, 2009, the manifestation date alleged in 11 WC 11168. On the Request for Hearing, Respondent generally disputed liability for the unpaid medical expenses, but did not otherwise introduce evidence that the claimed medical expenses were unnecessary or unreasonable. The parties agreed that Respondent was entitled to a credit of $10,477.26 in medical expenses already paid, pursuant to section 8(j) of the Act. Given this record, the Commission awards the claimed medical expenses to Petitioner pursuant to Sections 8 and 8.2 of the Act and awards the stipulated credit to Respondent.

C. Temporary Total Disability

The Commission turns to address Petitioner's claim for temporary total disability (TTD) benefits. Petitioner claimed TTD benefits for the period of January 13, 2012 through October 22, 2012, a period of 40 and 4/7ths weeks. The claimed period is consistent with Petitioner's testimony that she missed work from the time of her surgery through her release to work by Dr. Sonnenberg. Respondent generally denied liability for TTD, but raised no specific argument regarding the issue. Accordingly, the Commission awards Petitioner the TTD benefits she claimed in the Request for Hearing.

D. Permanent Partial Disability

Lastly, the Commission addresses Petitioner's claim for permanent partial disability (PPD) benefits. The injury here occurred before September 1, 2011 and thus does not require a consideration of the statutory factors enumerated in subsection (b) of section 8.1b of the Act (see 820 ILCS 305/8.1b(b) (West 2012)).

In considering Petitioner's permanent partial disability, the Commission considers that the then 40-year-old Petitioner underwent a right carpal tunnel release and anterior transposition of the right ulnar nerve at the elbow, as well as a left carpal tunnel release with neurolysis and anterior transposition of the left ulnar nerve with neurolysis. Thereafter, she returned to a similar position with Respondent, albeit with somewhat less keyboard work. Petitioner returned to full-duty work in a similar data entry position. Thereafter, on October 23, 2013, Petitioner complained of irritation in her right arm. On October 22, 2014, Dr. Sonnenberg noted persistent decreased sensation in the fourth and fifth digits of Petitioner's right hand. On December 3, 2014, Dr. Sonnenberg assessed Petitioner with right cubital tunnel syndrome, though he could not prove it electrically. Petitioner testified that that it remains difficult for her to write with her dominant right hand, still occasionally feels tingling in her fingers and hands when she types, and experiences numbness in both elbows. This testimony is corroborated by Dr. Sonnenberg, who thought that it was not unexpected that that her handwriting on the right hand deteriorated after surgery.

Given this record, the Commission awards Petitioner PPD benefits representing a 15% loss of use of the right hand, a 12.5% loss of use of the right arm, a 10% loss of use of the left hand, and a 12.5% loss of use of the left arm.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner sustained an accident manifesting on March 4, 2009 that arose out of and occurred in the course of her employment.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner's current conditions of ill-being regarding her right hand, right arm, left hand, and left arm are causally related to the accident.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner her reasonable and necessary medical expenses for charges incurred by UHS in the amount of $12,448.10; Dr. Jablon in the amount of $1,932.00; and Dr. Sonnenberg in the amount of $14,547.20, pursuant to §§8(a) and 8.2 of the Act. Respondent is entitled to a credit of $10,477.26 in medical expenses already paid, pursuant to §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $460.95 per week for the period of January 13, 2012 through October 22, 2012, a period of 40 and 4/7ths weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $414.86 per week for a period of 30.75 weeks, as provided in §8(e)9 of the Act, for the reason that the injuries sustained caused a 15% loss of use of the right hand. Respondent shall pay to Petitioner the sum of $414.86 per week for a period of 31.625 weeks, as provided in §8(e)10 of the Act, for the reason that the injuries sustained caused a 12.5% loss of use of the right arm. Respondent shall pay to Petitioner the sum of $414.86 per week for a period of 20.5 weeks, as provided in §8(e)9 of the Act, for the reason that the injuries sustained caused a 10% loss of use of the left hand. Respondent shall pay to Petitioner the sum of $414.86 per week for a period of 31.625 weeks, as provided in §8(e)10 of the Act, for the reason that the injuries sustained caused a 12.5% 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.

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

January 31, 2022

d: 1/20/22
CMD/kcb
045

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

/s/ *Marc Parker*
Marc Parker

/s/ *Deborah L. Simpson*
Deborah L. Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC011169
Case Name	BRADLEY, DERENDA L v. UNIVERSITY OF ILLINOIS AT CHICAGO
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	5
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Michael E. Mahay
Respondent Attorney	Brad Antonacci

DATE FILED: 6/1/2021

INTEREST RATE FOR THE WEEK OF JUNE 1, 2021 0.03%

/s/ Jeffrey Huebsch, 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

Derenda L. Bradley
Employee/Petitioner

v.

University of Illinois at Chicago
Employer/Respondent

Case # **10** WC **011169**

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 **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **March 23, 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 _____

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FINDINGS

On **March 4, 2009**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did 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 $**35,954.36**; the average weekly wage was $**691.43**.

On the date of accident, Petitioner was **40** years of age, ***single*** 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** 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

Claim for compensation denied. Petitioner failed to prove that she sustained accidental injuries which arose out of and in the course of her employment by Respondent on March 4. 2009 and failed to prove a causal connection between her work activities for Respondent and her current condition of ill-being regarding her right and left hands.

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/ Jeffrey B. Huebsch

Signature of Arbitrator

JUNE 1, 2021

INTRODUCTION

This case was tried with a companion case, No. 10 WC 011168, involving the claimed date of accident of December 22, 2009.

FINDINGS OF FACT

The Findings of Fact in Case No. 10 WC 011168 shall operate as the Findings of Fact herein.

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 her claim (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980)), including that there is some causal relationship between her employment and her injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989)).

Decisions of an arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e)

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? and F. Is Petitioner's current condition of ill-being causally related to the injury?

As noted above, there are no records regarding treatment that Petitioner received on March 4, 2009. The first record of any treatment for upper extremity complaints subsequent to March 4, 2009 is the visit to Health Services on December 22, 2009. If Petitioner's claim for cumulative trauma injuries to her bilateral upper extremities is compensable, the accident date should be December 22, 2009. The claim for compensation for injuries sustained on March 4, 2009 is denied on this basis and for the reasons stated in the Conclusions of Law set forth in the decision entered in the companion case, No. 10 WC 011169, filed with the decision herein.

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

Petitioner testified that she experienced tingling and numbness in her right hand on March 4, 2009 and her supervisor, Barbara Burnett, sent her to Health Services. An incident report was prepared. While there is no record of a March 4, 2009 visit to Health Services, Respondent submitted no evidence on this issue.

Timely notice was given.

J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonably and necessary medical services? , K. What amount of compensation is due for temporary total disability? and L.What is the nature and extent of the injury?

As the Arbitrator has found that Petitioner failed to prove a causal connection between her work activities and her bilateral CTS and ulnar neuritis/cubital tunnel conditions and 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 4, 2009, the Arbitrator needs not decide the above issues.