ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC027081
Case Name	Shelby Counts v. State of Illinois - Illinois Youth Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0372
Number of Pages of Decision	14
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	James Keefe, Jr., Ron Coffel
Respondent Attorney	Aaron Wright

DATE FILED: 10/3/2022

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
X Modify §8.1b factor (iv), Correct scrivener's error	☐ PTD/Fatal denied
☐ Modify Choose direction	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SHELBY COUNTS,

Petitioner,

vs. NO: 18 WC 27081

STATE OF ILLINOIS,
ILLINOIS YOUTH CENTER-HARRISBURG,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, medical expenses-including prospective medical, and permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission, herein, modifies the Arbitrator's decision under §8.1b(b), factor (iv), Earning Capacity, to strike "some", to replace with "no" weight given to this factor.

The Commission, herein, corrects a scrivener's error in the Arbitrator's decision, under "Conclusions of Law", Issue C, third paragraph, eighth line, to strike "minute", to replace with "second".

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 29, 2021, is, otherwise, hereby, affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $568.31 per week for a period of 20 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the 4% loss of use of Petitioner's person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner's medical bills contained in PX 5 as provided in §8(a) and §8.2 of the Act, directly to the medical providers and pursuant to the medical fee schedule. Respondent shall be given a credit for any amounts paid previously under §8(a) of the Act for medical benefits. The parties stipulated that Respondent shall receive credit for medical bills paid through its group medical plan, if any, pursuant to §8(j) of the Act. Respondent shall further hold Petitioner harmless from all claims or liabilities made by the group medical plan to the extent of such §8(j) credit.

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

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)*.

October 3, 2022

o- 9/6/22
KAD/jsf

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Maria E. Portela*
Maria E. Portela

/s/*Thomas J. Tyrrell*
Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC027081
Case Name	COUNTS, SHELBY v. STATE OF ILLINOIS/ ILLINOIS YOUTH CENTER HARRISBURG
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	James Keefe, Jr.
Respondent Attorney	Aaron Wright

DATE FILED: 11/29/2021

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 23, 2021 0.07%

/s/ Linda Cantrell, Arbitrator
Signature

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

November 29, 2021

/s/ Brendon O'Rourke
Brendan O'Rourke, Assistant Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Shelby Counts
Employee/Petitioner

v.

State of Illinois/Illinois Youth Center, Harrisburg
Employer/Respondent

Case # **18-WC-027081**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin**, on **September 16, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **8/24/18**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**45,465.20**; the average weekly wage was $**947.19**.

On the date of accident, Petitioner was **25** years of age, ***single*** with **1** dependent child.

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

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

Respondent shall be given a credit of $**0** 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 **any medical benefits paid through its group carrier** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner's medical bills contained in Petitioner's Group Exhibit 5, as provided in Section 8(a) and Section 8.2 of the Act, directly to the medical providers and pursuant to the medical fee schedule. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits. The parties stipulate that Respondent shall receive a credit for medical bills paid through its group medical plan, if any, pursuant to Section 8(j) of the Act. Respondent shall further hold Petitioner harmless from all claims or liabilities made by the group medical plan to the extent of such 8(j) credit.

Based on the totality of the evidence, the Arbitrator finds Petitioner is not entitled to temporary partial disability benefits.

Respondent shall pay Petitioner permanent partial disability benefits of $**568.31**/week for **20** weeks because the injuries sustained caused **4%** loss of use of the body as a whole, pursuant to Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 10/24/19, the date Dr. Howard released Petitioner from care, through the date of arbitration on 9/16/21, and shall pay the remainder of the award, if any, in weekly payments.

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

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

NOVEMBER 29, 2021

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

SHELBY COUNTS,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 18-WC-027081
	)	
STATE OF ILLINOIS/ILLINOIS YOUTH CENTER, HARRISBURG,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Herrin on September 16, 2021 on all issues. The issues in dispute are accident, causal connection, medical expenses, temporary partial disability benefits, and the nature and extent of Petitioner's injuries. All other issues have been stipulated.

TESTIMONY

Petitioner was 25 years old, single, with one dependent child at the time of accident. She testified that on August 24, 2018 she had been employed with Respondent for just under one year as a Juvenile Justice Specialist Intern. She was responsible for the security and safety of the youth including breaking up fights. The youths are incarcerated for violent crimes. Petitioner testified she is no longer employed by Respondent and her last date worked was on 1/30/20.

Petitioner testified that on 8/24/18 two youths in the gymnasium had an altercation over basketball. She told them to calm down and the youths started shoving one another. Petitioner placed her hand on one of the youth's shoulders and he struck her in the right side of the jaw. She believes she was struck with the youth's closed fist or elbow. Adrenaline kept her going to separate the youths including pushing one back by the shoulder to prevent a full blown fight. She noticed right jaw pain after she broke up the altercation.

Two video clips of the alternation were entered into evidence. Petitioner testified that between the 5 and 6-second mark of the first video is when she was struct in the jaw. Petitioner testified the second video that is 10 seconds long does not have the angle to show her being struck in the jaw. She stated she is not seen in the video until the 5-second mark and only her feet are depicted. Petitioner testified there are supposed to be four cameras total in the gym, with the

other two cameras situated at the opposite side of the gym from where the incident occurred. Petitioner did not know if the other two cameras were working at the time of the altercation.

Petitioner testified that she notified her co-worker Brandon Ramsauer she had been struck and he called a supervisor. Mr. Ramsauer was in the bathroom at the time of the incident. Petitioner was taken to the medical department on site. She testified she had swelling after the incident. She stated she did not finish her work shift and was taken to Harrisburg Medical Center by two staff members. Scans were taken at the hospital and Petitioner was taken off work the following day. She returned to work on 8/26/18 and worked 4-hour shifts through 9/12/18. She did not receive her full pay while working 4-hour shifts.

Petitioner testified she presented to the workman's comp doctor at SIH Work Care the following week for massive headaches, blurred vision, and dizziness. The headaches were located in the middle of her forehead that sometimes radiated to the back of her head and lasted 3 to 4 days. She wanted to sit in a dark, quiet room because the pain was constant and throbbing. Petitioner testified she had never experienced headaches on a regular basis prior to her work accident. SIH Work Care restricted Petitioner to 4-hour work shifts and no driving. Petitioner followed up with her PA Rachel Terrill who referred her to neurologist, Dr. Hunter. Dr. Hunter prescribed Topamax for Petitioner's migraines and the dosage was adjusted through her last visit on 10/24/19. Petitioner testified she continues to take Topamax daily to prevent headaches, but she still gets 2 to 4 headaches per month that are excruciating. She stated that light and sound make her nauseous and dizzy when she has a migraine and her vision is fuzzy and she cannot concentrate.

Petitioner testified she currently works as a waitress and has missed work due to headaches. She denied any injuries to her head or face since the work accident.

On cross-examination, Petitioner testified she returned to full duty work on 9/25/18. She volunteered to teach a fitness class called Pound and Ripped on her days off from working for Respondent. The fitness class involved dancing while holding drumsticks and kick boxing. Petitioner testified she demonstrated the dance routine to the class, and they mirrored her moves. Each session lasted 45 minutes. She stated she no longer teaches the fitness class.

When asked what she thought her doctor meant by continue Excedrin and brain rest, she stated it meant not to stare at a television or computer screen for excessive amounts of time. She agreed that she reported fatigue, low energy, and drowsiness on 9/6/18. She could not recall if she taught the fitness class on 9/5/18. Petitioner was shown a Facebook post dated 9/5/18 and positively identified herself in the video engaging in kickboxing. She agreed that on 9/5/18 she posted on Facebook, "Who is coming tonight?! Brand new workout forum never seen in southern Illinois! R.I.P.P.E.D. is modifiable for all fitness levels! Full body cardio workout with light weights! Come try it tonight at 6:15 in West Frankfort!!" Petitioner admitted to performing kickboxing and conducting the fitness class while she was on 4-hour work restrictions. Petitioner agreed the fitness class activities were not sedentary or stationary. Petitioner testified that this activity was "absolutely" within her restrictions.

Petitioner testified she worked in the control center while on 4-hour restricted duty where she operated the radios and logged juvenile movement. She stated the position was sedentary. She testified she officially resigned from employment with Respondent on 6/15/20 because she did not feel comfortable working there any longer due to negative rumors. She testified she thought she was found guilty of violating the standard of conduct.

MEDICAL HISTORY

Petitioner was taken to the on-site medical department following the incident. She reported being punched in the right jaw when separating two youths. Her jaw was getting sore and the pain increased when opening her mouth. Physical examination by a nurse revealed the right side of Petitioner's face was red with mild swelling and skin was intact. The first report of injury documents injuries to the right side of Petitioner's face/jaw area.

Petitioner was taken by two co-workers to Harrisburg Medical Center where she reported she was caught in the crossfire breaking up an inmate fight and was hit in the right jaw with a closed fist. She had pain with opening and closing her jaw and a headache. She denied loss of consciousness. The neurological exam was normal and a CT scan of the head revealed no acute intracranial process. A CT of Petitioner's face was performed and was negative for facial fractures. She was diagnosed with a concussion and facial contusion. She was prescribed medication and discharged.

On 8/27/18, Petitioner was sent to SIH Work Care at Respondent's direction. She reported being struck in the right jaw with a closed fist by an inmate. She denied being hit in the head or losing consciousness. She reported 1/10 right jaw pain and 3/10 headaches. Her headaches caused nausea, drowsiness, and difficulty concentrating. Physical examination revealed clicking in the right TMJ joint. She denied dizziness, blurred vision, or balance problems. Examination of her neck and neurological exam was normal. Nurse Sullivan diagnosed concussion and jaw pain. Petitioner was put on 4-hour work restriction due to concussive symptoms with no driving and limited screen time and complex thinking.

On 8/30/18, Petitioner reported continued drowsiness, light sensitivity, headaches, and nausea. She was using Excedrin. All examinations were normal. Nurse Sullivan prescribed Medrol Dosepak and continued her restrictions. On 9/6/18, Petitioner reported some improvement from the Dosepak but continued headaches, feeling fogged, and drowsiness. She was not driving but working light duty including computer monitoring without increased headaches. She denied jaw pain. On 9/12/18, Petitioner reported the headaches were improving with one episode of dizziness the day prior. The restrictions were lifted to working 8 hours and no driving and Ibuprofen was prescribed.

On 1/10/19, Petitioner discussed the work accident with her primary care PA Rachel Terrill. She denied headaches prior to the accident. She reported that Topamax helped but the headaches persisted. She rated them at 3/10 with occasional lightheadedness. PA Terrill continued Petitioner's medications and referred her to neurology and ENT.

On 4/2/19, Petitioner saw Dr. Heidi Jo Hunter and reported the work accident occurred when she was elbowed in the jaw. Petitioner reported suffering headaches three times per week at a pain level 6/10. She was taking Topamax. Dr. Hunter diagnosed post-traumatic headache, intractable and post-concussion syndrome. She increased the Topamax dosage to 100 mg twice daily and prescribed magnesium oxide 400 mg daily.

Petitioner returned to Dr. Hunter on 5/23/19 and reported she experienced only two headaches since the last visit. Dr. Hunter continued her medications and added Imitrex 50 mg daily as needed. On 7/25/19, Petitioner reported three headaches since the last visit. The Imitrex worked well. Petitioner last saw Dr. Hunter on 10/24/19 at which time Petitioner reported 2 to 3 migraines per week. Dr. Hunter opined Petitioner would likely continue to have migraines. She continued the medications and told her to follow up with her primary care physician.

CONCLUSIONS OF LAW

Issue (C): Did Petitioner sustain an accidental injury arising out of and in the course of employment?

To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arouse out of and in the course of his employment with employment. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193, 203 (2003). An injury "arises out of" employment when "the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id.* A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in order to fulfill his job duties. *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, ¶36.

Accordingly, an injury arises out of an employment-related risk (*i.e.*, a risk "distinctly associate with" and "incidental to" his employment) if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might "reasonably be expected to perform incidental to his assigned duties." *McAllister*, 2020 IL 124848, ¶36; see also *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989).

Based on the testimony presented at trial, it appears Respondent disputes accident on the sole basis it does not believe the security video shows Petitioner getting struck in the face during the altercation. The Arbitrator had several opportunities to view the only video which depicts Petitioner's body during the altercation. Petitioner is depicted in the video in the top left corner taken by a camera that appears to be across the basketball court and quite a distance from the altercation. Nevertheless, during trial Petitioner identified several times during a slow-motion viewing of the video exactly when she was struck in the face, that being between the 5 and 6-minute mark. The Arbitrator notes it is very difficult to distinguish on the video the movement of the youths and Petitioner during the altercation. However, the Arbitrator believes the video shows Petitioner get struck by a youth and her body is certainly in close contact with the youth that is combative. Unfortunately, there was no clearer or closer video footage offered into evidence.

The Arbitrator finds that Petitioner's alleged injury was consistent with the First Report of Injury and nurses note documenting redness and swelling in the right side of her jaw. Petitioner completed a Notice of Injury the day of the accident and reported she was preventing two youths from fighting and one of them punched her in the right side of her face causing her right jaw to become swollen and sore. The Notice of Injury was filled out prior to Petitioner receiving medical treatment according to the report. The First Report of Injury dated 8/27/18 states Petitioner was trying to break up a fight between two juveniles and one of them punched her in the face. Concussion and contusion of jaw was the alleged injury. The on-site medical department reported objective findings of redness and mild swelling to the right side of Petitioner's face and jaw immediately following the incident. The records from the emergency room at Harrisburg Medical Center, primary care, and Dr. Hunter all provide a consistent history of accident and physical examination revealed positive signs of Petitioner being struck in the right side of the face/jaw. Respondent did not offer any contrary medical evidence.

Even if it could be argued the security video does not depict Petitioner get stuck by a youth during the undisputed altercation, circumstantial evidence supports that Petitioner sustained an injury on 8/24/18 is well supported by the medical evidence. Further, Petitioner's injuries arose out of her employment because she was injured while performing an act that she was instructed to perform by her employer and one in which Respondent might reasonably expect Petitioner to perform incidental to her assigned duties. There was no evidence that Petitioner deviated from the scope of her employment or that she performed an activity that Respondent did not expect her to perform incidental to her duties.

Therefore, the Arbitrator finds that Petitioner sustained injuries that arose out of and in the course of her employment with Respondent on August 24, 2018.

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

In addition to or aside from expert medical testimony, 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 III.App.3d 92, 96-97, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 111.2d 59, 442 N.E.2d 908 (1982).

The Arbitrator finds the medical evidence supports Petitioner's current condition of ill-being is causally connected to her work accident on 8/24/18. Petitioner immediately reported being struck in the face and the history of injury contained in all of Petitioner's treatment records are consistent. Objective findings of injury to Petitioner's right face/jaw immediately following the accident demonstrates a clear chain of events.

Based on the Arbitrator's finding as to accident and the medical evidence, the Arbitrator finds Petitioner has met her burden of proof as to the issue of causal connection.

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?**

Upon a claimant's establishment of a causal nexus between injury and illness, employers are responsible for the employees' medical care reasonably required in order to diagnose, relieve, or cure the effects of the claimant's injury. *Plantation Mfg. Co. v. Indus. Comm'n,* 294 Ill.App.3d 705, 691 N.E.2d 13 (2000); *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill.App.3d 527, 758 N.E.2d 18 (1st Dist. 2001). Based upon the above findings as to accident and causal connection, the Arbitrator finds Petitioner's medical treatment was reasonable, necessary, and causally related to her work accident on 8/24/18.

Therefore, the Arbitrator finds that Petitioner is entitled to medical benefits. Respondent shall pay Petitioner's medical bills contained in Petitioner's Group Exhibit 5, as provided in Section 8(a) and Section 8.2 of the Act, directly to the medical providers and pursuant to the medical fee schedule. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits. The parties stipulate that Respondent shall receive a credit for medical bills paid through its group medical plan, if any, pursuant to Section 8(j) of the Act. Respondent shall further hold Petitioner harmless from all claims or liabilities made by the group medical plan to the extent of such 8(j) credit.

Issue (K): **What temporary benefits are in dispute? (TPD)**

Petitioner claims entitlement to temporary partial disability benefits for the period 8/27/18 through 9/12/18. The medical records support that on 8/27/18 Petitioner presented to SIH Work Care with complaints of nausea, drowsiness, and difficulty concentrating due to headaches she experienced following her injury. She was diagnosed with a concussion and jaw pain. Petitioner was placed on restrictions of 4-hour work shifts, with no driving and limited screen time and complex thinking. On 8/30/18, Petitioner reported continued drowsiness, light sensitivity, headaches, and nausea. Her work restrictions were continued.

While treating for concussive symptoms and on light duty restrictions, Petitioner was capable of and did engage in a fitness class that was neither sedentary nor stationary. The exercise class involved dancing while holding drumsticks and kick boxing. Petitioner testified she demonstrated the dance and kickboxing routines to the class, and they mirrored her moves. Each session lasted 45 minutes. There are no earnings demonstrating how much Petitioner earned during that time and she testified the position was voluntary.

Based on the evidence taken as a whole, the Arbitrator finds Petitioner is not entitled to temporary partial disability benefits.

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

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, are to be established using the following criteria: (i) the reported level of

impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment**: Neither Party submitted an AMA rating. Therefore, the Arbitrator gives no weight to this factor.

(ii) **Occupation**: Petitioner's employment was terminated by Respondent. She is currently employed as a waitress. Although Petitioner testified she has missed some days from work due to ongoing headaches, there was no objective evidence that Petitioner's current condition of ill-being affects her ability to work. The Arbitrator places some weight on this factor.

(iii) **Age**: Petitioner was 25 years old at the time of injury. She testified she still experiences two to four headaches per month that can be disabling. Dr. Hunter opined that Petitioner would likely continue to experience headaches and Petitioner continues to take medication for same. Petitioner has many years to live and work with her disability. The Arbitrator places greater weight on this factor.

(iv) **Earning Capacity**: There is no evidence of reduced earning capacity contained in the record. Petitioner returned to her pre-accident position with Respondent and was subsequently terminated for cause. The Arbitrator places some weight on this factor.

(v) **Disability**: As a result of her work accident, Petitioner was diagnosed with a concussion and facial contusion. She experienced nausea, drowsiness, and difficulty concentrating with headaches. She was prescribed medication for persistent headaches and placed on light duty restrictions for approximately two weeks. Dr. Hunter opined Petitioner would likely continue to have migraines. The Arbitrator places greater weight on this factor.

Based upon the foregoing factors and the record as a whole, the Arbitrator finds Petitioner sustained permanent partial disability to the extent of 4% loss of the body as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 10/24/19, the date Dr. Howard released Petitioner from care, through the date of arbitration on 9/16/21, and shall pay the remainder of the award, if any, in weekly payments.

Linda J. Cantrell, Arbitrator

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC012448
Case Name	Laura Wackerlin v. Walgreens
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0373
Number of Pages of Decision	17
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Lawrence Jackowiak
Respondent Attorney	Frank Gildea

DATE FILED: 10/3/2022

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Laura Wackerlin,

Petitioner,

vs. No. 20 WC 012448

Walgreens,

Respondent.

DECISION AND OPINION ON REVIEW PURSUANT TO §19(B) AND §8(A)

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

The trial of this matter began on September 13, 2021. The request for hearing form submitted at the start of trial indicated the Respondent was seeking an amount "TBD" as a credit under Section 8(j) for medical bills paid by a group health plan. Petitioner disputed that any Section 8(j) credit was due. After testimony was taken, the matter was continued, in part, to allow Respondent time to finalize its claims for credit with respect to medical bills which may have been paid through the group plan. When the trial resumed on December 7, 2021 the Arbitrator noted that the parties were submitting an Amended Request for Hearing form. The amount claimed under Section 8(j) for medical bills was changed to "$0.00 from "TBD." The Arbitrator expressly

noted this change on the record, stating, "The parties have amended also that the amount claimed under Section 8(j) for medical bills is zero…" Following that statement, counsel for both parties verbally acknowledged they had no objection to the admission of the Amended Request for Hearing into evidence.

In his decision, the Arbitrator granted Respondent a credit under Section 8(j) for medical benefits that had been paid and adjustments which had been made by Blue Cross/Blue Shield. The Arbitrator found Petitioner had Blue Cross/Blue Shield insurance, and that it had made payments and adjustments to the medical bills.

The Commission views the evidence regarding the Section 8(j) credit differently than the Arbitrator. The Appellate Court has held that statements made on Request for Hearing sheets are stipulations which are binding upon the parties. *Walker v. Indus. Comm'n,* 345 Ill. App. 3d 1084 (4th Dist., 2004). Representations made on Request For Hearing sheets narrow the disputed issues. In this case, Respondent's express representation that it paid "$0.00" for an 8(j) credit for medical bills, was a binding stipulation. It effectively removed that issue from dispute.

However, even if Respondent had preserved its claim for a Section 8(j) credit for medical bills paid by the group carrier, the Commission would still find Respondent had not proven entitlement to such credit. When Section 8(j) credits are disputed, three elements must be proven before a credit will be granted: (1) group insurance must have paid the medical benefits in question, (2) the employer must have paid into that group policy, and (3) the policy must have precluded payments for medical expenses associated with work-related conditions of ill-being. *Yarmer v. City of Chicago,* 19 IWCC 333 (2019).

In the present case, there is evidence of the first element of proof: Petitioner's group insurer, Blue Cross/Blue Shield, did pay some of her medical bills. However, there was no evidence presented to prove the second and third elements: that Respondent paid into the group insurance policy, and that the policy in question precluded medical payments for injuries sustained in work related accidents. In *Yarmer,* the Commission stated that just as a claimant has the burden of proving all elements of his or her claim, the employer has the burden of proving entitlement to credit under Section 8(j). In this case, that has not been shown.

For the aforesaid reasons, the Commission reverses the credit granted Respondent under Section 8(j) of the Act for medical benefits paid and adjustments made by Blue Cross/Blue Shield.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 25, 2022, is hereby modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the credit granted Respondent under Section 8(j) of the Act for medical benefits paid and adjustments made by Blue Cross/Blue Shield is reversed.

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 $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.

October 3, 2022

MP/mcp
o-09/08/22
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	20WC012448
Case Name	WACKERLIN, LAURA v. WALGREENS
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	Lawrence Jackowiak
Respondent Attorney	Frank Gildea

DATE FILED: 1/25/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 25, 2022 0.38%

/s/Stephen Friedman, Arbitrator

Signature

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)

Laura Wackerlin
Employee/Petitioner

v.

Walgreens
Employer/Respondent

Case # **20** WC **012448**

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 **September 13, 2021** and **December 8, 2021** in the city of **Geneva**, on **October 28, 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, **April 30, 2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**31,957.12**; the average weekly wage was $**614.56**.

On the date of accident, Petitioner was **44** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**5,626.71** for other benefits, for a total credit of $**5,626.71**.

Respondent is entitled to a credit under Section 8(j) of the Act for payments and adjustment by Blue Cross/Blue Shield.

ORDER

Respondent shall pay reasonable and necessary medical services of $376,086.85 as detailed in the finding with respect to Medical herein, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit medical benefits that have been paid and adjustments made by Blue Cross/Blue Shield, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall authorize and pay for additional reasonable and necessary treatment consistent the recommendations Dr. Blint or other reasonable and necessary care.

Respondent shall pay Petitioner temporary total disability benefits of $409.71/week for 83 4/7 weeks, commencing May 1, 2020 through December 7, 2021, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $**5,626.71** paid. Respondent shall hold Petitioner harmless from any claims by any providers for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Petitioner's claim for Penalties and Attorney Fees is denied.

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

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

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

/s/ Stephen J. Friedman
Signature of Arbitrator

JANUARY 25, 2022

ICArbDec19(b)

Statement of Facts

Petitioner Laura Wackerlin testified that on April 30, 3030 she was employed by Respondent Walgreens. She started about five years earlier as a sales associate and received promotions. About 9 to 10 months before April 30, 2020, she was promoted to shift lead. Her duties require a lot of cash handling, vendor receiving, counting the drawers, and balancing the safe. She runs the photo department and makes sure all supplies are there as needed. She deals with customer service, teamwork, and stocking. She was working as a shift lead on April 30, 2020 at the Walgreens in Sycamore, Illinois. Petitioner testified that on April 30, 2020 the store was on Covid hours, closing at 9:00 PM. She testified she was not aware that there were keys for the doors in the safe.

Petitioner testified she started her shift at 2:00. She punched in. At about 4:00, she noticed she had left her work keys at home. She testified that the keys are important to lock up receiving and lock the building at the end of her shift. She testified she needed to find management to ask permission to leave. She found Sarah, the opening shift lead, in the photo department. She testified that Sarah told her she would be leaving her shift at 6:00. She testified she explained to Sarah that she had forgotten her keys and asked if she could run home to get them and Sarah said yes.

Sarah Womack testified that was an assistant store manager for Respondent in April 2020 at the Sycamore store. This is a 24 hour store. She testified that for Covid, the store doors were closed but the drive-thru was open. The public could not come in, but workers were still there, doing work like stocking and cleaning. She testified that Petitioner was a shift lead. Her duties would include locking and unlocking the receiving door during deliveries. Ms. Womack testified that there are keys available in the safe. All leadership has the combination to the keypad. She testified that they all have keys, but they put them in the safe at the end of the day. The keys are not to go home. She agreed that some people were concerned at that time about touching things other people had handled.

Ms. Womack testified that on April 30, 2020, Petitioner approached her and said she had left something at home and needed to go get it. Would it be okay if she left? Ms Womack said yes that is fine. She testified that Petitioner said she would use her 15 minute break. She testified that they do not punch out for their 15 minute breaks. She does not recall anything about needed to go home for her work keys. She does not know what Petitioner forgot. She trusted her, so she did not need to know. She did not direct her to go home. She was not present for the conversation with Debbie.

Petitioner testified that at the end of this conversation, Debbie Nottingham, the store manager walked up and asked what was going on and Petitioner explained to her that she asked Sara if she could run home to get her work keys and said “yes, make it quick.” Ms. Nottingham also said make it quick. Petitioner testified that she was not directed to go home to get her keys by either Ms. Womack or Ms. Nottingham. She was given approval.

Debra Nottingham testified that she was the store manager for Respondent’s store in Sycamore on April 30, 2020. She reports to the district manager. During Covid, the store was still 24 hours. She testified that RX 1 was the hours worked that week and showed that the overnight lead Mary Rose worked 9:30 PM to 8:11 AM. She testified that store never locks up except for extreme circumstances. Extra keys are kept in the safe. All leadership including Petitioner have the combination.

Ms. Nottingham testified that on April 30, 2020 at about 4:00 PM, she saw Petitioner and Sarah talking. Petitioner told her she had to run home for a minute. She does not remember the exact words. It was such a minor request. She testified Petitioner did not tell her she needed to run home and get her work keys. Ms. Nottingham did not tell her to go home to get her work keys. She testified that there was no reason to go home to get her keys because they had other keys available and typically there is no receiving after 4:00 PM. Petitioner would have keys to receiving and to the corral to put out warehouse totes that are kept outside. She testified that employees punch out for lunch. She did not ask Petitioner to punch out. If they are going out during a break they do not punch out unless they expect to be gone over the 15 minute break period. There would be not reason to have Petitioner punch out for that short request, given her time and service and history with the company. She has never seen a supervisor disciplined for allowing an employee to run an errand without punching out. Ms. Nottingham reviewed a March 18 Walgreens announcement that their 24 hour stores were no longer going to be 24 hours. She testified it did not happen at her location.

Petitioner testified she called her significant other roommate Debbie to tell her she was coming home to get her keys. It takes her about 8 to 10 minutes to get home. When she got home, she tried to call Debbie, but she did not pick up, so she pulled into the garage and honked the horn. Debbie brought the keys out. She refreshed her recollection with her cell phone records. Petitioner testified that Debbie ran out and handed her the keys and she proceeded to go back to work. Then she was struck by another truck. She denied that she was speeding. She did not get a ticket. She tried to call Debbie at home, but she did not pick up. There was a witness named Laurie who used Petitioner's phone to called Debbie Nottingham at Respondent and Debbie.

Debbie Cook testified that Petitioner is her partner. On April 30, 2020, she lived with Petitioner. She testified that about 4:00 PM, she received a phone call from Petitioner that she had forgotten her work keys and was going to be coming home. She asked if she would bring those out when she got home. A short time later, she heard a honk in the back where the garage is, so she had the keys and ran them out to Petitioner. She did not give her anything else. Petitioner then drove away. A short time later, she received a phone call from the witness Laurie on Petitioner's phone telling her that she had witnessed a car accident. Ms. Cook then notified Debbie Nottingham that Petitioner would not be returning to work. She testified that she told her that she just ran the keys out to her and a couple of minutes later got the call about the accident. She later discovered a voicemail from Petitioner about the accident. Debbie Nottingham testified she received phone calls from the witness Laura and Debbie Cook about the accident. She does not recall anything being said about work keys.

Following the accident on April 30, 2020, a DeKalb Fire Department Ambulance was dispatched to the scene. First responders cut Petitioner out of her car and transported her to Kishwaukee Community Hospital (PX 1). At Kishwaukee Hospital, Petitioner had X-rays which noted fractures to her right patella, left upper tibia, and a hematoma to her left frontal lobe (PX 4). A CT scan revealed an additional fracture to her left proximal fibula. On May 1, 2020, Petitioner was transferred by A-TEC Ambulance from Kishwaukee Hospital to St. Anthony's Medical Center for elevated care (PX 4).

At St. Anthony's, Petitioner began treatment with Dr. Andy Blint (PX 2). On May 2, 2020, Petitioner underwent closed reduction surgery on her left knee performed by Dr. Blint. Petitioner had another surgery on May 6, 2020, where Dr. Blint removed the wound vac previously applied to the right patella and performed a repair of the right patellar tendon. On May 19, 2020, Petitioner was discharged from St. Anthony's and transferred to Van Matre Encompass Health Rehabilitation Institute to for rehabilitation and therapy (PX 2). At Van Matre, Petitioner saw occupational therapists 2-3 times per week for therapeutic exercise, self-care training, and neuromuscular re-education. Petitioner was discharged from a ten-day stay on May 29, 2020, with

instructions to maintain her home treatment plan and regularly follow-up with her treating physicians (PX 5). Between May 29, 2020 and July 21, 2020, Petitioner received physical therapy treatment at both St. Anthony's and Kishwaukee Hospital. On July 21, 2020, Petitioner began therapy at Midwest Orthopaedics Institute in Sycamore, Illinois, and has been receiving therapy at MOI as of the date of the trial (PX6B). Petitioner returned to therapy at Kishwaukee Hospital on October 5, 2020, with goals to reduce her functional limitations. (PX 4). Petitioner regularly followed-up at Kishwaukee Hospital from June 22, 2020, through October 2021 During this time, Petitioner purchased and rented medical equipment and supplies from Mercy Health Visiting Nurses Association, including hospital beds and railings, leg rests, and wheelchairs (PX 11). On April 7, 2021, Petitioner underwent an arthroscopy performed by Dr. Blint at St. Anthony's to repair a tear in her lateral meniscus. Petitioner saw Dr. Blint for post-operative follow-ups on April 29, 2021 and August 19, 2021.

Petitioner testified that she has been off work since the date of the accident per her physician's order and is still in medical care. She is currently involved in a third party lawsuit against the driver of the vehicle that struck her. She confirmed that the other driver was ticketed for their involvement in the accident. Petitioner testified that she received short term disability and that she had Blue Cross/Blue Shield health insurance at the time of the accident.

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. For an injury to 'arise out' of the employment its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in order in fulfilling his job duties. *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848.

It is undisputed that Petitioner was injured in a motor vehicle accident on April 30, 2020 and that she had gone home during her break and was returning to Respondent's location at the time of the accident. In dispute is the reason for the trip and whether that reason brings this accident into the course of her employment and arising out of her employment.

Petitioner testified that she went home to get her work keys which she had forgotten. Respondent's witnesses testified that Petitioner did not tell them why she was going home. However, Respondent offered no other personal reason for her trip. Petitioner's testimony is corroborated by Debbie Cook and the timeline of the trip supports her testimony that she just ran home and was coming directly back to work without performing any

personal errand. The Arbitrator finds Petitioner's testimony that she left solely to go home to get her work keys credible and unrebutted.

The Arbitrator also notes that Respondent's witnesses and Petitioner herself agree that she was not instructed or directed to go home to get her work keys. It is undisputed that both Ms. Womack and Ms. Nottingham allowed her to go home. The permission to go home was granted without regard to what the reason was. The Arbitrator notes the close, friendly relationship among these individuals and does not find the lack of detailed explanations for the trip unusual given the trust and informal nature of their relationship and interactions. The Arbitrator finds that Respondent acquiesced in Petitioner's decision and permitted her to go home to get her work keys.

However, these finding are only the threshold of whether the trip resulted in an accident arising out of and in the course of her employment. Injuries occurring in transit generally do not arise out of and in the course of employment and are therefore rendered not compensable under the Act. (Ill. Rev. Stat. 1975, Ch. 48, par. 138.2; *Hess v. Industrial Com.* (1980), 79 Ill. 2d 240, 241-42; Sjostrom v. Sproule (1965), 33 Ill. 2d 40, 43; see generally 1 A. Larson, Workmen's Compensation sec. 15 (1978).) But "injuries sustained by an employee while away from the job premises of his employer have been held compensable under the Act when the injuries occurred while the employee was acting under the direction of the employer or for his benefit or accommodation." *Osborn v. Industrial Com.* (1971), 50 Ill. 2d 150, 151; see also *Lynch Special Services v. Industrial Com.* (1979), 76 Ill. 2d 81, 91-92; *Givenrod-Lipe, Inc. v. Industrial Com.* (1978), 71 Ill. 2d 440, 444; *Mid Central Tool Co. v. Industrial Com.* (1978), 72 Ill. 2d 569, 578; *Torbeck v. Industrial Com.* (1971), 49 Ill. 2d 515, 516-17; 1 A. Larson, Workmen's Compensation sec. 16 (1978). Injuries are found to be compensable if the employee is subject to employer control or direction when the injuries took place, or the employee travel is to accommodate or benefit the employer. *International Art Studios v. Industrial Com.* (1980), 83 Ill. 2d 457, 415 N.E.2d 1031).

Respondent argues that there was no work reason for Petitioner to get her keys, since she likely had no duties to perform that would require them and, in the event she needed a key, there was a set available to her at the store. Respondent provided evidence that the keys were available in the store safe and that Petitioner had the combination. Respondent also provided evidence that there would be no need to lock or unlock the store doors since this was a 24 hour location and that it was unlikely there would be any deliveries after 4:00 PM which would require Petitioner to use the key for receiving. Respondent argues that Petitioner provided no employer benefit in getting her set of work keys. To be compensable, it must be shown that the errand or trip is both reasonable and foreseeable to the employer. *Birdsley Trucking Co. v. Industrial Com*., 192 Ill. App. 3d 39, 548 N.E.2d 772, 1989 Ill. App. LEXIS 1921, 139 Ill. Dec. 387, cited in *Larry Flynn v. Utica Township and Custodian of the Second Injury Fund*, 2001 Ill. Wrk. Comp. LEXIS 711, 1 IIC 635, 2001 Ill. Wrk. Comp. LEXIS 711, 1 IIC 635.

While the Arbitrator notes that there may have been keys available to Petitioner, Respondent's witnesses testified that each management employee had a set of keys. There was clearly an employer benefit in Petitioner having her own set or there would be no reason to provide one. While there may not have been an absolute necessity for Petitioner to have her own keys for her shift on April 30, 2020, the Arbitrator finds it reasonable that she would want to get them, particularly given the relative ease with which they could be obtained. Petitioner, as a shift lead, had certain management functions and was in a position to assess her comfort level in continuing her shift without her keys. All evidence agreed that Petitioner could run home and return during her 15 minute break. The Arbitrator also finds it foreseeable that Petitioner would leave to run

such a quick errand. Since she received permission to leave even if it was for a suspected personal reason by Ms. Nottingham, the Arbitrator cannot conceive that she would have forbidden Petitioner to go home and get her keys.

The case law supports these findings. In *Birdsley Trucking Co. v. Industrial Com*., 192 Ill. App. 3d 39, 548 N.E.2d 772, 1989 Ill. App. LEXIS 1921, 139 Ill. Dec. 387, Petitioner was injured while driving to get a part for a company vehicle. The employer argues the trip was not foreseeable because claimant had not discussed the need for the part in advance with Birdsley. Birdsley, however, testified that the driver was responsible for maintaining the vehicle in good repair, that he trusted claimant and did not supervise him. Birdsley only testified that "normally" he might "call around to dealers" to find a part. Apparently, the drivers often bought the parts themselves and simply received reimbursement from Birdsley later. The overall character of the trip was clearly for business purposes. We hold, as in *Bradley Printing*, that claimant here was engaged in an activity which he reasonably might be expected to do as part of his employment, and that he was where he reasonably might be expected to be driving, at the time of the accident. There is no evidence indicating claimant veered off onto a course incompatible with his work at any time before the accident. See *Bradley Printing Co.* v. *Industrial Com*., 187 Ill. App. 3d 98, 543 N.E.2d 116.

In *Max v. Elite Staffing* 09 IWCC 1002, affirmed *Staffing v. Ill. Workers' Comp. Comm'n*, 2011 Ill. App. Unpub. LEXIS 1515, 409 Ill. App. 3d 1147, 2 N.E.3d 660, 377 Ill. Dec. 744, 2011 WL 11550141, a motor vehicle accident suffered while going out to get burritos for the crew as held compensable. The court notes the claimant's trip was not a personal errand taken on his own behalf during his free time; it was an errand taken under limited permission from his supervisor for a purpose suggested by his supervisor and a need created by his work. In *Conlee v. Morrissey Homes, Inc., 95 IIC 884*, the Commission awarded compensation to a worker who went home from a jobsite to get a tool he needed to complete the job, despite testimony from the employer that he had everything he needed.

In *Bradley Printing Co. v. Industrial Com*., 187 Ill. App. 3d 98, 543 N.E.2d 116, 1989 Ill. App. LEXIS 1101, 134 Ill. Dec. 833, the court states whether an incident arose out of and in the course of employment depends first upon the purpose of the trip taken. *Boyer Chemical Laboratory Co. v. Industrial Comm'n* (1937), 366 Ill. 635, 10 N.E.2d 389. The test for determining the purpose of a trip which has both personal and business characteristics, first enunciated in *Marks' Dependents v. Gray* (1929), 251 N.Y. 90, 93-94, 167 N.E. 181, 183, is as follows:

"If the work of the employee creates the necessity for travel, he is in the course of his employment, though he is serving at the same time some purpose of his own. if, however, the work has had no part in creating the necessity for travel, if the journey would have gone forward though the business errand had been dropped, and would have been canceled upon failure of the private purpose, though the business errand was undone, the travel is then personal, and personal the risk."

In Petitioner’s case, there was no private purpose for her trip, and therefore the Arbitrator finds that the trip was for the purpose of providing benefit to the employer, that there was no personal component, and that Petitioner’s decision to get her own keys was reasonable and foreseeable. Petitioner was therefore still in the course of her employment.

On Petitioner’s return trip to the store, she was involved in a motor vehicle accident. Respondent argues that accident did not arise out of the employment, because the risk of the accident is an ordinary risk of life and

was not increased by the employment. Persons using the highway are subjected to certain traffic risks and one of the them is the danger of collision. The perils of modern-day travel upon the highways are well known. Risk of accident is an ever-present menace. When it is necessitated by the employment the risks incidental thereto become the risks of the employment and remain so as long as the employee is acting in the course of his employer's business. *Olson Drilling Co. v. Industrial Comm'n* (1944), 386 Ill. 402, 413, 54 N.E.2d 452, 457-58; *Stembridge Builders v. Industrial Comm'n (Zepeda)*, 263 Ill. App. 3d 878, 1994 Ill. App. LEXIS 975, 201 Ill. Dec. 656. The risk of the motor vehicle accident to Petitioner while running an errand for the benefit of the employer is an employment risk and therefore no further quantitative or qualitative analysis is required. The accident is arising out of the employment.

Based upon the record as a whole, the Arbitrator finds that the Petitioner has proven by a preponderance of the evidence that she sustained accidental injuries arising out of and in the course of her employment with Respondent on April 30, 2020.

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).

Based upon the Arbitrator's finding with respect to Accident, any condition of ill-being causally connected to the accident on April 30, 2020 would be compensable. Petitioner had no prior condition of ill-being in her legs. Immediately after the accident, she was taken by ambulance and diagnosed with the multiple injuries resulting from the accident. She continues to treat for those injuries. No medical evidence was offered of any other possible cause for this treatment other than the accident on April 30, 2020.

Based upon the record as a whole and the Arbitrator's finding with respect to accident, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that her conditions of ill-being are causally connected to the accidental injury suffered on April 30, 2020.

In support of the Arbitrator's decision with respect to (J) Medical and (N) Credit, 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). Based upon the Arbitrator's finding with respect to Accident and Causal Connection, reasonable and necessary treatment for Petitioner's condition of ill-being as delineated in the medical records would be causally connected.

Petitioner has submitted medical bills as part of his medical exhibits. The bills are listed in the attachment to Arb. Ex. 1A as:

DeKalb Fire Dept. (ambulance)	$1,890.00
OSF St. Anthony	$262,345.56
Atec Ambulance	$3,399.60
Northwestern Medicine	$60,255.00
Van Matre Rehabilitation Hospital	$21,138.92
Midwest Orthopaedic Institute	$4,643.00
Rockford Anesthesiologists Assoc.	$10,149.56
Rockford Radiology	$2,082.00
Aurora Radiology	$2,359.00
Mercy Health	$7,824.21

The Arbitrator has reviewed the testimony and exhibits in this matter and finds that these bills are reasonable, necessary, and causally related to the accident. The bills submitted total $376,086.85.

Arb. Ex. 1 also notes that Respondent claimed credit under Section 8(j) for medical treatment paid through group insurance. The amount was to be determined due to the continued treatment and processing of the bills being submitted. Petitioner testified she had Blue Cross/Blue Shield health insurance. The medical bills submitted confirm that payments have been made by Blue Cross/Blue Shield and adjustments made to the charges per agreements. Respondent is entitled to credit for these payments and adjustments pursuant to Section 8(j).

Based upon the record as a whole, the Arbitrator finds that Respondent shall pay reasonable and necessary medical services of $376,086.85 as detailed above, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit medical benefits that have been paid and adjustments made by Blue Cross/Blue Shield, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In support of the Arbitrator's decision with respect to (K) Prospective 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). Based upon the Arbitrator's findings with respect to Accident and Causal Connection, ongoing reasonable and necessary treatment for Petitioner's condition of ill-being as delineated in the medical records would be causally connected.

The medical records and Petitioner's testimony document ongoing care which the Arbitrator finds reasonable, necessary, and causally related to the accident.

Based upon the record as a whole, the Arbitrator finds that Respondent shall authorize and pay for additional reasonable and necessary treatment consistent the recommendations Dr. Blint or other reasonable and necessary care.

In support of the Arbitrator's decision with respect to (L) 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).

The unrebutted testimony of Petitioner and the medical records submitted, document that Petitioner is not yet at MMI and has been continued off work while under active treatment for her work-related conditions of ill-being through the date of trial in this matter. The parties stipulated that Petitioner received $5,626.71 in short term disability for which Respondent would receive credit under Section 8(j).

Based upon the record as a whole and the Arbitrator's finding with respect to Accident, the Arbitrator finds Petitioner has proven by a preponderance of the evidence that she is entitled to temporary total disability benefits commencing May 1, 2020 through December 7, 2021, being the date of hearing in this matter, a total of 83 4/7 weeks. Respondent shall be given a credit of $5,626.71 paid. Respondent shall hold Petitioner harmless from any claims by any providers for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In support of the Arbitrator's decision with respect to (M) Penalties, the Arbitrator finds as follows:

Penalties imposed under section 19(l) are in the nature of a late fee. The award of section 19(l) penalties is mandatory if the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay. The standard for determining whether an employer has good and just cause for a delay in payment is defined in terms of reasonableness. The employer bears the burden of justifying the delay, and its justification is sufficient only if a reasonable person in the employer's position would have believed the delay was justified.

The Arbitrator finds that Respondent's refusal to pay benefits in this matter was reasonable. As more fully discussed in the Arbitrator's finding with respect to Accident, there were not only factual disputes but also close issues of applicable law to the facts as determined. The Arbitrator is aware that there is also caselaw to dispute the inferences made in this matter findings compensability and that Respondent presented sufficient evidence to present a reasonable and good faith dispute as to the compensability of the matter.

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) because sections 19(k) and (16) require more than an "unreasonable delay" in payment of benefits. For the award of penalties and attorney fees under sections 19(k) and 16, 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. Instead, penalties and attorney fees under sections 19(k) and 16 are intended to address situations where there is not only delay, but the delay is deliberate or the result of bad faith or improper purpose. In addition, while section 19(l) penalties are mandatory, the imposition of penalties and attorney fees under sections 19(k) and 16 is discretionary.

As noted above, the Arbitrator finds that Respondent had a reasonable position on the factual and legal disputes in this matter and did not delay payment without good cause. The delay was not the result of bad faith or improper purpose but rather from a good faith dispute as to the compensability of this matter. The Arbitrator finds that no improper purpose was demonstrated and refused to exercise discretion to award penalties under Section 19(k) or attorney fees under Section 16.

Based upon the record as a whole, the Arbitrator finds that Petitioner failed to establish that Respondent’s delay in payment of benefits was unreasonable and therefore is not entitled to Section 19(l) penalties. The Arbitrator also finds that the delay was not without good and just cause or the result of bad faith or improper purpose and declines to award Section 19(k) penalties or Section 16 attorney fees.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC039081
Case Name	Karen Anderson (Widow of Alec Anderson Deceased and Mother of Sierra Anderson Minor) v. Homewood Flossmoor High School
Consolidated Cases	
Proceeding Type	Remand
Decision Type	Commission Decision
Commission Decision Number	22IWCC0374
Number of Pages of Decision	23
Decision Issued By	Deborah Baker, Commissioner,

Petitioner Attorney	James Marszalek
Respondent Attorney	W. Britt Isaly

DATE FILED: 10/4/2022

/s/ Deborah Baker, Commissioner
Signature

DISSENT: /s/ Deborah Baker, Commissioner
Signature

22IWCC0374

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KAREN ANDERSON, widow of Alec Anderson and mother of Sierra Anderson, a minor,

Petitioner,

v. NO: 13 WC 39081

HOMEWOOD FLOSSMOOR HIGH SCHOOL,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission pursuant to a September 10, 2021 order from the Circuit Court of Cook County. Therein, the court reversed the decision of the Commission and remanded the matter.

PROCEDURAL HISTORY

On October 4, 2017, this matter proceeded to arbitration before Arbitrator Steven Fruth on the following issues: 1) whether Decedent sustained an accidental injury occurring in the course of and arising out of his employment, 2) whether Decedent's fatal cardiac event was causally related to his work activities, and 3) Petitioner's entitlement to benefits under Section 7 of the Act. Arbitrator Fruth issued his decision on January 17, 2018; concluding that Decedent's death fell under the Section 11 exclusion, the Arbitrator denied Petitioner's claim for benefits.

Petitioner filed a timely Petition for Review before the Commission. On October 28, 2019, a prior iteration of Commission Panel B entered its Decision and Opinion on Review. Therein, the Commission provided supplemental analysis regarding Section 11 and otherwise affirmed and adopted the decision of the arbitrator.

On November 7, 2019, Petitioner filed a timely review before the Circuit Court of Cook County. On September 10, 2021, the circuit court entered its order finding the Commission's Decision to be contrary to law: "This court holds that, as a matter of law, Section 11 does not

exclude recovery in this case." The matter was remanded to the Commission for a determination as to whether the accident occurred in the course of and arose out of Decedent's employment.

On remand, Commissioner Baker permitted the parties to file supplemental briefs specifically addressing accident. The Commission, having considered the issues and being advised of the facts and law, finds Decedent's fatal cardiac event did not occur in the course of nor arise out of his employment.

FINDINGS OF FACT

The Commission affirms and adopts the Statement of Facts as set forth by the arbitrator in his decision of January 17, 2018 and incorporates such facts herein.

CONCLUSIONS OF LAW

To obtain compensation under the Act, a claimant must establish by a preponderance of the evidence that the alleged injury both occurred in the course of the employment and arose out of the employment. *820 ILCS 305/1(d)*. We address each element in turn.

I. In the Course Of

The phrase "in the course of" refers to the time, place and circumstances under which the accident occurred. *Orsini v. Industrial Commission*, 117 Ill. 2d 38, 44 (1987). "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. Industrial Commission*, 207 Ill. 2d 193, 203 (2003). Accidental injuries sustained on an employer's premises within a reasonable time before and after work are generally deemed to occur in the course of the employment. *Caterpillar Tractor Co. v. Industrial Commission*, 129 Ill. 2d 52, 57 (1989).

On remand, Petitioner advances two arguments regarding in the course of: 1) Decedent's fatal event occurred while he was engaged in a reasonable, permitted activity at the employer's premises at a reasonable time, and 2) the accident is compensable under the Personal Comfort Doctrine. In support of this second argument, Petitioner directs us to *Tom Campbell v. Taylorville Fire Department*, 13 IWCC 5740, subsequently affirmed by the appellate court in 2014 IL App (5th) 140010WC-U. In the Commission's view, Petitioner's arguments are not persuasive.

The Commission first observes Petitioner's reliance on *Campbell* is misplaced. In *Campbell*, the claimant was a firefighter working a 24-hour shift: after 4:30 p.m. he was generally free to do whatever he wanted as long as he remained on the firehouse premises and was available to answer emergency responses; he injured his right foot playing basketball with his fellow firefighters. At arbitration, the claimant testified his shift commander suggested the firefighters play basketball together as a way to get exercise as well as for team building; this was corroborated by the Fire Chief, who testified that firefighters are encouraged to exercise and play sports while on-duty for team-building and fitness purposes. In finding the claimant's injury compensable, the Commission relied on the Personal Comfort Doctrine. We note the facts herein share no similarities to *Campbell*. To be clear, the *Campbell* claimant was on duty and not permitted to leave the employer's premises, was asked to participate in the basketball game by his supervisor, and the employer expressly encouraged participation in sports and fitness. None of these facts are

true for Decedent. The Commission further notes the Personal Comfort Doctrine is inapplicable, as the doctrine speaks to acts performed when the employee is already in the course of his/her employment: "Employees who, within the time and space limits of their employment, engage in acts which minister to personal comfort do not thereby leave the course of employment, unless the *** method chosen is so unusual and unreasonable that the conduct cannot be considered an incident of the employment." *Circuit City Stores, Inc. v. Illinois Workers' Compensation Commission*, 319 Ill. App. 3d 913, 920 (2nd Dist. 2009), quoting 2 A. Larson & L. Larson, Workers' Compensation Law §21, at 21-1 (2008) (Emphasis added). Rather, resolution of the issue rests on whether or not Decedent was on the employer's premises "within a reasonable time" before or after work. We find he was not.

The Commission notes that both of Respondent's witnesses, Lawrence Cook and Jodi Marie Bryant, testified that the "administrative day" ended prior to Decedent's accident. Cook testified all administrators were obligated to be at the school until 4:00 p.m. T. 47. Bryant clarified, however, that on August 7, 2013, the administrative staff was still on summer hours, which are from 7:30 a.m. to 3:30 p.m. T. 65. Bryant testified that all administrators, including Decedent, were "duty-free" from 3:30 p.m. until the start of any evening event, in this case the orientation starting at 7:00 p.m. T. 65. Bryant explained Decedent was free to do as he liked and was not required to stay at the school beyond 3:30 p.m. T. 65. The Commission finds Bryant and Cook were credible witnesses.

The evidence establishes that Cook spoke with Decedent at about 4:30 p.m., or an hour after the end of the administrative day and more than two hours before orientation. T. 45. The Commission finds Decedent's heart attack did not occur within a reasonable time after his administrative day ended at 3:30 p.m., nor within a reasonable time before orientation began at 7:00 p.m. As such, the injury did not occur in the course of Decedent's employment.

II. Arising Out Of

"The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *McAllister v. Illinois Workers' Compensation Commission*, 2020 IL 124848, ¶ 36, quoting *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 203 (2003). A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. *Id*. That an accident happens at the claimant's workplace does not automatically establish the injury "arose out of" the claimant's employment. *Parro v. Industrial Commission*, 167 Ill. 2d 385, 393 (1995).

We begin with our analysis with a review of the job description. Therein, Decedent's role is defined as follows:

> The Director of Athletics and Student Activities provides leadership to ensure that the extra-curricular program is designed and conducted so that students will have optimum opportunities for mental, social, and physical development. The Director reports to the Principal and supervises the Assistant Director of Athletics and Student Activities and selected personnel. Resp.'s Ex. 1.

The four "Key Functions" of the job are then identified along with the associated "Authority/Responsibility":

A. Extra-curricular Programs – "Supervise all athletics, intramural, and student activities"
B. Personnel – "Recommend and evaluate all staff in the co-curricular areas"
C. Student Co-Curricular Participation – "Provide leadership and supervision in all areas relating to the students in activities"
D. Facilities Management – "Ensure adequate and safe facilities for all participants in the activity program." Resp's Ex. 1.

The "Representative Activities" detailed in the Student Co-Curricular Participation subsection are as follows:

1. Enforces the physical and academic requirements of eligibility in each activity and verifies to the Principal each student's eligibility.
2. Schedules and coordinates physical exams for athletes.
3. Plans and supervises recognition programs for students.
4 . Keeps records of the results of all senior high school athletic contests and maintains a record file of all award winners, stating the date and type of the award.
5. Coordinates and supervises the athletic drug testing program.
6. Schedules and coordinates all training rules meeting. Resp.'s Ex. 1.

Clearly, Decedent's job description does not expressly require him to be physically fit. As such, the arising out of element rests on whether a physical fitness requirement can be reasonably inferred from the job duties such that Decedent's working out would be incidental thereto.

On remand, Petitioner claims that as athletic director, Decedent was expected to maintain a certain level of physical fitness as well as set a good example for students and staff, and his working out on the treadmill was in furtherance of those expectations. In support of her position, Petitioner highlights Ronald Wilcox's testimony that it is important for an athletic director to set a good example by maintaining a high level of physical fitness and the job description requirement that the athletic director provide leadership; Petitioner then argues maintaining a level of fitness and demonstrating a healthy lifestyle by working out is incidental to Decedent's assigned duty as a leader of student athletes. Petitioner also asserts the employment contract provision requiring Decedent to submit to the Board's physical fitness rules and regulations indicates physical fitness was incorporated into his role as athletic director and therefore, he would reasonably be expected to work out in order to maintain his physical fitness. The Commission disagrees.

Initially, we do not find Petitioner's reliance on Decedent's leadership role to be persuasive. The Commission emphasizes the "leadership" requirement set forth in the job description definition specifically speaks to administering the program: "…provides leadership to ensure that the extra-curricular program is designed and conducted so that students will have optimum opportunities for mental, social, and physical development." Resp's Ex. 1 (Emphasis added). We further observe the "leadership and supervision" of the Student Co-Curricular Participation function similarly involves strictly administrative activities, *i.e.*, ensuring pre-participation physicals and academic eligibility, tracking game results, coordinating award

recognition, etc. The Commission finds the job description corroborates Bryant's testimony regarding the administrative focus of Decedent's responsibilities over Respondent's "very comprehensive" high school program:

> We have 32 sports, 75 teams, 80 clubs and activities…He's directly responsible for the administrative scheduling, evaluation form completion, et cetera, ordering equipment, reviewing budgets…Alec primarily is responsible for the administration of the program. So making sure that our coaches are qualified, making sure that they have the proper paperwork filed, making sure that our kids have their physicals turned in, that they have their compliance paperwork done, making sure that the parents have paid the fees, scheduling of all of the games, the referees, something as simple as if you have a volleyball game after school and you're the athletic director, you have the cash box for the person taking tickets, you put the score board out, make sure the person taking score shows up, and you supervise the facility" T. 68-70.

Moreover, we note Decedent's act of running on the treadmill cannot be said to have been performed for relationship building or setting an example given that it was summer break, there were no students on the school grounds, and Cook indicated that at that time of day, the cardiovascular room was restricted to staff/faculty use only. T. 59.

Turning to the employment contract, we do not find this indicates an expectation of physical fitness. While Respondent reserved the right to adopt "rules, regulations, or orders" regarding, *inter alia*, physical fitness, the Commission finds it significant that the Board never did so; to be clear, there is no evidence to suggest the Board imposed a fitness metric. The Commission finds this fact buttresses the testimony of Bryant and Cook who both testified there was no expectation that Decedent maintain a certain level of fitness. We recognize that Wilcox stated it was important for the athletic director to set a good fitness example for the students (T. 26), however, we emphasize Wilcox conceded that was merely his opinion and not a requirement set by his school district. T. 33-34.

Finally, the Commission notes that Petitioner, who was the only witness who could have reliably explained Decedent's attitude toward physical fitness, was not asked to do so. Certainly, we are not suggesting Petitioner could have properly testified as to whether Decedent believed fitness was incidental to his position as athletic director. However, Petitioner could have described Decedent's level of physical fitness over the 15 years of their marriage and testified as to whether or not Decedent had an increased focus on physical fitness after he transitioned from teacher to athletic director.

Decedent suffered a fatal cardiac event while running on a treadmill. The Commission finds Decedent's workout was not incidental to his employment. Therefore, Decedent's injury did not arise of his employment.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's claim for benefits is denied.

The bond requirement in Section 19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." *820 ILCS 305/19(f)(2)*. Based upon the denial

of compensation herein, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

October 4, 2022 /s/ *Stephen J. Mathis*

D: 7/13/22

43 /s/ *Deborah L. Simpson*

DISSENT

I disagree with the majority's decision denying Petitioner's claim for benefits. In my view, Mr. Anderson's heart attack occurred in the course of and arose out of his employment.

Initially, I find Mr. Anderson's heart attack occurred within a reasonable time after the end of the administrative day. *Caterpillar Tractor Co. v. Industrial Commission*, 129 Ill. 2d 52, 57 (1989). As the Majority observes, the administrative day ended at 3:30 p.m., and Cook testified he spoke with Mr. Anderson approximately an hour later. Notably, Cook testified it was commonplace for faculty members to use the athletic facilities after school hours (T. 56, 59), and on the day in question, Cook and several other individuals had remained on the premises and were taking advantage of the facilities while awaiting that evening's orientation. T. 45. As the Majority stated, resolution of the issue rests on whether Mr. Anderson was on the employer's premises "within a reasonable time" before or after work. I find that remaining on Respondent's premises and utilizing the athletic facilities after normal school hours while waiting for a mandatory evening orientation to begin was reasonable. In many respects, it would have been unreasonable to expect Mr. Anderson to leave the premises and then return for the evening orientation just a few hours later. In my view, Mr. Anderson's injury occurred in the course of his employment.

I similarly find Mr. Anderson's accident arose out of his employment. To be clear, I am not necessarily persuaded by Petitioner's suggestion that the leadership requirement incorporates physical fitness. Rather, I find the evidence reflects physical fitness is inherent in Mr. Anderson's role as athletic director. See *Elmhurst Park District v. Ill. Workers' Comp. Comm'n*, 395 Ill. App. 3d 404, 410-11 (1st Dist. 2009) (finding that the claimant fitness supervisor proved his work injury arose out of his employment and was specifically incidental to his employment because according to his job description, his job required him to promote Respondent's programs, thus his activity of playing wallyball off-site with potential customers served the purpose of promoting Respondent's programs).

Petitioner presented the testimony of Ronald Edward Wilcox, who is the athletic director at Kankakee High School and is a member of both the Illinois Athletic Directors Association and NIAAA, which is a national organization. T. 23-24. Wilcox explained the athletic director is "the face of the athletic department" and as such, it is important for an athletic director to provide a good example of maintaining a high level of fitness. T. 26. Wilcox further explained that even

though his employment contract does not (explicitly) require him to maintain a level of fitness, nor engage in relationship building with the students, he does so because he believes those things are incidental to his job. T. 42. I find it can be reasonably inferred that Mr. Anderson held the same belief, feeling it necessary for the head of the athletic department to exemplify physical fitness, and this attitude contributed to Mr. Anderson's reputation as an excellent athletic director. Significantly, Bryant acknowledged that it was Mr. Anderson's reputation that caused her to contact him about the athletic director opening at Homewood. T. 62-63. In my view, Mr. Anderson's "above and beyond" approach to his job duties set a positive example for the students and staff and therefore benefitted Respondent.

Further, I disagree with the Majority as to the significance of the physical fitness provision in the employment contract. I find the Board's inclusion of a provision specifically reserving the Board's right to impose "rules, regulations and orders" relating to physical fitness is clear evidence that physical fitness was contemplated as part of Mr. Anderson's job. While the Majority emphasizes that no such rule was ever imposed, it is equally reasonable to infer that such a rule, regulation or order was unnecessary because Mr. Anderson already incorporated physical fitness into his job performance.

Having found Mr. Anderson's injury occurred in the course of and arose of out his employment, I further find Mr. Anderson's heart attack was causally related to his work activities. The record contains two expert opinions. Petitioner offered the opinion of Dr. Bruce Leavitt, a cardiothoracic surgeon. Dr. Leavitt concluded Mr. Anderson had significant atherosclerotic disease (heart disease), including his "left anterior descending coronary artery having a 90% calcified occlusion, his circumflex having a 75% calcified occlusion and his right coronary artery had a 50% calcified occlusion," as well as evidence of a prior heart attack. Pet.'s Ex. 8. Dr. Leavitt opined Mr. Anderson suffered sudden cardiac death secondary to pre-existing structural heart disease while exercising on a treadmill:

> The demand ischemia (lack of blood flow to the heart muscle) was causative in the development of the dysrhythmia [abnormal heart rhythm] that caused Mr. Anderson's death. While exercising on the treadmill, he placed an increased demand on his heart for oxygen required for that intense level of exercise. The blocked arteries could not deliver the amount of oxygen needed for his heart muscle to perform adequately. Ischemia (lack of oxygen) developed in his heart muscle which in turn led to the probable cause of his arrhythmia which eventually led to his death. Certainly, he would have had a cardiac issue in the future because of the presence his [*sic*] 3 blocked coronary arteries. More than likely the patient had silent ischemia which means he had no symptoms from the blocked arteries that was [*sic*] present in his heart. Pet.'s Ex. 8.

Respondent offered the opinion of Dr. Dan Fintel, a cardiologist. Dr. Fintel concluded Mr. Anderson suffered sudden cardiac death secondary to malignant ventricle arrhythmia with underlying three-vessel coronary artery disease and involvement of the proximal left-anterior descending artery. Resp.'s Ex. 3. Dr. Fintel noted the Mr. Anderson had "severe underlying obstructive premature coronary artery disease," including "a proximal 90% obstruction of his left-anterior descending artery which is certain to cause myocardial ischemia at high workloads." Resp.'s Ex. 3. Dr. Fintel indicated, "When Mr. Anderson played basketball prior to his sudden death and/or used the treadmill, he increased his myocardial oxygen demand and experienced

ischemia in his left ventricle. This placed him at risk for developing the malignant arrhythmias of ventricle tachycardia or ventricle fibrillation which would likely lead to his cardiopulmonary arrest and eventual degeneration into asystole as discovered by the EMS." Resp.'s Ex. 3. Dr. Fintel further opined, however, that Mr. Anderson was essentially a heart attack waiting to happen:

> Nonetheless, even in the absence of exertional activity, Mr. Anderson was at significant risk for suffering myocardial infarction and sudden cardiac death at rest.
>
> ***
>
> In the absence of medical treatment for his underlying severe coronary disease, I believe that it was highly likely that Mr. Anderson would have suffered a myocardial infarction or cardiac death. Resp.'s Ex. 3.

Although Mr. Anderson had severe occlusion in three arteries and evidence of a prior heart attack, the credible medical evidence establishes that his activity on the treadmill was *a* factor in his cardiac event. See *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 205 (2003)(holding that an accident need not be the sole or primary cause—as long as employment is *a* cause – of a claimant's condition).

Regarding the disputed benefits, I find Petitioner entitled to benefits under Section 7 of the Act. The evidence establishes Petitioner and Mr. Anderson wed on July 18, 1998, and they were still married when Mr. Anderson deceased. Pet.'s Ex. 1, T. 9. The evidence further establishes the couple had one daughter who was born in 2001. Pet.'s Ex. 2. I find Petitioner entitled to the sum of $1,331.20 per week, the statutory maximum for Mr. Anderson's date of accident, as surviving spouse, on her own behalf and on behalf of their daughter, until $500,000.00 has been paid or 25 years, whichever is greater, because the injury caused Mr. Anderson's (the employee's) death, as provided in Section 7(g). I further find Petitioner entitled to $8,000 for burial expenses, as provided in Section 7(f).

For all of the above reasons, I respectfully dissent.

/s/ *Deborah J. Baker*

DJB/mck

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
FATAL

ANDERSON, KAREN WIDOW OF ANDERSON, ALEC AND MOTHER OF ANDERSON, SIERRA A MINOR
Employee/Petitioner

Case# **13WC039081**

HOMEWOOD FLOSMOOR HIGH SCHOOL
Employer/Respondent

On 1/17/2018, 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:

0347 MARSZALEK AND MARSZALEK
STEVEN A GLOBIS
120 W MADISON ST SUITE 801
CHICAGO, IL 60602

0863 ANCEL GLINK
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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
FATAL

Karen Anderson, Widow of Alec Anderson and Mother of Sierra Anderson, a minor
Employee/Petitioner
v.

Case # **13 WC 39081**

Consolidated cases: _____

Homewood Flossmoor High School
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago**, on **October 4, 2017**. 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 Decedent's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Decedent's current condition of ill-being causally related to the injury?
G. ☐ What were Decedent's earnings?
H. ☐ What was Decedent's age at the time of the accident?
I. ☐ What was Decedent's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Decedent reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?

M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **August 7, 2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Decedent Alec Anderson ***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, Decedent Alec Anderson earned **$118,294.80**; the average weekly wage was **$2,274.90**.

On the date of accident, Decedent Alec Anderson was **54** years of age, ***married*** with **1** dependent child.

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

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

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

The Arbitrator finds that Decedent Alec Anderson died on **August 7, 2013**, leaving **2** survivors, as provided in §7(a) of the Act, including **a wife and a minor child.**

ORDER

The Arbitrator finds that because decedent Alec Anderson's activity of exercising after his job responsibilities had ended on August 7, 2013 was a voluntary recreational activity his death did not arise out of and in the course of his employment. In accord with §11 of the Act, benefits are denied.

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

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

Signature of Arbitrator

January 15, 2018
Date

JAN 17 2018

Karen Anderson, widow of Alec Anderson and mother of Sierra Anderson, a minor, v. Homewood Flossmoor High School
13 WC 39081

INTRODUCTION

This matter proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were: ***C:*** Did an accident occur that arose out of and in the course of the deceased Alec Anderson's employment by Respondent?; ***F:*** Was the death of Alec Anderson causally related to the accident on August 7, 2013?; ***J:*** Were the medical services that were provided to the deceased Alec Anderson reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***L:*** What is the nature and extent of the injury?

STATEMENT OF FACTS

This matter involves a death claim from August 7, 2013, relating to the death of Alex Anderson, brought by his widow, Petitioner Karen Anderson. Petitioner testified she and Mr. Anderson were married July 18, 1998 (PX #1). Petitioner was still married to Mr. Anderson at the time of his death on August 7, 2013 (PX #3). They had a daughter Sierra Anderson, born May 18, 2001 (PX #2). Mr. Anderson had no other children.

Petitioner testified about Alec Anderson's education and background as an Athletic Director for Respondent Homewood Flossmoor High School. Mr. Anderson graduated from SIU–Carbondale, majoring in history and physical education. He first worked at Kankakee School District in 1985 as a history and physical education teacher for 13 years. He later got his Masters Degree from Governor's State while working there in their Administration. He was employed by Urbana High School as Athletic Director and Assistant Principal for 6-8 years. Mr. Anderson then worked at Evanston High School as Athletic Director for one year. Next, he was employed at Bolingbrook High School for 8 years as an Assistant Principal and Athletic Director.

In August 2012 Mr. Anderson was hired by Respondent as Athletic Director. Petitioner believed that as Athletic Director for the Respondent, Mr. Anderson supervised all sporting events, attending home and away athletic events. On the date of his death, August 7, 2013, Mr. Anderson was required to be at Freshmen Orientation later that night. Petitioner testified that Mr. Anderson often kept hours from 7:00 A.M. until 10:00 P.M., depending on what game was going on, and whether the athletic events were at home or away.

Petitioner testified that Mr. Anderson was muscular and not overweight. He worked out regularly at the school, but did not have any personal goals he was hoping to accomplish with his fitness activity. He would bring workout clothes with him to school just about every day. Petitioner believed that although her husband's regular work day would be by 4:00 or 4:30 P.M., there was always some additional thing, such as a game or a meeting that he needed to attend. On the morning of August 7, 2013, when she last saw Mr. Anderson, he exhibited no signs of ill health.

Petitioner believed that the day he passed away, August 7, 2013, Mr. Anderson was required to be at Freshmen Orientation, so that his work day did not end until after that event. She believed that his workday was not over until that event was done. Petitioner testified that she would not be surprised that there were other people that day, on August 7, 2013, playing basketball. She agreed that it was not part of their job duties to play basketball between the times of 4:00 P.M. and 7:00 P.M.

Ronald Edward Wilcox testified for Petitioner. Mr. Wilcox is Athletic Director of Kankakee High School. He has been working 18 years in education, and has been employed as a teacher, a basketball coach, an Assistant Athletic Director, and Athletic Director for the last 3 years. He belongs to the Illinois Athletic Directors Association and the NIAAA, the national organization for athletic associations.

During meetings and conversations with other athletic directors at these associations, Mr. Wilson discussed expectations and duties of athletic directors. In his opinion, it is important for an athletic director to maintain a high level of fitness. He believes an athletic director should "practice what you preach" when working with student athletes. In his own practice, it is not uncommon to participate in certain practices, and involve himself in open gyms. Mr. Wilcox is also aware of other athletic directors, including himself, who workout on a school's exercise equipment.

Mr. Wilcox admitted that his contract with Kankakee High School does not require that he keep a certain level of physical fitness. He also admitted that his job description does not require that he maintain a level of physical fitness. When he started employment as Athletic Director, he had a physical examination, but not since. He is not aware of Homewood Flossmoor's standards for its Athletic Director, so he could not testify about whether the Respondent requires a certain level of physical fitness for its athletic director. He testified that he is

"pretty hands-on" with working with his students, but that is not aware of the level of interaction which Alec Anderson had with his students at Homewood Flossmoor.

Homewood Flossmoor Associate Principal Dr. Lawrence Cook testified for Respondent. Dr. Cook knew Alec Anderson personally as the school's Athletic Director. Dr. Cook agreed that he was present at the high school when Mr. Anderson passed away of August 7, 2013. Dr. Cook had been playing basketball when he spoke with Mr. Anderson on the evening of August 7, 2013, around 4:30 P.M. Mr. Anderson was coming from the weight room. Mr. Anderson said that it had been a while since he had lifted weights and that he was happy to lift them and was next going to run before attending Freshman Orientation. Dr. Cook assumed Alec went to the cardio-vascular room.

Dr. Cook testified that administrators are obligated to be at school from 7:30 A.M. until 4:00 P.M. He believed it was the same for Mr. Anderson as well. Freshman Orientation was scheduled for 7:00 or 7:30 P.M. Although employees were not required to stay in between 4:00 P.M. and 7:00 P.M., Dr. Cook testified that he was waiting at the school until the start of orientation. Dr. Cook agreed that the basketball games that he was playing were voluntary and recreational and something he personally chose to do that day but were not part of his job duties. Dr. Cook did not believe that Mr. Anderson was required to lift weights or go on the treadmill, because he has never seen that in any contract or heard it at any meetings that they are required to engage in physical activities in order to maintain or keep their jobs.

At the freshmen orientation meeting, just before 7:00 P.M. on August 7, 2013, the Principal asked if anyone knew of Mr. Anderson's whereabouts. Dr. Cook said that he had seen him about 2 hours ago. Because Mr. Anderson lived 30 to 40 minutes from the school, Dr. Cook thought that it did not make any sense for him to go home and then come back later for Freshmen Orientation meeting. Dr. Cook volunteered to look for Mr. Anderson. He found Mr. Anderson unresponsive lying on the treadmill, at the end of the belt, face down about 7:15 or 7:30. Mr. Anderson was wearing workout clothes.

Dr. Cook testified that it is reasonable for school employees to use the fitness center during school hours, such as during lunch but not during regular work hours. When he uses the fitness equipment, it is something he believes to be completely voluntary and recreational. When he saw Mr. Anderson on the day

he passed away, it was already after school hours. The cardiovascular room is off limits to the general public and would only be used for staff or faculty.

Jodi Marie Bryant, Director of Human Resources and Public Relations for Respondent, also testified for the Respondent. Her job duties include managing all employees, participating in all the hiring, enforcement of school policies, making sure people are aware of policies and maintaining the personal files, among many other things. She is the custodian of the personnel files and records. Ms. Bryant participated in hiring Alec Anderson as Athletic Director. On August 7, 2013, Ms. Bryant was at the school, but did not speak at Freshman Orientation. Rather, she got the materials ready for the meeting and was present as an administrator of the school. That day, after the school day ended, and because she lives in Lisle, she chose not to drive home because of the distance. Instead, she stayed at her desk until the freshman orientation began.

Ms. Bryant confirmed that typical administrative work days during the school year are from 7:30 A.M. until 4:00 P.M. During the summer, the hours are from 7:30 A.M. to P.M. On the night of August 7, 2013, because there was a work event at 7:00 p.m., she was duty free from 3:30 P.M. until 7:00 P.M. Also, Ms. Bryant agreed that all the employees who needed to attend the freshman meeting at 7:00 p.m., were "duty free" between 3:30 P.M. and 7:00 P.M. Mr. Anderson had the same summer work hours as did all other 12-month employees. Mr. Anderson would not have been required to stay at work beyond 3:30 P.M. except for attending the 7:00 P.M. meeting. Ms. Bryant saw Mr. Anderson that morning and he did not look out of the ordinary.

Ms. Bryant brought Mr. Anderson's personnel file to the hearing (RX #1). The personnel file contained the job duty description for Director of Athletics and Student Activities. This job duty description was in place at the time of Mr. Anderson's death. Ms. Bryant is familiar with this job duty description because when she hired the person for the position, they go over these duties to make sure that the new hire understands the requirements of the job. She testified that Mr. Anderson's job duty description did not require the Director of Athletics and Student Activities to maintain a certain level of physical fitness. Additionally, the Director of Athletics, he did not teach students. Instead, he was responsible for the 32 sports, 75 teams, and 80 clubs and activities, which involve administrative scheduling, evaluation form completion, ordering equipment, and reviewing budgets.

Ms. Bryant testified that every employee, when hired by the School District, needs to have a physical done in order to be hired. Mr. Anderson's physical exam on April 30, 2012, he was normal, showing that he had a TB test and was physically fit for the employment and the position (RX #5). Mr. Anderson also passed a physical fitness test demonstrating that he was able to walk distances, sit for the correct length of time required, and frequently lift 10 lbs. The personnel file had a Contract for Director of Athletics, Intramurals, and Student Activities, dated July 1, 2012 through June 30, 2017 (RX # 2). Ms. Bryant reviewed these contracts and authenticated their accuracy. There was nothing in Mr. Anderson's contract that required him to maintain a certain level of physical fitness. None of the School District contracts require any employee to maintain a certain level of fitness. There are no other agreements between the School District and Amr. Anderson.

Ms. Bryant testified that most of the school's administrators and a lot of the teachers work out at the school, but are only allowed to work out outside of work hours. That includes all staff members, including physical education staff. The locations around the school where they can work out include the track, working in the weight room, in the fitness room, or in the field house in the north building. These athletic facilities are benefits available to both administrators and staff. There have been instances when she has had to tell employees that they cannot work out during school hours. The use of the school exercise equipment is something that is totally voluntary on the part of the employee. She further testified that for activities that occurred after the regular school day end but before an activity like the orientation in this case, administration and faculty members were allowed to use the exercise equipment, but they do so outside of the scope of their employment.

Ms. Bryant was not Mr. Anderson's direct supervisor. She never provided guidance or suggestions to Mr. Anderson regarding how he performed his job. Mr. Anderson had from time to time assisted in coaching the football team. Ms. Bryant emphasized that his responsibilities were administrative, not coaching. She described Mr. Anderson as the "coach of the coaches." Assisting in athlete instruction, assisting in coaching, or refereeing an intramural game were outside his job responsibilities.

Petitioner's Exhibit # 5 is the Flossmoor Fire Department EMS report for the events at Homewood Flossmoor on August 7, 2013. The report indicates that a call was received at 19:32 hours from the men's locker room at Homewood Flossmoor High School indicating the Athletic Director had passed out. The EMS crew was taken to the second floor of the high school gymnasium where Mr.

Anderson was having CPR done to him. A heart monitor was placed but no pulse was noted. Mr. Anderson was noted to be in asystole. It was noted he had been running on the treadmill next to his body and had cuts/burns to his face and neck from the machine. He was transported to South Suburban Hospital.

The records of South Suburban Hospital were admitted evidence as Petitioner's Exhibit #6. Mr. Anderson arrived by EMS at 20:00 hours. Mr. Anderson was unresponsive and in asystolic arrest on arrival. His pupils were fixed and dilated. The physical exam noted lividity and coolness of his body. Heroic efforts to resuscitate were unsuccessful. He was pronounced dead at 20:06 hours. The diagnosis was cardiac arrest – asystole. It was noted as an ME (Medical Examiner) case.

Petitioner's Exhibit # 7 is the report of postmortem examination performed on August 8, 2013, by Latanja M. Watkins, M.D. of the Cook County Medical Examiner's Office. Dr. Watkins noted coronary artery disease due to arteriosclerotic cardiovascular disease. There was 90% occlusion of the left anterior descending coronary artery, 75% occlusion of left circumflex coronary artery, and 50% occlusion of the right coronary artery. Abrasions to the head and neck with a contusion to the right arm were also noted. It was Dr. Watkins' opinion that Mr. Anderson died of sudden cardiac death due to severe coronary artery disease due to arteriosclerotic cardiovascular disease.

Petitioner's Exhibit #4, records of Dr. Rajasekhar Kolla, Mr. Anderson's primary care physician, was admitted over Respondent's objection. Dr. Kolla's records covered a period from April 30, 2012 through August 2, 2013. Dr. Kolla noted that Mr. Anderson was a "well adult."

Petitioner's Exhibit #8 was December 15, 2016 report from Dr. Bruce Leavitt, Professor of Surgery, Division of Cardiothoracic Surgery at the University of Vermont Medical Center. He reviewed the Cook County Medical Examiner's report, records have South Suburban Hospital, the South Cook County EMS report, and organ tissue donor forms. Dr. Levitt summarized his review on those records. It was his opinion that Mr. Anderson died from sudden cardiac death secondary to pre-existing structural heart disease while exercising on a treadmill. Dr. Leavitt noted that Mr. Anderson's heart disease included three-vessel coronary artery disease (blockages of over 50%), as well as evidence of an old heart attack.

Dr. Leavitt concluded that demand ischemia (lack of blood flow to the heart muscle) was causative in the development of the dysrhythmia that caused Mr. Anderson's death. The doctor opined that while exercising on the treadmill he placed an increased demand on his heart for oxygen required for that intense

level of exercise. The blocked arteries could not deliver the amount of oxygen needed for his heart muscle to perform adequately. Ischemia developed in his heart muscle which in turn led to an arrhythmia which eventually led to death.

Respondent's Exhibit #3 is the undated report of Dan J. Fintel, M.D., Professor of Medicine, Department of Cardiology at the Feinberg School of Medicine at Northwestern University. Dr. Fintel made to the be so EMS report, records of South Suburban Hospital, records of Dr. Kolla, and the Medical Examiner's report. Dr. Fintel noted Mr. Anderson's diagnosis was sudden cardiac death secondary to malignant ventricular arrhythmia with underlying three-vessel coronary artery disease. Dr. Fintel noted Mr. Anderson had severe underlying premature coronary artery disease.

Dr. Fintel noted that when Mr. Anderson exercised prior to sudden death he increased his myocardial oxygen demand and experienced ischemia in his left ventricle. This placed him at risk of developing the malignant arrhythmias of ventricular tachycardia or ventricular fibrillation which was likely led to his cardiopulmonary arrest. Dr. Fintel also noted that even absent exertional activity Mr. Anderson was at significant risk of suffering myocardial infarction and sudden cardiac death. He further noted that without medical treatment for the underlying severe coronary disease he believed it was highly likely Mr. Anderson would suffer a myocardial infarction or cardiac death. Dr. Fintel noted that significant ischemia would predispose Mr. Anderson to an arrhythmia at rest or due to increase in myocardial oxygen demand by exerting himself, such as may have happened on August 7, 2013.

Respondent's Exhibit #1, Director of Athletics and Student Activities job description included in the definition of the position a statement that the Athletic Director: "Provides the leadership to ensure that the extracurricular program is designed and conducted so that students will have optimum opportunities for mental, social and physical development." Major policy responsibilities are listed as well as key functions which include the, "authority/responsibility – supervise all athletics, intramural and student activities." Personnel functions included: "recommend and evaluate all staff in the co-curricular areas." Section C of the job description included: "Provide leadership and supervision in all areas relating to the students in activities."

Respondent's Exhibit #2 is the employment contract between Mr. Anderson and the Board of Education of Homewood Flossmoor High School. That contract was dated December 20, 2012. The contract included a provision stating:

"The Director shall conform to, comply with, and be subject to all lawful rules, regulations and orders heretofore and hereafter adopted by the Board relating to professional growth, physical fitness, temporary illness and temporary incapacity and all other lawful rules, regulations and orders heretofore or hereafter adopted by the Board."

CONCLUSIONS OF LAW

C: Did an accident occur that arose out of and in the course of the deceased Alec Anderson's employment by Respondent?

The Arbitration finds that Petitioner failed to prove that the death of Alec Anderson arose out of and in the course of his employment by Respondent.

An injury is compensable under the Act only if the claimant can prove by a preponderance of the evidence that it arose out of and in the course of his or her employment. An injury arises out of one's employment if its origin is in some risk connected with, or incidental to, the employment so that there is a causal connection between the employment and the accident injury. An injury is in the course of employment when it occurs within the period of employment at a place where the employee can reasonably be expected to be in the performance of his or her duties and while he or she is performing these duties or a task incidental thereto. However, purely voluntary recreational activities are not compensable under the Illinois Workers' Compensation Act. §11 of the Act states in pertinent part:

"Accidental injuries incurred while participating in voluntary recreational programs including but not limited to athletic events, parties and picnics do not arise out of and in the course of the employment even though the employer pays some or all of the cost thereof. This exclusion shall not apply in the event that the injured employee was ordered or assigned by his employer to participate in the program."

Here the question is whether the activities engaged in by decedent Alec Anderson were voluntary recreation or an activity expected within the scope of his employment as Athletic Director. If the activity was purely recreational Petitioner's claim would not be compensable under §11. On the other hand, if the activity was ordered or directed by the employer, an activity from which the employer derived some benefit, then the claim may be compensable.

Petitioner presented the testimony of Ronald Wilcox, Athletic Director of Kankakee High School. Mr. Wilcox testified that a high school athletic director

should be physically fit as an example to students. Wilcox is a member of two professional athletic director organizations. He did not offer evidence that either professional organization recommendations or guidelines that high school athletic directors should be a certain level of physical fitness in order to appropriately perform their jobs. It is clear that Mr. Wilcox offered his personal opinion rather than citing to professional recommendations or guidelines or even accepted custom and practice within the community of high school athletic directors. As such, the Arbitrator does not find Mr. Wilcox's opinions persuasive.

Respondent presented evidence that neither the job description for Athletic Director nor Mr. Anderson's employment contract required that certain level this is a requirement of employment. There was nothing within Mr. Anderson's employment contract or job description which directed or implied that he maintain a certain level of physical fitness as an example for students.

The evidence showed that the administrative duties of Mr. Anderson ceased at 4:00 P.M. and were not to resume until 7:00 P.M. at Freshman Orientation. The time Mr. Anderson spent exercising was voluntary recreation within the purview of §11 of the Act. Mr. Anderson was engaged in an exercise activity that was for his personal benefit during hours when he had no job-related duties or responsibilities. He was clearly engaged in voluntary recreation.

In light of all the evidence, the Arbitrator finds that Petitioner failed to prove that Alec Anderson's death arose out of and in the course of his employment by Respondent.

F: <u>Was the death of Alec Anderson causally related to the accident on August 7, 2013?</u>

In light of the Arbitrator's finding above that Mr. Anderson's accidental death did not arise out of and in the course of his employment, this issue is moot.

The Arbitrator does note that Mr. Anderson had significant three-vessel coronary artery disease. The physician opinions presented by both Petitioner and Respondent inferred that Mr. Anderson's heart disease made him prone to cardiac ischemia and infarction, whether exercising or not. The Arbitrator does note that Dr. Leavitt, Petitioner's expert, is a board certified thoracic surgeon, while Dr. Fintel, Respondent's expert, is aboard certified cardiologist. Had their

opinions differed in any substantial way, the Arbitrator would have deferred to Dr. Fintel's opinions.

However, due to the unfortunate event involved here being the result of voluntary recreation Petitioner failed to prove that Mr. Anderson's death was causally related to any work activity.

J: Were the medical services that were provided to the deceased Alec Anderson reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

In light of the Arbitrator's finding above that Mr. Anderson's accidental death did not arise out of and in the course of his employment, this issue is moot.

The Arbitrator does note that the emergency paramedic and medical services provided to Mr. Anderson were in fact reasonable and necessary. However, due to the unfortunate event involved here being the result of voluntary recreation Petitioner failed to prove that those medical services and the related charges were causally related to any work activity.

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

In light of the Arbitrator's finding above that Mr. Anderson's accidental death did not arise out of and in the course of his employment, this issue is moot.

This fatal injury was the result of voluntary recreational activity under §11 of the Act, and therefore Mr. Anderson's death did not arise out of and in the course of his employment and no benefits can be awarded as a result.

Steven J. Fruth, Arbitrator

January 15, 2018
Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC026293
Case Name	Jessica Lupercio v. Paradis 4 Paws Midway
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0375
Number of Pages of Decision	30
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Caroleann Gallagher
Respondent Attorney	James Byrnes

DATE FILED: 10/4/2022

/s/ Deborah Baker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JESSICA LUPERCIO,

Petitioner,

vs. NO: 19 WC 26293

PARADISE 4 PAWS MIDWAY,

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 her employment on March 29, 2019, whether timely notice was provided, whether Petitioner's current condition of ill-being is causally related to the work injury, entitlement to temporary disability benefits, and entitlement to incurred medical expenses as well as prospective medical care, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated 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 20 WC 05010.

CONCLUSIONS OF LAW

Causal Connection

The Arbitrator concluded Petitioner's condition of ill-being is causally related to her March 29, 2019 work accident. Our review of the evidence yields the same result, however, we write separately as our analysis differs.

A finding of causal connection can be based upon direct or circumstantial evidence and the reasonable inferences which can be drawn from such evidence. *Gano Electric Contracting v. Industrial Commission*, 260 Ill. App. 3d 92, 96 (4th Dist. 2004). In the Commission's view, the proper legal analysis begins with the direct evidence (the expert medical opinions) which can then be supplemented with consideration of the circumstantial evidence (chain of events). As such, we focus our analysis on the conflicting medical opinions of Dr. Steven Mather and Dr. Ashraf Darwish.

Dr. Mather conducted a record review at Respondent's request. In his report, Dr. Mather opined that Petitioner's March 29, 2019 "pushing incident of a dog" did not cause her disc herniation. Instead, Dr. Mather opined that Petitioner had "a slow-growing disc protrusion" which "at some point will cause the patient to be symptomatic." Resp.'s Ex. 2, Dep. Ex 2. In denying a causal connection, Dr. Mather emphasized that: "It is very, very significant to evaluate the CT scan from August 15, 2019. This shows that the 'herniation' is not a herniation, but rather a calcific protrusion that has been going on for years." Resp.'s Ex. 2, Dep. Ex. 2. During his deposition, Dr. Mather reiterated that the calcified disc protrusion had "been there for years" and was "degenerative." Resp.'s Ex. 2, p. 41. The doctor further explained this phenomenon occurs more commonly with "chunky" people, and it is "very common" for such slow-growing calcifications to spontaneously become so painful that a person seeks medical treatment and he "frequently" sees acute onset of foot drop in such cases. Resp.'s Ex. 2, p. 49, 51-52.

Dr. Darwish, in turn, reached the opposite conclusion. Dr. Darwish, who is Petitioner's treating orthopedist, concluded Petitioner had a large disc herniation which was causally related to Petitioner having to push a heavy dog into its boarding suite on March 29, 2019 as well as the August 14, 2019 fall. During his deposition, Dr. Darwish "strongly disagreed" with Dr. Mather's suggestion that Petitioner's presentation was consistent with a slow-growing degenerative process:

> I think that if -- if you look at the -- really our experience as spine surgeons and the literature on how foot drops develop, the vast majority of them develop as a result of an acute disc herniation, not as a result of slow-growing -- what we -- we see as lumbar stenosis. At -- those conditions, we normally see in -- in elderly patients who have had degenerative changes for decades and slow-growing disc osteophytes or a calcified disc, and those patients almost never develop weakness or foot drops, they develop more of pain in their lower extremities with walking. The patient's presentation here is an acute -- is -- is more consistent with an acute disc herniation compressing the nerve and causing acute foot drop or acute weakness in her lower extremity. So I -- I -- I disagree that this is from a slow-growing degenerative condition or calcification of a disc. Pet.'s Ex. 9, p. 18-19 (Emphasis added).

Dr. Darwish further explained his disagreement with Dr. Mather's finding that the calcification enveloped the herniation: "…there is some component of calcification at the L4-5 level, but it's on the right side. If -- if you look at the CT scan, the cut through disc space at L4-5 doesn't show any calcification on the left side. It actually shows what I would interpret to be a soft disc herniation on that side," which the doctor stated is consistent with Petitioner's left-sided symptoms of radiating pain and weakness. Pet.'s Ex. 9, p. 16-17. Further, Dr. Darwish repeatedly stated he

reviewed the August 15, 2019 CT and MRI scans (Pet.'s Ex. 9, p. 14, 16, 39, 40) and explained he did not refer to those films in his March 13, 2020 note because they were not relevant to his treatment plan. Pet.'s Ex. 9, 46-47. Significantly, Dr. Darwish not only detailed his disagreement with Dr. Mather's interpretation of the CT scan, but Dr. Darwish further explained that Dr. Mather's opinion is inconsistent with the surgical procedure that Dr. Diane Sierens performed on August 16, 2019:

> I don't see that, and -- but I gotta be even more clear, even if there was calcification, I -- I don't think that would change anything at all in terms of the diagnosis or any of my opinions, but I -- I don't see any calcification that is on the left side at all. There is some calcification on the right side at the L3-4 level, but there's -- soft disc herniation on the left side at L4-5 and -- and furthermore, his report of the records or his record review states that a large disc was removed at L4-5 on the left side by the surgeon at Cook County Hospital on August 16th of 2019, and so this is a soft disc, a -- a -- a disc made up of the disc material and that would be removed and described as a large disc, not - - not - - not a calcification. A calcified disc or -- or an osteophyte, you can't just remove with a discectomy, you have to take the whole disc out with special instruments, you -- like shavers and curettes, not -- not something that could be taken out during a microdiscectomy. Pet.'s Ex. 9, p. 39 (Emphasis added).

The Commission finds Dr. Darwish's conclusions are credible, persuasive, and consistent with the medical evidence, and we rely on same.

The Commission agrees with the Arbitrator and finds the credible evidence establishes that Petitioner's condition of ill-being is causally related to the March 29, 2019 accident.

Temporary Disability

The Arbitrator ordered Respondent to pay Temporary Total Disability ("TTD") benefits which appear to be prospective in nature. We emphasize, however, that there is no authority under the Act to award temporary disability benefits beyond the arbitration date: "The Arbitrator may find that the disabling condition is temporary and has not yet reached a permanent condition and may order the payment of compensation up to the date of the hearing…" *820 ILCS 305/19(b)* (Emphasis added).

The award of TTD benefits from "October 6, 2021 until Petitioner is declared to be at maximum medical improvement" is contrary to law and is hereby vacated. The Commission further strikes the entirety of Section O from the Decision.

Corrections

The Commission corrects the Order to reflect Petitioner is awarded "Temporary Total Disability," (not "Temporary *Partial* Disability"), benefits commencing on August 15, 2019, pursuant to §8(b). The Commission notes the parties stipulated on the Request for Hearing form that "Temporary *Partial* Disability" benefits under §8(a) were not at issue.

The Commission corrects Section L of the body of the Decision to reflect Temporary Total Disability benefits are awarded through "October 5, 2021."

Untranslated Evidence

The Findings of Fact include two footnotes: Footnote 1 defines the word "quinceañera," and Footnote 2 asserts that the contents of Petitioner's Exhibit 8 were translated by "Petitioner herself as well as Google Translate." The Commission finds both footnotes rely on evidence outside the record. As to Footnote 1, there is no identified source for the definition. As to Footnote 2, addressing the Spanish-language records for treatment Petitioner received from two providers in Mexico, Salud Digna and Farmacias Clafer (Petitioner's Exhibit 8), the Commission emphasizes Google Translate is not an acceptable method to translate medical documents in this judicial forum. Further, while Petitioner was asked about the contents of the medical records, there was no preliminary discussion of Petitioner's proficiency in the Spanish language, especially with respect to medical terminology. To be clear, the record does not contain a direct English translation of Petitioner's Exhibit 8 that was provided by a demonstrably qualified interpreter. Therefore, the Commission strikes the footnotes in the Findings of Fact. The Commission concludes the only reliable information to be gleaned from Petitioner's Exhibit 8 is the date Petitioner presented to the facility.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 23, 2021, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $355.43 per week for a period of 111 6/7 weeks, representing August 15, 2019 through October 5, 2021, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b), this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of post-hearing Temporary Total Disability benefits commencing on October 6, 2021 is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of $59,488.31 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 lumbar spine surgery as recommended by Dr. Darwish, including but not limited to any necessary pre-operative clearance and post-operative rehabilitative treatment, as provided in §8(a) of the Act.

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

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

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

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

October 4, 2022

/s/ *Deborah J. Baker*

DJB/mck

O: 8/10/22

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC026293
Case Name	LUPERCIO, JESSICA v. PARADISE 4 PAWS MIDWAY
Consolidated Cases	19WC026293
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	24
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Caroleann Gallagher
Respondent Attorney	James Byrnes

DATE FILED: 12/23/2021

/s/William McLaughlin, Arbitrator
Signature

INTEREST RATE WEEK OF DECEMBER 21, 2021 0.16%

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)

JESSICA LUPERCIO
Employee/Petitioner

v.

PARADISE 4 PAWS MIDWAY
Employer/Respondent

Case **#19 WC 26293**

Consolidated cases: 20005010

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 **MCLAUGHLIN** Arbitrator of the Commission, in the city of **Chicago**, on **October 5, 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. **X** Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other Accident**, Notice, Causal Connection, TTD owed, TTD continuing, Authorization for Lumbar surgery as recommended by Dr. Darwish, Past, Future and Continuing Rights under Section 8 (a).**

FINDINGS

On the date of accident, **3/29/2019**, 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 ***3/29/2019*** date, Petitioner ***did sustain an accident while 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 $**27,723.91**; the average weekly wage was $**533.15**.

On the date of accident, Petitioner was **27** years of age, **single** with **0** dependent children.

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

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

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

ORDER

Respondent shall pay Petitioner Temporary Partial Disability benefits of $355.43 per week for 111 and 6/7 weeks, from August 14, 2019 through October 5, 2021, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner Temporary Partial Disability benefits of $355.43 per week from October 6, 2021 until Petitioner is declared to be at maximum medical improvement by Dr. Darwish as provided in Section 8(a) of the Act.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule of the following bills: John H. Stroger Hospital; $56,275.31 Hinsdale Orthopedics; $713.00; Premium Healthcare Solutions; $2,500.00;

Respondent shall authorize and pay for the lumbar spine surgery and its sequalae as recommended by Dr. Darwish pursuant to Section 8 (a) and subject to Section 8.2 of the Act.

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

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

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

Signature of Arbitrator

December 23, 2021

ICArbDec19(b)

ILLINOIS WORKERS' COMPENSATION COMMISSION

JESSICA LUPERCIO	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 19 WC 26293
	)	
PARADISE 4 PAWS MIDWAY	)	
	)	
Respondent.	)	

FINDINGS OF FACT

Respondent operates a pet day and overnight care facility at various locations throughout the Chicagoland area. Petitioner, Jessica Lupercio began her employment at Respondent's Midway Airport location, as a Team Member in 2012. She promoted to Supervisor in 2015 at the same location. (Tr. 12-13). Petitioner is 29-years-old and her highest level of education is an associate's degree in Travel and Hospitality from Fox College where she graduated from in 2013. (Tr. 11). In 2018, in addition to working at Respondent's Midway location, Petitioner also started part time at Respondent's downtown location, as a Team Member as well. (Tr. 16).

Petitioner's duties as a supervisor for Respondent included supervising other team members to ensure they carried out their schedules and providing them with any assistance if needed. She administered medications to the pets, scheduled medications for the following day, and scheduled team member's duties for each day. Petitioner also supervised playgroups for the pets, loaded and unloaded the animals one by one into the play area and supervised team members doing the same. (Tr. 13-15). She would also make sure the animals had vaccinations, perform reception duties by checking in animals, and was otherwise involved with everyday tasks involving the care of the animals. (Tr. 75).

On March 29, 2019 Petitioner was working at Respondent's Midway location. At the time she was working with a team member named Mike. Around 10:15 to 10:30 am Petitioner began unloading all the dogs from the play group room to return them to their assigned rooms. (Tr. 17).

Petitioner testified that she attempted to move a large male rottweiler back into his room. Petitioner estimated this dog weighed between 80 to 100 pounds. (Tr. 18). While attempting move the dog, the dog sat down, was not cooperating and would not move. (Tr. 17-18). Attempting to get the rottweiler into the room, Petitioner tried pushing the dog from behind. She pushed him once and he did not move and then on the second or third push she felt a pop in the left side of her lower back. (Tr. 19).

Petitioner testified that, although she didn't feel immediate pain, she did feel *weird*, like something was *off* in her back. (Tr. 19). She proceeded to grab the rottweiler's front legs and pull them in the room first and then she was able to push the dog into the room. Petitioner thereafter proceeded to take the other ten dogs from

the play room and put them into their rooms one by one. (Tr. 20). Petitioner worked the rest of her shift that day and testified that her lower back felt weird throughout the rest of the day. (Tr. 20).

After her shift, Petitioner went home and when she sat down and relaxed, she began experiencing pain in her lower back. She took some over-the-counter pain medication and went to sleep. The next morning, Petitioner woke up with pain in her lower back and testified that she could barely move. (Tr. 21). She told her mom who then gave her pain medication, which made her pain bearable and she went to work (Tr. 21-22).

At the time of the incident Amanda Hernandez was the Petitioners manager. (Tr. 22). Petitioner testified that she spoke with Ms. Hernandez regarding what happened the prior day. She told Ms. Hernandez she hurt her back the previous day while pushing the dog and that she was in pain. (Tr. 22). Ms. Hernandez did not offer Petitioner an incident report and did not tell her to go to the doctor. (Tr. 22-23). Petitioner did not ask to fill out an incident report because she was not offered one and did not think it was a big deal at the time. (Tr. 23). Petitioner proceeded to work the rest of her shift and took pain medication to assist her with the pain she was feeling. (Tr. 23). Petitioner did not seek medical attention at this time. (Tr. 23).

During the months of March of 2019 to July of 2019 Petitioner continued taking over-the-counter pain medications to manage the pain she felt in her back. Petitioner does not have any hobbies nor does she do any sports. (Tr. 24). During that time, she spent most of her time between work and home and go out to eat at a restaurant with her family which barely happened. (Tr. 24).

On July 24, 2019 Petitioner flew to Guadalajara, Mexico for her younger sisters Quinceanera[1] that was to occur on July 27, 2019. There, she stayed in her mother and stepfather's home. (Tr. 25). Petitioner testified that the left side of her back was painful when she arrived in Mexico and she continued to take over the counter pain medications that would help to alleviate her pain. (Tr. 26). She also testified that she was feeling numbness in her left leg at the time and that her back pain was confined to the left side of her back. (Tr. 27).

On the day of the party, Petitioner tried to dance but was unable to do so because of the pain experienced in her back so she spent the party just hanging out and chatting with family. (Tr. 28).

The day after the party, July 28, 2019, Petitioner testified that the pain in her back became unbearable so after being encouraged by her mother she stated to look for a doctor to attend in Mexico. (Tr. 28).

On July 29, 2019, Petitioner attended a health clinic named **Salud Digna**. **(PX8)**.[2] There, Petitioner told the doctor about her back pain and that everything had started with the dog pushing incident in March of 2019. (Tr. 29). Petitioner underwent an x-ray of the lumbar spine as recommended by the doctor. **(PX8 P.1)**.

[1] A Quinceanera represents the celebration of a girl's 15th birthday and is widely celebrated by girls throughout Latin America.
[2] The Citations used with reference to **Exhibit 8** have been translated from Spanish to English by Petitioner herself as well as Google Translate.

Petitioner then presented to **Clafer Pharmacy** on August 2, 2019 where she was seen by Dr. Fernando H. Morales Medrano for a review of the lumbar spine x-ray. **(PX8, P.3)**. After conducting a physical examination of the patient and reviewing her x-ray results, Dr. Medrano diagnosed Petitioner with mechanical low back pain and prescribed medication for pain control. He further recommended that Petitioner use a lumbar back girdle for support, that she rests for 3 weeks, and that she begins rehab if the symptoms persist and undergo further imaging of the lumbar spine if the radiculopathy persists. **(PX8, P.3)**.

Petitioner testified that neither doctor in Mexico performed any type of neck traction on the Petitioner and she never had any pain or issue involving her neck as a result of the incident involving pushing the dog in March of 2019. (Tr. 30).

Petitioner left Mexico and flew back home on August 2, 2019.

She went to Parade 4 Paws that same day to pick up her dogs. (Tr. 31). While there she gave Ms. Hernandez her doctor's notes from Mexico and told Ms. Hernandez what the doctor had recommended. (Tr. 31).

In response, Ms. Hernandez made copies of the doctor's notes and told Petitioner to take some time off work to rest. (Tr. 31).

Ms. Hernandez did not suggest that Petitioner fill out an incident or accident report at any time. (Tr. 31).

Petitioner testified that her and Amanda had a conversation about her back pain on August 2, 2019, being associated with the initial dog pushing incident in March of 2019. (Tr. 32). She further admitted that, as far as she was aware and, in all communications, involving her, Ms. Hernandez, and Alma Garcia (her other Manager) that the back pain was present since the initial dog pushing incident in March of 2019. (Tr. 33).

Petitioner took around two weeks' time off work on Ms. Hernandez's recommendation. During that two-week period, Petitioner testified that she did not see a doctor and stayed home because she was alone and that, since she wasn't doing much physical activity, the pain was bearable and the medications prescribed by the doctor in Mexico were helping a little. (Tr. 33-34). Over the next few days, she rested by staying in bed with minimal walking and did not even walk her dogs during that time.

Petitioner testified that she felt ready to go back to work after two weeks and she did so on August 14, 2019.

After a second accident and leaving work from the Respondent's job site on August 14, 2019, Petitioner attended to the Emergency Department of **Cook County Stroger Hospital**. **(PX2)**. There, she complained of right leg pain with swelling, left ankle pain with swelling, and right hip pain. **(PX2 P.181).**

Her history at Cook County Stroger, recorded that she "*presented with left leg weakness and numbness. Two months ago she hurt her lower back moving a heavy dog. Since then she has had back pain worse with heavy lifting, bending, walking. 2 weeks ago she began to notice lower extremity tingling and numbness that is*

worse on the left side. Today she fell at work when her leg gave out." **(PX2 P.182).** Bethann Freeman PA C diagnosed Petitioner with back pain and leg weakness and ordered a CT scan of the lumbar spine for further evaluation. **(PX2 P.184).** Petitioner was asked if she told the doctor at the ER that she had hurt her back two weeks ago and she testified as follows:

Q. In terms if the history, did you tell the doctors at the ER at Cook County Stroger that you had hurt your back moving a heavy dog two months ago?

A. I said "a few months ago." **(Tr. 40)**.

Petitioner was admitted to Cook County Stroger as an inpatient and underwent a CT scan of her lumbar spine on August 15, 2019.

Upon review of the CT scan of the lumbar spine, Dr. Meghan Mathur noted *"severe narrowing at L4-L5 level with disc extrusion."* **(PX2 P.187).** She was then referred for an MRI of her lumbar spine. Upon review of the lumbar spine MRI, Dr. Zainab Raji noted that the Petitioner has a large herniated disc at L4-L5 and referred her to neurosurgery service for immediate and emergency surgery. **(PX2 P.191).**

On August 16, 2019 Petitioner was seen by Dr. Bradley Kolb.

He reported the history of the illness as follows; *"27-year-old female with 2-month history of left foot drop, found to have L4-L5 HNP with compression of traversing nerve roots on MRI. Petitioner presented to Stroger Hospital after her left leg gave out at work on August 14, 2019, causing her to fall. Patient stated she has a 2-month history of low back pain which originally started at work when she was trying to move a large dog into a cage. Patient states she felt a pop at that time and the next day she had pain across the low back. The pain developed over the next few weeks and the symptoms began radiating down bilateral lateral legs to the ankle left worse than right burning in nature. Patient also admits to numbness and tingling following this path and to the bottoms of both feet. She states the symptoms are made worse when she sits a long time and then goes to stand up, she has numbness and tingling travel down her legs. She admits the pain is worse in her back than her legs."* **(PX2 P.194)**.

After having carried out surgical decision making with Dr. Sieren and Dr. Jaffa, Petitioner was advised *"that immediate intervention would offer the best chance of arresting further neurological deterioration and regaining of function."* **(PX2 P.196)**. She agreed to proceed with surgery.

Petitioner was subsequently taken to the operating room where she underwent a left L4-L5 laminectomy and microdiscectomy. **(PX2 P.199)**. Post-surgery, Petitioner was taken to the post anesthesia care unit for further care. While working with occupational and physical therapy, Petitioner was issued a cane to assist in walking.

On August 17, 2019 Petitioner was discharged home from Cook County Stroger Hospital. At discharge, she was diagnosed with a lumbar herniated disc, back pain, cauda equina compression, lumbar radiculopathy,

paresthesias, and spinal stenosis. **(PX2 P.198)**. She was prescribed Norco and Flexeril for pain control and was told to follow up in one week as an outpatient. **(PX2 P.206).**

Petitioner testified that upon her release from Cook County Stroger Hospital on August 17, 2019, the doctors told her that it was going to take some time for her to go back to work and that it was probably a six-month period, but it could be longer. **(Tr. 43-44).** She was provided with a note for work that said no work until further notice and she emailed that to Ms. Hernandez at Paradise 4 Paws. **(Tr. 44)**.

Petitioner returned to Cook County Stroger Hospital on August 26, 2019 for a post-surgery evaluation. She complained of numbness and tingling over the left lateral foot on the dorsal and plantar aspect. **(PX2 P.154)**. Dr. Yogesh Ghandi examined the patient and placed an order for physical therapy and noted that the she may require an ankle foot orthosis for her foot drop and recommended that she follow up with Dr. Sierens in one month. **(PX2 P.157)**.

Petitioner started physical therapy with Cook County Stroger Hospital on September 12, 2019 and attended six sessions of physical therapy before being discharged on January 10, 2020. **(PX2 P.115)**.

Petitioner presented to Cook County Stroger Hospital on September 27, 2019 for her follow up with Dr. Sierens. She reported that *"she no longer has pain down her left leg but does admit to numbness and tingling down posterior left thigh and calf."* **(PX2 P.120)**. Upon examination Dr. Sierens recommended increasing physical therapy to 2-3 times a week, that she initiate home exercises, and to follow up in one month. **(PX2 P.122)**.

Petitioner returned to Cook County Stroger Hospital for a follow up on October 25, 2019. There, she was seen by Marilou L. Pena, CNP, who reported that *"Patient is a 27-year-old right-handed female with PMH of HTN (non-compliant with medication due to lack of insurance) with low back pain radiating to LE with footdrop s/p L4-L5 laminotomy and microdiscectomy on 8/16/19, with improved radiating back pain post-op."* **(PX2 P.30)**. After discussing with Dr. Sierens, she recommended that she continue physical therapy and return for a follow up in one month. It is also noted that Petitioner's return to work status is *"undetermined"* at this time and she was instructed *"no heavy lifting greater than gallon of milk."* **(PX2 P.30)**.

Petitioner returned to Cook County Stroger Hospital on November 22, 2019 for a follow up with Dr. Sierens. Upon examination, Dr. Sierens diagnosed Petitioner with lumbago and recommended that she use heat packs, perform exercises learned in physical therapy, and aqua therapy. **(PX2 P.7)**. Dr. Sierens further noted that the *"Patient is to remain out of work and re-evaluate in one month.*" **(PX2 P.7)**.

Petitioner returned to Cook County Stroger Hospital on February 7, 2020 for a follow up with Dr. Sierens. There, she reported that her *"symptoms are improving slowly. She states when she awakes in am she has numbness in her left calf but it seems to be getting better. She also has numbness on the top of her left foot."* **(PX2 P.534)**. Dr. Sierens recommended no acute neurosurgery intervention at this time, that Petitioner continue

doing at home physical therapy exercises, and to follow up in 3 months or sooner with questions and concerns. **(PX2 P.536)**. Dr. Sierens further noted that it is *"okay for patient to return to work part time.*" **(PX2 P.536)**.

Petitioner sent the part-time restriction note to Ms. Hernandez. By way of reply, Ms. Hernandez asked Petitioner to supply a letter with all of her dos and don'ts and all the restrictions so that her employer could accommodate her shift. (Tr. 47). Petitioner testified that Dr. Sierens told her that she couldn't give her that letter and that she had to go to physical therapy for that letter instead. (Tr. 47). Petitioner was never able to get a doctor or physical therapist to specify what her restrictions were despite calling and leaving voicemails. (Tr. 47-48). At this point, March of 2020, the COVID pandemic has begun. (Tr. 48).

Petitioner sought a second opinion with **Dr. Darwish at Hinsdale Orthopedics**. She initially saw Dr. Darwish on March 13, 2020 with complaint of low back pain. **(PX4 P.3)**.

Dr. Darwish recorded her history as follows: *"on 3/29/19 she felt a pop in her low back after pushing a dog at her workplace. In August 2019 her left knee gave out causing her to sustain a fall. She was seen at Stroger Hospital where a herniated disc was confirmed. On 8/16/19 a lumbar microdiscectomy (left) was performed. She has completed physical therapy sessions as of January 2020 but she returns with pain rated as a 8 on a 10-point scale. She takes Ibuprofen and Tylenol for pain relief. New x-rays will be taken today."* **(PX4 P.3)**.

Petitioner underwent an x-ray of the lumbar spine per Dr. Darwish's recommendation. He diagnosed low back pain, post laminectomy syndrome, and left foot drop. Dr. Darwish reported that the Petitioner *"had a lumbar laminectomy but continues to have left lower extremity radiculopathy. She continues to have a left side foot drop."* **(PX4 P.5)**. He recommended an MRI of the lumbar spine to better delineate the cause of the continued symptoms and told Petitioner to return for a review. **(PX4 P.5)**. As regards work restrictions, Dr. Darwish released the Petitioner on a light duty restriction of no lifting, pushing, or pulling over 20 pounds. **(PX4 P.6)**.

On April 11, 2020 Petitioner presented to **Premium Healthcare Solutions** where she underwent an MRI of the lumbar spine as recommended by Dr. Darwish.

Petitioner was seen in follow up by Dr. Darwish via a virtual visit on April 28, 2020**.** She had continued low back pain that radiates into her left lower extremity with numbness and tingling. **(PX4 P.7)**. Upon review of the lumbar spine MRI dated April 11, 2020, Dr. Darwish noted that *"she has recurrent disc herniation causing compression at L4-5 causing her continued left sided radiculopathy and left foot drop."* **(PX4 P.8)**.

Following review of the MRI, Dr. Darwish recommended a revision L4-5 laminectomy and diskectomy and reported that the Petitioner is unable to return to work. **(PX4 P.8 and P.10)**.

Petitioner returned to see Dr. Darwish on July 14, 2020. She continued to report low back pain, left leg, and left buttock pain that radiates into the posterior aspect of her left lower extremity stopping at her foot with

numbness and tingling. **(PX4 P.11)**. Dr. Darwish noted that Petitioner has continued weakness and left foot drop which did not improve with surgery. **(PX4 P.11)**. Dr. Darwish noted that she *"continues to recommend a revision left L4-5 laminectomy and diskectomy due to a work-related injury. She has had no improvement in her left foot drop since surgery."* **(PX4 P.13)**. He recommended that Petitioner return in one month for a follow up and that she remained unable to work. **(PX4 P.12-13)**.

Petitioner returned to see **Dr. Darwish** on August 14, 2020. She reported continued complaints of low back pain that radiates into her lower left extremity and foot with numbness and tingling in her right foot/toes. **(PX4 P.15)**. Since her last visit with Dr. Darwish she had returned to see her original surgeon, Dr. Sierens at Cook County Hospital. Dr. Sierens had another MRI carried out of Petitioner's lumbar spine in May 2020.

Upon review of the lumbar spine MRI from May 2020, Dr. Darwish diagnosed a herniated lumbar disc, low back pain, left foot drop, and post laminectomy syndrome. **(PX4 P.18)**. He further noted that he continued to recommend "*an L4-5 transforaminal interbody fusion, L3-4 laminectomy/discectomy due to her work-related injury."* **(PX4 P.17).**

He did not change Petitioner's work status and she was still unable to return to work. **(PX4 P.18)**.

Petitioner returned to see Dr. Darwish on September 25, 2020 for a follow up visit. There, she reported continued complaints of left sided low back pain that radiates into her left lower extremity and foot with numbness and tingling. **(PX4 P.19)**. Dr. Darwish repeated his prior surgical recommendation and continued her off work status. **(PX4 P.21-22)**.

Petitioner followed up with Dr. Darwish on November 6, 2020. She had the same continued complaints and Dr. Darwish continued to recommend the L3-4 laminectomy and diskectomy with a L4-5 transforaminal lumbar interbody fusion surgery. He also continued her on a no work status. **(PX4 P.23-26).**

Petitioner returned to see Dr. Darwish for a final time on December 18, 2020. She reported continued complaints of low back pain radiating into her lower left extremity after sustaining a work-related injury. She reports that the pain has increased since her last visit. Dr. Darwish examined the patient and continued to opine that *"Jessica continues to complain of low back pain radiating into her lower left extremity with a left drop foot. She is now experiencing pain into her right lower extremity. I continue to recommend a L3-4 laminectomy and discectomy with a L4-5 transforaminal lumbar interbody fusion with posterior instrumentation and use of allograft bone due to a work-related injury. We will proceed with surgery after work comp approval. Mobic was sent to her pharmacy in the meantime to help with her pain."* Dr. Darwish continued Petitioner's work restriction of no work. **(PX4 P.27-30)**.

Dr. Mather, Respondent's IME, reviewed Respondent's records in order to respond to counsel's questions in his August 26, 2020 Report. Mather concluded that the complaints of August 14, 2019 were not related to the fall earlier that day and that the disk herniation was not the result of pushing the dog based upon it

being encompassed by calcification. He further concluded that the calcific protrusion coincidentally became symptomatic two weeks prior to the surgery.

Dr. Darwish testified on November 13, 2020. **(PX9)**. He is a Board-Certified Orthopedic Spine Surgeon. **(PX9, P.6)**. He performs about 350 to 400 spine surgeries a year. **(PX9 P.7)**. He treats patients who have suffered traumatic injuries and also degenerative injuries that have progressed over the years. **(PX9, P.9)**.

Dr. Darwish testified that Petitioner told him that she was pushing a dog at work and felt a pop in her back and pain in her low back and that the pain became worse and she continued to have low back pain and lower extremity pain and weakness even after her surgery. **(PX9, P.10-11)**. His review of the Petitioner's lumbar spine MRI taken at Cook County Stroger Hospital was consistent with a diagnosis of disc herniation. **(PX9, P.14, 12-21)**. Dr. Darwish testified that the March 2019 incident caused Petitioner to sustain a disc herniation. **(PX9, P.14-15 at 22)**.

Dr. Darwish physically examined the Petitioner on March 13, 2020 and testified that she had a positive straight leg raise, or nerve root tension sign, as well as a foot drop on the left side and decreased sensation on the left when compared to the right. **(PX9, P.25, at 19)**. As a result, he diagnosed low back pain, post laminectomy syndrome, and left foot drop. Post laminectomy syndrome means that the patient has had a laminectomy and is still having problems. **(PX9, P.26, at 9-16).**

Dr. Darwish further recommended that Petitioner continued to be off work when he evaluated her on March 13, 2020. **(PX9, P.27, at 14-18)**. He also ordered a lumbar spine MRI. When the MRI was completed, he reviewed it and testified that *"the MRI showed evidence of a disc herniation causing compression at L4-5 on the left side, as well as evidence that she had undergone a laminectomy on the left side at L4-5. At the L4-5 level, there was a central disc protrusion causing central stenosis, or compression of the nerves at that level, as well."* **(PX9, P.28, at 1-7)**.

Dr. Darwish testified that, upon review of the lumbar spine MRI on April 28, 2020, recommended a revision L4-5 laminectomy and discectomy, the same surgery that Petitioner had in August of 2019. **(PX9, P.29, at 7-25).** He further testified that the proposed surgery is causally related to her work accidents of March 2019 and August 2019 and that the surgery is also reasonable and necessary to treat her work-related condition. **(PX9, P.30-31, starting at 1).**

Dr. Darwish testified that Petitioner's condition was worsening with the passage of time and he was very concerned about her.

Q. And is that significant to you, Doctor, that she's almost a year – out from the date of her fall and she is continuously showing – this foot drop?

A. It's very concerning. I think this is a young lady who may develop permanent dysfunction as a result of her disc herniation and the lack of appropriate care.

Q. And in terms of her understanding as to why the surgery wasn't moving forward despite your recommendations, is it you're understanding that it was pending work comp approval?
A. That's correct, yes.
Q. On this occasion in August 14 of 2020, it appears you made a recommendation for a different surgical procedure… would that be a good characterization of it?
A. Yes. After reviewing the MRI in May, I had recommended a lumbar fusion at L4-5 and a laminectomy at L3-4.
Q. And what was the purpose now for your recommendation of the fusion?
A. I think that the severity of the stenosis and the impingement of the nerves would require removing a substantial amount of the stabilizing structures and removal of the whole disc, therefore, the patient would need a fusion, at least at that level, at the L4-5 level. And at L3-4, we would perform a surgery very similar to her first surgery, where it would only be a laminectomy and removing the part of the disc that's pushing on the nerves.

(PX9, P.34-35, starting at 19).

When asked if this worsening related back to her work accident, Dr. Darwish was asked and he answered the following:

Q. … Do you have an opinion about whether or not the worsening of her MRI findings is related to her work-related accidents?
A. I think the whole condition is related to her work accident, and the delay in undergoing surgical intervention is the reason for her worsening condition and the worsening of the MRI findings.

(PX9, P.34, at 11-15).

Dr. Darwish explained that Petitioner would be off work for at least three months while doing physical therapy following the recommended surgery. Petitioner would then likely be capable of light duty with the full recovery 12 months following surgery. **(PX9, P.37, at 11-17).** He further testified that all of Petitioner's treatment was reasonable and necessary to treat the Petitioner's condition. **(PX9, P.38, 4-11).**

Dr. Steven Mather testified on February 11, 2021. **(RX2)**. He is a board-certified orthopedic spine surgeon. He does most of his IMEs and medical-legal work on behalf of the Defense. **(RX2, P.1, 1-13)**. He does over 200 IMEs per year and a record review once every three weeks. **(RX2, P.6-7, at 17)**. His legal work is about 20% of his overall practice. He charges $1,200 per IME and per record review. He averages about 3 and ½ depositions a month and his fee for a deposition is $1,500 per hour. **(RX2, P.19, at 9)**.

Dr. Mather has never met Petitioner or physically examined her. **(RX2, P.32, 4-6)**.

Dr. Mather relied heavily on a characterization of Petitioner's injury timeline as described in the Cook County record, that the dog-pushing incident was two months prior to the fall. **(RX2, P.11, 15-21)**. Dr. Mather further testified that, upon his review of the MRI and CT scans performed at Cook County in August of 2019, *"the MRI showed a large disc protrusion at L4-5 which could give a foot drop . . . and [the] CT scan showed that this disc was actually calcified, meaning it had been there for years."* **(RX2, P.12, 3-12)**. Dr. Mather has therefore conceded that the MRI from Cook County displayed disk pathology sufficient to cause the complained condition.

Dr. Mather also testified that, if Petitioner had a herniation… causing nerve root compression, she would not have been able to work. **(RX2, P.56, starting at 24, P.57, 1-2)**. On cross-examination Dr. Mather conceded that, other than the incident where Petitioner was putting a dog into a dog suite, he does not know anything about what Petitioner does in her job nor does he know anything about what her physical requirements are in that job. **(RX2, P.57, 3-10)**.

Petitioner has not worked since August 14, 2019. Respondent has never paid temporary total disability benefits.

Petitioner was initially placed on a "no work" restriction upon her release from Cook County Stroger Hospital, on August 17, 2019. (Tr. 43-44). Thereafter, she continued to see Dr. Sierens once a month and she continuously reiterated her no work status.

Petitioner was first seen by Dr. Darwish on March 13, 2020 when he placed Petitioner on restrictions not to work. Petitioner's work status remained the same, per Dr. Darwish through December of 2020. **(PX4 P.8, 12-13, 18, 21-22, 23-26, and 27-30)**. To date, she currently remains off work per Dr. Darwish. (Tr. 58-59). Petitioner has looked for work in spite of the recommendations in order to support herself, but has not found work. (Tr. 69-70). **:**

Petitioner testified that she wants to have the surgery recommended by Dr. Darwish. (Tr. 54).. She continues to experience numbness in her left leg and does not feel any sensation in her left foot. (Tr. 55). She feels a sensation that her left leg is going to give out as it did in August of 2019. (Tr. 56). To date, she continues to use a cane that was prescribed to her after her surgery in August of 2020 because she loses balance when walking or standing up for a long period of time. (Tr. 55-56). She continues to experience pain in her back and left leg when she sits or stands for a long period of time. (Tr. 56). Petitioner continues to do stretches at home that she learned from physical therapy as that is the only thing that makes her pain feel better. At times when the pain is unbearable, she takes over-the-counter pain medications. (Tr. 56).

CONCLUSIONS OF LAW

The Arbitrator hereby incorporates by reference the Findings of Fact delineated above and the Arbitrator's and parties' exhibits are made part of the Commission's file. After reviewing the evidence and due deliberation, the Arbitrator finds on the issues presented at trial as follows:

(C) Whether Petitioner sustained an accident that arose out of and in the course of her employment on August 14, 2019:

The Arbitrator finds that Petitioner has proven by a preponderance of the evidence that she was involved in an accident that arose out of and occurred in the course of her employment, when she pushed a heavy dog on March 29, 2019.

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. *Sysco Food Serv. of Chicago v. Illinois Workers' Comp. Comm'n*, 2017 IL App (1st) 170435WC, ¶41; *see also O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980).

The elements of the Petitioner's claim include proving a causal relationship between his work accident and his condition of ill-being, that is that the injury must "arise out of" and "in the course of" the employment. *See Sysco* at ¶41; *see also Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52 (1989). "The phrase 'in the course of' refers to the time, place and circumstances under which the accident occurred." *See Caterpillar* at 57-8. For an injury to 'arise out of' the employment, it must originate in "some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id.*; *see also Jewel Cos. v. Industrial Comm'n*, 57 Ill. 2d 38, 40 (1974).

Under the Act, an injury arises out of one's employment if, at the time of the occurrence, the employee was found to be "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." *Caterpillar* at 58; *see also Howell Tractor & Equipment Co. v. Industrial Comm'n*, 78 Ill. 2d 567, 573(1980).

Petitioner was clearly engaged in an act that arose out of and occurred during the course of her employment as an employee of Paradise 4 Paws a day and overnight care center for pets. Part of her job duties involved bringing dogs for play time to the play room area. After play time the dogs had to be returned to their respective rooms. While engaged in relocating a large male Rottweiler dog, Petitioner had to push the dog from behind as he was uncooperative and unwilling to go back into his room. Petitioner testified that the dog weighed approximately 80-100 pounds. (Tr. 18).

The Respondent did not dispute that the task in which Petitioner was engaged in, was one that was required of her. No representative from the Respondent company testified at the hearing of this matter on any of the disputed issues.

The Petitioner testified as to her job duties as a team member and supervisor at the Midway Paradise 4 Paws. She outlines in clear and detailed testimony the nature of her job duties. Part of her job duties clearly included doing what she was doing when she hurt her back. There was no evidence presented to dispute the Petitioner's credible testimony that when she was attempting to push a heavy dog into a room, she felt a pop in her back and thus her testimony is accepted by the Arbitrator as credible and undisputed.

The Arbitrator further notes the consistent manner in which the mechanism of the incident and task Petitioner was engaged in was reported by her to Cook County Stroger Hospital and to Dr. Darwish. He accepts that the testimony of the Petitioner that she felt a pop while engaged in a pushing activity was reported to all of her medical providers and the credible nature of that consistent record is a further factor which is considered by the Arbitrator.

As Petitioner's testimony remains undisputed and as it is clear that the task, she was engaged in on March 29, 2019 is part of her job, and given the consistent nature of the description of the mechanism of incident by the Petitioner to her medical providers, the Arbitrator is satisfied that the Petitioner sustained an accident that arose out of and in the course of her employment with the Respondent on March 29, 2019 when she was pushing a heavy dog into a room.

(E) Whether Petitioner properly notified Respondent of her work-related injury:

The Arbitrator finds Respondent received sufficient notice of Petitioner's injury and was not unduly prejudiced in these proceedings. Section 6(c) of the Act sets forth the "notice" requirement. It states:

> Notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. . .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. Notice of the accident shall give the approximate date and place of the accident, if known, and may be given orally or in writing. 820 Ill. Comp. Stat. 305/6(c).

The Petitioner testified that the day after her accident, March 30, 2019, she told Amanda Hernandez, her supervisor, that she hurt her back when she was pushing a dog into a room after play time and that she was in pain. Petitioner testified that she was not asked to fill out an incident report by Ms. Hernandez. She further testified that she did not ask to fill one out as she initially thought she had strained herself and the pain would go away. (Tr. 22-23).

The Petitioner also testified that after the incident with the dog on March 29, 2019, she had numerous conversations with her Supervisor Amanda regarding her ongoing back pain and that all times, Ms. Hernandez was aware that all of the Petitioner's back complaints started with the dog pushing incident in March 2019. (Tr. 32-33).

Respondent appears to ground its defense of notice on the fact that the Petitioner did not fill out an incident or accident report regarding what happened on March 29, 2019. This reliance on the lack of an incident report is of course not grounded in law as written notice is not required to satisfy Section 6 (c) of the Act. Much to do was made by Respondent on cross examination of the Petitioner with regard to the fact that

Ms. Lupercio did not ask for an incident report not did she make any effort to fill one out regarding the March 29, 2019 incident - despite knowing that the report was available and she knew how to fill it out. This focus by Respondent is ill founded in so far as an incident report is not necessary to prove notice and such reliance on the lack of an incident report by Respondent is a red herring in this situation.

Moreover, despite disputing that they were not given adequate notice of a work-related accident, the Arbitrator notes that Respondent did not call a single witness to dispute Petitioner's credible testimony that she told Ms. Hernandez what happened with the dog on March 29, 2019. The Arbitrator believes Petitioner and finds her to be a credible witness and accepts her undisputed testimony that she informed her supervisor about the incident she was involved in on March 29, 2019.

Based on the above the Arbitrator finds that Petitioner did meet the requirements set forth by section 6(c) of the Act and Respondent had sufficient and adequate notice that Petitioner was involved in a work-related accident on March 29, 2019.

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

The Arbitrator concludes that the Petitioner has proven a causal connection to her condition of ill being as it related to her lumbar spine were caused as a result of her work accident on March 29, 2019.

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence - more probably true than untrue - 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).

A causal connection between a condition of ill-being and a work-related accident can be established by showing a chain of events wherein an employee has a history of prior good health, and, following a work-related accident, the employee is unable to carry out his duties because of a physical or mental condition. BMS Catastrophe v. Industrial Commission, 245 Ill. App. 3d 359, 365 (1993). Medical testimony is not necessarily required to either establish causation and disability. Heston v. Industrial Commission, 164 Ill. App. 3d 178, 181 (1987).

It is well established that it is the province of the Commission to determine the credibility of witnesses, to resolve conflicts in the medical evidence and to determine causal connection between a claimant's condition of ill-being and his or her employment. BMS Catastrophe at 365.

The Arbitrator finds that Petitioner has proven by a preponderance of the evidence that the injuries sustained by her when she pushed a heavy dog on March 29, 2019 and specifically the injuries sustained to her lumbar spine (to wit –a disc herniation) are causally connected to her work accident on the above date. The Arbitrator is satisfied that the Petitioner has proven a causal connection to her condition of ill being as it relates to her lumbar spine and her work accident of March 29, 2019.

Petitioner did not have any issues with her lumbar spine prior to the dog pushing incident on March 29, 2019 and had never sought treatment for same before this date. **(Tr. 57).**

"A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *Int'l Harvester v. Indus. Comm'n*, 93 Ill. 2d 59, 63-64. "When the claimant's version of the accident is uncontradicted and his testimony is unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award. *Id.* at 64.

No evidence was produced at trial to show that the Petitioner had any issues with her back before the March 2019 incident. This fact is corroborated by the medical records. Petitioner relayed this fact to all of her doctors. The Arbitrator finds that the Petitioner was credible and consistent with regard to the history of the beginning of her back complaints and relayed to everyone that all of her issues started with the dog pushing incident in March 2019. The only discrepancy appears to be a typo in one of the ER notes which referenced Petitioner pushing a heavy dog *two weeks* ago but Petitioner clarified this in her testimony when she confirmed she told the ER Doctor that the incident with the dog happened *"a few months ago".* **(Tr. 40).** Subsequent notes from the Stroger admission correctly refer to the pushing incident happening a few months ago. The arbitrator finds this testimony credible and accepts that the reference to two weeks was a typo.

The Arbitrator finds that the Petitioner has established through her testimony that her lumbar spine was in a previous condition of good health. The Petitioner also testified credibly regarding a subsequent and disabling condition which she felt immediately after she pushed the dog which she described as a pop and while not immediately painful was certainly painful by that evening. As a result, the Petitioner's testimony was sufficient to establish a chain of events that demonstrated a causal connection between her work accident and his lumbar condition.

The causal connection between the dog pushing incident and the Petitioner's subsequently diagnosed disc herniation is further supported by the medical testimony of Dr. Darwish who explained the significance of the Petitioner feeling a pop when she pushed the dog on March 29, 2019. He was asked and he answered as follows:

Q. *... your history indicated on 3/29/2019, she felt a pop in her low back after pushing a dog at her workplace. That description of feeling a pop, is that something you can explain to the arbitrator the significance of that?*

A. Sure. The disc is made up of an outer fibrous later and an inner spongy later. I believe that the pop that she felt is the defect in the annulus fibrosus, or the outer fibrous later, and the disc herniation of the inner layer coming out of ... that fibrous outer layer. . . essentially, what the disc is, the inner later is a spongy material, and the outer layer, the fibrous material keeps that in place. The pop that the patient

felt was most likely a defect caused in that fibrous layer, and – that's really how a disc herniation occurs.

Q. And – you can cause such a defect by shoving or pushing a heavy object, correct?

A. That's correct.

(PX9, P.23-24, at 24).

Petitioner testified that the dog she was attempting to push weighed 80-100 pounds. It was a large male Rottweiler dog. (Tr. 18). This testimony is undisputed. Dr. Mather was asked what weight would be necessary, in his opinion, to cause an acute disc herniation and he answered *"I think based on what I know about human spine, I think you probably at least need to be in the range of 30 to 40 pounds of pushing force minimum"*. **(RX2, P.59, 3-9)**.

Dr. Darwish agreed that pushing a heavy dog, any heavy item, is sufficient to cause a disc herniation. He was asked and answered as follows: -

Q Based off of what you know about her history of the incident in March when she was moving a heavy dog, and then the incident in August when she fell, what is your opinion as to the cause of her disc herniation?

A. I think the mechanism of injury in moving a heavy object, it doesn't necessarily have to be a dog, I don't want to single that out, I think just pushing or moving a heavy object can cause a disc herniation, and a fall can also cause a disc herniation or exacerbate or aggravate a preexisting disc herniation. What I believe happened is that in pushing the dog or moving the dog into the case, she sustained a disc herniation, and then when she fell, that disc herniation either became worse or re-aggravated to a point where it caused significant compression of her L4 nerve root at L4-5, causing a foot drop and a need for surgery.

(PX9, P.14-15, at 22)

The Arbitrator accepts the many causal connection statements of Dr. Darwish. The Arbitrator acknowledges the opinions of Dr. Mather but does not find those to be persuasive. Dr. Mather's opinion that the Petitioner's disc herniation was long standing is rejected by the Arbitrator and Dr. Mather's opinions are of no persuasive or evidentiary value to the Arbitrator.

Of particular note is that Dr. Darwish specifically and clearly testifies that the calcification that Dr. Mather apparently sees on the Petitioner's CT scan from August 20119, simply isn't present on the left side. Dr. Darwish had read the IME report of Dr. Mather and expressed several opinions thereon.

He commented with regard to Dr. Mather's reading of Petitioner's CT scan taken at Cook County Stroger Hospital in August 2019. Specifically, Dr. Mather was of the view that the Petitioner's disc herniation was enveloped in calcification.

Dr. Darwish disagreed and testified as follows*: - "I reviewed the same CT scans that he reviewed and I agree there is some component of calcification at the L4-5 level, but it's on the right side. If you look at the CT*

scan, the cut though disc space at L4-5 doesn't show <u>any</u> calcification on the left side. It actually shows what I would interpret to be a soft tissue disc herniation on that side".

Q. When you say "Soft disc herniation," can you explain to the arbitrator what you mean by that?
A. Well I think what we're talking about here is a calcification or an osteophyte that would be more of some bony component or calcified component, and a soft disc herniation, one where it's just annulus, which is the disc material, does not have any calcification in it. It's more of a spongy material.
Q. So to be clear, based off of your personal review of the images of the CT, you did not see any calcification whatsoever on the left side, is that correct?
A. That's correct.

(PX9, P.15-17, at 16).

He was further asked and answered as follows: -

Q. *If you could just look to page 3 of Dr. Mather's record review…it says, "The CT scan shows the herniation is encompassed by calcification. This is a slow-growing disc protrusion, even though it is extremely large."*
Can you comment on that or do you agree or disagree with that finding?

A. Well, I strongly disagree with that finding. . . really our experience as spine surgeons and the literature on how foot drops develop, the vast majority of them develop as a result of an acute disc herniation, not as a result of slow growing – what we see as lumbar stenosis... those conditions we usually see in elderly patients who have had degenerative changes for decades and slow-growing disc osteophytes or a calcified disc, and those patients almost never develop weakness or foot drops, they develop more of pain in their lower extremities with walking.
The patient's presentation here... is more consistent with an acute disc herniation compressing the nerve and causing acute foot drop or acute weakness in her lower extremity. So, I disagree that this is from a slow-growing degenerative condition or calcification of a disc.

(PX9, P.18-19, at 2).

The Arbitrator favors Dr. Darwish's opinion that the accident as described by the Petitioner can cause the pathology subsequently seen on Petitioner's imaging – to wit a disc herniation. He accepts as credible Dr. Darwish disagreement with Dr. Mather's reading of the Petitioner's images and accepts Dr. Darwish's opinion that '*The patient's presentation here... is more consistent with an acute disc herniation compressing the nerve and causing acute foot drop or acute weakness in her lower extremity*". (**PX9, P.18-19, at 2).**

The Arbitrator concludes that Dr. Darwish's diagnosis, impressions and treatment recommendations, over the course of many months and many exams and having reviewed all her images, both from 2019 and from 2020, should be given more weight and consideration, over the Respondent's Section 12 IME physician, who neither saw or examined the Petitioner on a single occasion. The Arbitrator therefore adopts the causal connection opinions of Dr. Darwish and rejects the opinion of Dr. Mather and finds that the Petitioner has

proven by a preponderance of the evidence that there is a causal connection between her accident on March 29, 2019 and her subsequent condition of ill being as related to her lumbar spine.

(J) Whether the medical services provided to Petitioner were reasonable and necessary, and whether Respondent has paid any charges for all reasonable and necessary medical bills:

The Arbitrator having found Petitioner sustained an accident while engaged in her employment as a team member and supervisor for Respondent and having found that her lumbar spine condition - to wit a disc herniation - was causally connected to her work accident, also finds that all of the medical services provided to Petitioner for her injuries were reasonable and necessary.

The Respondent has not paid any charges for reasonable and necessary medical services relative to Petitioner's injuries.

Section 8(a) of the Act provides that an "employer shall provide and pay the negotiated rate, if applicable, or the less of the health care provider's actual charges or according to a fee schedule, subject to 8.2 . . . for all necessary first aid, medical and surgical services, an all necessary medical, surgical and hospital services thereafter incurred . . ." 820 ILCS 305/8(a).

Dr. Darwish opined that the Petitioner's surgery that was undertaken at Cook County Stroger was appropriate for her diagnosis of a herniated disc. **(PX9, P.21 at 8-11)**. As regards casual connection of Petitioner's treatment after the Cook County Stroger surgery, Dr. Darwish was asked and he answered the following:

Q. Was physical therapy post that surgery reasonable and necessary for her condition?
A. Absolutely. I think that if you have a foot drop and undergo a lumbar laminectomy and discectomy, you almost always have to have physical therapy in order to regain some of the strength that was lost as a result of the disc herniation.
Q. And would the need for that physical therapy, in your opinion, Doctor, be causally connected to her March and August 2019 work accidents?
A. Yes.

(PX9, P.22-23 at 16).

The Arbitrator finds Dr. Darwish's testimony compelling and credible and finds that all medical treatment given to Petitioner relative to her lumbar spine was both reasonable and necessary. Therefore, the Arbitrator orders Respondent to pay reasonable and necessary medical services, pursuant to the medical fee schedule as provided in Sections 8(a) and 8.2 of the Act for any and all treatment undergone by Petitioner relative to her lumbar injuries to include the following; - all treatment undergone by Petitioner at and through Cook County Stroger Hospital to include her August 2019 surgery and all subsequent follow up, all physical therapy treatment commenced by Petitioner after her August 2019 surgery and any and all treatment by Dr.

Darwish to date and continuing to the future, until Petitioner is released MMI by Dr. Darwish. The Respondent should be given a credit for any medical bills paid by them pursuant to Section 8 (j) of the Act.

(K) Prospective medical care and Medical rights pursuant to Section 8 (a):

As the Arbitrator found that the Petitioner's lumbar spine condition is causally related to her work activities, the Arbitrator finds that the Respondent shall authorize and pay for the prospective medical treatment plan recommended by Dr. Darwish, to wit the L3-4 laminectomy and discectomy with a L4-5 transforaminal lumbar interbody fusion with posterior instrumentation and use of allograft bone, and any and all resulting sequelae treatment.

Section 8 (a) of the Act provides that, the Respondent shall pay for "medical, surgical and hospital services provided by the physician, surgeon or hospital initially chosen by the employee or by any other physician, consultant, expert, institution or other provider of services recommended by said initial service provider or any subsequent provider of medical services in the chain of referrals from said initial service provider . . ." 820 ILCS 305/8(a)(1).

Dr. Darwish testified that, upon review of the lumbar spine MRI on April 28, 2020, he recommended a revision L4-5 laminectomy and discectomy, the same surgery that Petitioner had in August of 2019. As regards whether or not a recurrent disc herniation is casually related to Petitioner's March 2019 and August 2019 work accidents, Dr. Darwish was asked and he answered as follows: -

Q. If in scenario that she has a recurrent disc herniation, Doctor, do you have an opinion whether that recurrent disc herniation is causally related to her March and August 2019 work accidents?

A. The thing with recurrent disc herniations is they're always related to the initial disc herniation, meaning if the first disc herniation was casually related to the work injury, then the recurrent disc herniation is also causally related to the work injury.

(PX9, P.29, at 7-25).

At trial, Petitioner continued to have pain in her lumbar spine with radiating numbness in to her leg. She uses a cane when walking long distances. (Tr. 55). Petitioner wants to and intends to have the surgery as prescribed by Dr. Darwish. (Tr. 54).

Dr. Mather was unable to give an opinion about whether or not the revision surgery being recommended by Dr. Darwish was appropriate or not because he had not seen the Petitioner's recent MRI's. **(RX2, P.32-33, starting at 7)**.

As a result, Dr. Darwish's treatment plan as contemplated is compensable treatment under Section 8(a) of the Act, and therefore the Respondent is responsible for authorizing and payment of said treatment.

(L) Whether Petitioner is entitled to Temporary Total Disability Benefits:

Consistent with the accident and causal connection analysis explained above, the Arbitrator finds Petitioner was restricted from working until further notice after her August 2019 surgery, placed upon her by Dr. Sierens. (Tr. 44). Petitioners work status remained unchanged until she presented for a follow up at Cook County Hospital on October 25, 2019. That day she was seen by Marilou L. Pena, CNP, who noted that Petitioner's return to work status is undetermined at the time and modified her restriction as "*no heavy lifting greater than a gallon of milk"*. **(PX2 P.30)**.

Petitioner presented to her follow up with Dr. Sierens on November 22, 2019 who placed her on a restriction to *"remain out of work and re-evaluate in one month"*. **(PX2 P.7)**.

She was subsequently released to return to work part time by Dr. Sirens in February of 2020. However, when Petitioner sent the part time restriction note to Amanda Hernandez, she was unable to accommodate the restriction due to a lack of clarity as to the nature of the restrictions and requested that she supply a letter from her doctor with more detailed restrictions. (Tr. 47). Petitioner was never able to get a doctor or physical therapist to specify what her restrictions were despite calling and leaving voicemails. (Tr. 47-48). As a result, she sought a second opinion with Dr. Darwish at Hinsdale Orthopedics.

When Petitioner came under his care in March 2020, Dr. Darwish initially released the Petitioner on a light duty restriction of no lifting, pushing, or pulling over 20 pounds, pending the results of her lumbar spine MRI that was recommended. Following review of the lumbar spine MRI in April of 2020, Dr. Darwish placed Petitioner on a restriction not to work. **(PX4 P.8 and P.10)**. That no work order from Dr. Darwish continued until his last visit and per his testimony will continue until she undergoes the surgery that he is recommending.

In regards to Petitioners work abilities following her initial August 2019 surgery - Dr. Darwish was asked and he answered as follows:

Q. In terms of her work abilities after that type of surgery, Doctor, would you expect her to be able to work after the surgery?
A. I think immediately after the surgery, absolutely not, but after recovering from surgery, the patient can be expected to return to normal activity approximately 12 to 16 weeks after surgery.
Q. And the inability to work for 12 to 16 weeks, that would also, in your opinion, be casually connected to her March and August 2019 work accidents, correct?
A. That's correct.

(PX9, P.23 at 2-13).

No testimony, live or otherwise, was presented by Respondent to dispute that Petitioner is entitled to TTD benefits during the period of time that she has and is restricted from full duty work.

Pursuant to Section 8(b) of the Act, if the period of temporary total incapacity for work lasts more than 3 working days, weekly compensation as hereinafter provided shall be paid beginning on the 4th day of such temporary total incapacity, and continuing as long as the total temporary capacity lasts. In cases where the temporary total incapacity for work continues for a period of 14 days or more from the day of the accident compensation shall commence on the day after the accident. *Temporary total incapacity under this paragraph (b) shall be equal to 66 2/3% of the employee's average weekly wage.*

The parties stipulated that the Petitioner's average weekly wage while working for Respondent was $533.15 per week. Thus, Petitioner is entitled to TTD benefits for 111 and 2/7 weeks from August 15, 2019 to October 5, 2019 in the sum of $351.88 per week.[3]

(O) Petitioner is entitled to Temporary Partial Disability benefits following the surgery as recommended:

Consistent with the Arbitrator's findings and analysis as described previously, the parties stipulated that the Petitioner's average weekly wage while working for Respondent was $533.15 per week. Dr. Darwish has testified that following surgery, the Petitioner will be incapacitated from work for a period of approximately three months. At the three-month mark, he would expect the Petitioner to return to work in some capacity, usually light duty, and that her full recovery can be up to 12 months from surgery. **(PX9, P.37, at 11-17).**

The Arbitrator therefore finds that Respondent shall pay Petitioner temporary total disability payments based upon the agreed upon Average Weekly Wage, for all periods of time that Petitioner is unable to work, following the recommended lumbar surgery and for any periods of time that any light duty or restricted status work cannot be accommodated by the Respondent Employer and until the Petitioner is an MMI.

[3] 2/3 ($533.15) = $351.88

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC025054
Case Name	Barbara Dale v. East Alton School District No 13
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0376
Number of Pages of Decision	10
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	John Winterscheidt
Respondent Attorney	Patrick Keefe

DATE FILED: 10/5/2022

/s/ Deborah Baker, 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

BARBARA DALE,

Petitioner,

vs. NO: 18 WC 25054

EAST ALTON SCHOOL DISTRICT NO. 13,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 4, 2021 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $531.39 per week for a period of 300 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused a 60% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner compensation that has accrued from February 3, 2020, through September 28, 2021, and shall pay the remainder of the award, if any, in weekly payments.

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.

October 5, 2022

/s/ *Deborah J. Baker*

DJB/lyc

O: 9/28/22

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC025054
Case Name	DALE, BARBARA v. EAST ALTON SCHOOL DISTRICT NO. 13
Consolidated Cases	No Consolidated Cases
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	John Winterscheidt
Respondent Attorney	Patrick Keefe

DATE FILED: 11/4/2021

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 2, 2021 0.06%

/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
NATURE AND EXTENT ONLY

Barbara Dale
Employee/Petitioner

v.

East Alton School District No. 13
Employer/Respondent

Case # 18 WC 25054

Consolidated cases: n/a

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on September 28, 2021. By stipulation, the parties agree:

On the date of accident, May 18, 2017, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $35,426.00; the average weekly wage was $885.65.

At the time of injury, Petitioner was 53 years of age, married, with 0 dependent child(ren).

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

Respondent shall be given a credit of $70,261.17 for TTD, $0.00 for TPD, $4,892.14 for maintenance, and $0.00 for other benefits, for a total credit of $75,153.31.

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.

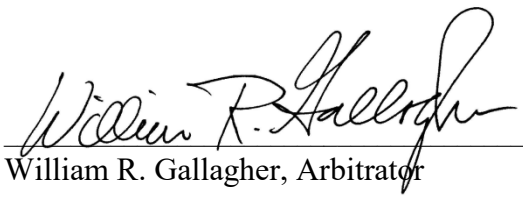
ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $531.39 per week for 300 weeks because the injury sustained caused the 60% loss of use of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from February 3, 2020, through September 28, 2021, 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.



William R. Gallagher, Arbitrator

NOVEMBER 4, 2021

ICArbDecN&E p. 2

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment by Respondent on May 18, 2017. According to the Application, Petitioner "Fell after striking bus stop sign" and sustained an injury to her "Right and left shoulders, head and body as a whole" (Arbitrator's Exhibit 2). At trial, Petitioner's counsel claimed there were outstanding medical bills of $11,794.62 as well as an additional $20.00 owed to Petitioner for an out of pocket expense. Respondent's counsel stipulated payment would be made of the preceding, subject to the fee schedule. Accordingly, the only disputed issue at trial was the nature and extent of disability (Arbitrator's Exhibit 1).

Petitioner became employed by Respondent in 1997 and worked as a school bus driver and courier. Petitioner graduated from high school in 1981 and, while in school, she worked as a Certified Nurse Assistant (CNA) at a nursing home. Petitioner got married while she was still in school and after graduation she stayed home to care for her children. It was after her children were older she became employed by Respondent.

On May 18, 2017, Petitioner was in the process of loading coolers on a school bus for a field trip. When Petitioner stood up, she struck her head on the bus' stop sign. This caused Petitioner to fall forward onto her outstretched hands. Petitioner experienced immediate pain in both shoulders, hands and knees, but continued to work.

Petitioner initially sought medical treatment on May 23, 2017, when she was evaluated by Dr. Michael Mandis, her family physician. At that time, Petitioner complained of right shoulder pain which had been present for five days. On examination, Dr. Mandis noted there was a decreased range of motion of the right shoulder. He ordered an x-ray of the right shoulder which was negative for fracturea. He subsequently ordered an MRI scan of Petitioner's right shoulder (Petitioner's Exhibit 1).

The MRI was performed on July 28, 2017. According to the radiologist, the MRI revealed a full thickness tear of the supraspinatus tendon, a partial thickness tear of the conjoined portion of the supraspinatus and infraspinatus tendons, glenohumeral osteoarthritis with mild labral degeneration, tendinopathy of the long head biceps tendon and joint effusion with synovitis (Petitioner's Exhibit 3).

Dr. Mandis referred Petitioner to Dr. Paulo Bicalho, an orthopedic surgeon. Dr. Bicalho evaluated Petitioner and reviewed the MRI scan on August 24, 2017. Dr. Bicalho diagnosed Petitioner as having sustained a complete tear of the right rotator cuff. He recommended Petitioner receive physical therapy to improve the range of motion and subsequently undergo surgery (Petitioner's Exhibit 4).

Petitioner received physical therapy from August 25, 2017, through September 5, 2017. Petitioner's right shoulder condition did not improve with therapy primarily because of Petitioner's pain symptoms (Petitioner's Exhibit 5).

Dr. Bicalho performed right shoulder surgery on October 25, 2017. The procedure consisted of repair of the rotator cuff with anchors and wire sutures. The operative report described the condition as being a "massive cuff tear." (Petitioner's Exhibit 3).

Following surgery, Dr. Bicalho ordered physical therapy which Petitioner received from November 15, 2017, through January 16, 2018. Petitioner's condition did not improve and she was diagnosed with adhesive capsulitis (Petitioner's Exhibit 6).

Dr. Bicalho saw Petitioner on January 16, 2018, and performed a manipulation of the shoulder with Petitioner under anesthesia. He also administered an injection into the glenohumeral joint (Petitioner's Exhibit 3).

Following the procedure of January 16, 2018, Dr. Bicalho again ordered physical therapy, but Petitioner's condition did not improve. He ordered another MRI scan of Petitioner's right shoulder. He also opined Petitioner may have sustained a recurrent rotator cuff tear and ordered an MRI scan (Petitioner's Exhibit 4).

The MRI was performed on June 2, 2018. According to the radiologist, it revealed a complete tear of the right rotator cuff (Petitioner's Exhibit 3).

Dr. Bicalho subsequently referred Petitioner to Dr. Richard Howard, an orthopedic surgeon. Dr. Howard examined Petitioner on July 3, 2018. Dr. Howard diagnosed a complete tear of the right rotator cuff and adhesive capsulitis of the right shoulder. He opined Petitioner would require another right shoulder surgery consisting of a capsular release and repair or reconstruction of the rotator cuff as well as a possible superior capsular reconstruction (Petitioner's Exhibit 7).

At the direction of Respondent, Petitioner was examined by Dr. David King on October 2, 2018. Dr. King's report was not tendered into evidence at trial.

Dr. Howard performed right shoulder surgery on February 28, 2019. The procedure consisted of manipulation under anesthesia, mini-open rotator cuff reconstruction with superior capsular reconstruction with Arthrex graft and biceps tenodesis (Petitioner's Exhibit 7).

Petitioner continued to be treated by Dr. Howard following surgery, but her condition did not improve. Dr. Howard ordered another MRI scan of Petitioner's right shoulder.

The MRI of Petitioner's right shoulder was performed on June 27, 2019. According to the radiologist, the MRI revealed a recurrent full thickness tear of the supraspinatus tendon and tenodesis of the right long head of the biceps tendon (Petitioner's Exhibit 10).

Dr. Howard again performed surgery on Petitioner's right shoulder on September 10, 2019. The procedure consisted of manipulation under anesthesia of the right shoulder (Petitioner's Exhibit 7).

Following surgery, Dr. Howard ordered physical therapy. Petitioner's condition did not improve and when Dr. Howard saw her on October 31, 2019, he noted Petitioner was not making progress and he had no further treatment recommendation, but that Petitioner should continue physical

therapy and home exercises. When he subsequently saw Petitioner on November 26, 2019, he recommended Petitioner have work conditioning rather than physical therapy, but if she did not improve, he would proceed with an FCE (Petitioner's Exhibit 7).

Petitioner proceeded with work conditioning and was subsequently seen by Dr. Howard on February 3, 2020. At that time, he opined it was unrealistic to expect Petitioner to be able to drive a bus because of her right shoulder weakness and lack of motion. He also noted Petitioner would likely require a reverse total shoulder arthroplasty, but should wait until she was older. Dr. Howard imposed permanent restrictions of limited lifting, pushing and pulling, no overhead activity and lifting limited to 40 pounds below the waist (Petitioner's Exhibit 7).

Petitioner contacted Respondent about returning to work with her restrictions, but Respondent was not able to offer her any work consistent with the restrictions. Petitioner conducted a job search and her search log from March 2, 2020, through April 25, 2020, was received into evidence at trial (Petitioner's Exhibit 12). Petitioner's job search coincided with the pandemic and she was not interviewed or offered any jobs.

At the direction of her attorney, Petitioner was evaluated by June Blaine, a vocational rehabilitation counselor, on March 30, 2020. June Blaine reviewed the medical records and noted the permanent restrictions which were imposed by Dr. Howard, interviewed Petitioner regarding her education and work history and administered tests. Because of Dr. Howard's restrictions, Blaine opined Petitioner could only function in the "light" physical demand level. She also opined Petitioner lacked transferable skills. Blaine recommended Petitioner receive training to improve her computer skills and suggested Petitioner enroll in a program at the CALC Institute of Technology in Alton, Illinois. Unfortunately, CALC was not accepting new students because of the pandemic (Petitioner's Exhibit 13).

Given that preceding circumstances, Petitioner made the decision to retire. Her retirement was effective June 1, 2020 (Respondent's Exhibit 2).

Petitioner testified she is right handed and her right shoulder/arm is in constant pain which becomes worse when she attempts to use her right arm. Because of her pain symptoms, Petitioner said she has to sleep in a recliner and she usually sleeps seven hours a night.

Petitioner was not able to raise her right arm to or above shoulder level and she cannot lift objects with her right arm extended from her body. Petitioner is no longer able to drive a vehicle with a manual transmission and she sold her car because of this. Petitioner also testified she has lost significant strength in her right shoulder/arm.

Petitioner continues to perform activities of daily living, but now has to rely more on her left arm/hand. Petitioner can no longer bowl or ride a bicycle. Petitioner's participation in her hobbies of sewing, quilting and crocheting have also been limited because she cannot hold her right arm up for extended periods of time.

Conclusion of Law

The Arbitrator concludes Petitioner sustained permanent partial disability to the extent of 60% loss of use of the person as a whole.

In support of this conclusion the Arbitrator notes the following:

Neither Petitioner nor Respondent tendered an AMA impairment rating. The Arbitrator gives this factor no weight.

Petitioner worked for Respondent as a school bus driver and courier. Based on the restrictions imposed by Dr. Howard, there was no question that Petitioner could not return to work for Respondent in those capacities. Further, Respondent had no work available for Petitioner that conformed to her work restrictions. The Arbitrator gives this factor significant weight.

Petitioner was 53 years old at the time she sustained the accident and 58 years old when the case was tried. Petitioner will have to live with the effects of the injury for the remainder of her natural life. The Arbitrator gives this factor significant weight.

Petitioner worked for Respondent for essentially her entire working career. As noted herein, Petitioner's only other job was when she worked as a CNA while in high school. June Blaine, the vocational rehabilitation counselor who evaluated Petitioner, opined Petitioner had no transferable skills. She recommended Petitioner enroll in a training program, but this was not a viable option because of the pandemic. Petitioner made the decision to retire and it is speculative to attempt to determine if Petitioner could have obtained gainful employment or whether she would have a diminished earning capacity as a result of the accident. The Arbitrator gives this factor moderate weight.

As noted herein, Petitioner underwent multiple surgical procedures on her right shoulder and experienced little or no improvement in her condition. Further, Petitioner may require a reverse total shoulder arthroplasty in the future. At trial, Petitioner had numerous complaints regarding the condition of her right shoulder; however, Petitioner's testimony was credible and her complaints were consistent with the injury she sustained. The Arbitrator gives this factor significant weight.

William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC010926
Case Name	Michael Lemons v. State of Illinois - Illinois State Police
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0377
Number of Pages of Decision	12
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Kayla Koyne

DATE FILED: 10/5/2022

/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

MICHAEL LEMONS,

Petitioner,

vs. NO: 20 WC 10926

STATE OF ILLINOIS, ISP,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of Petitioner's permanent disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 18, 2022 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $753.00 per week for a period of 15.05 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused a 7% loss of use of the right leg.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit of amounts paid under Section 8(j) 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.

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.

October 5, 2022

/s/ *Deborah J. Baker*

DJB/lyc

O: 9/28/22

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC010926
Case Name	LEMONS, MICHAEL v. STATE OF ILLINOIS, ISP
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Kayla Koyne

DATE FILED: 4/18/2022

THE INTEREST RATE FOR THE WEEK OF APRIL 12, 2022 1.22%

/s/ Edward Lee, Arbitrator
Signature

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

April 18, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Michael Lemons,
Employee/Petitioner

v.

State of Illinois, ISP,
Employer/Respondent

Case # **20** WC **010926**

Consolidated cases: _____

The only disputed issue is the nature and extent of the injury. An Application for Adjustment of Claim was filed in this matter, and a Notice of Hearing was mailed to each party. The matter was heard by the Honorable Edward Lee, Arbitrator of the Commission, in the city of Springfield, on March 30, 2022. By stipulation, the parties agree:

On the date of accident, **March 04, 2020**, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $**65,260.00**, and the average weekly wage was $**1,255.00**.

At the time of injury, Petitioner was **53** years of age, ***married*** with **2** dependent children.

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

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

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

ORDER

Respondent shall pay Petitioner the sum of $**753.00**/week for a further period of **15.05** weeks, as provided in Section **8 (e)** of the Act, because the injuries sustained caused **permanent partial disability to the extent of 7% of the right leg.**

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

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

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

Edward Lee
Signature of Arbitrator

APRIL 18, 2022

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

With respect to this matter, the parties stipulated to causation on the Request for Hearing in relation to the injury on March 4, 2020. The parties further stipulated that the medical treatment petitioner received after the March 4, 2020 injury was reasonable and necessary to cure or relieve petitioner from the effects of his injury. The only issue in dispute is the nature and extent of Petitioner's injury.

Petitioner filed an Application on May 11, 2020 stating that the accident occurred on March 4, 2020, by overexertion during academy training and affected his right lower extremity. (PX 1). Petitioner, testified that prior to his accident on March 4, 2020, he "graduated high school in 1984, entered into the United States Air Force, security police field; was in the Air Force for approximately 10 years. I exited the Air Force. Went to work for EMI for probably a year. I then went to work for the Illinois Department of Corrections. After that I had went to work for the Pike County Sheriff's Department, and then I took employment with the Illinois State Police and entered into the Illinois State Police Academy March 1st of 2020. (TX 7-8).

On March 4, 2020, Petitioner was a cadet in the academy in Springfield. (TX 8). Petitioner testified that his academy was a "fast track academy class which basically prior law enforcement enters into the academy and it's on an accelerated rate of 13 weeks approximately versus the normal 26 weeks." (TX 9). Petitioner indicated that he met the requirements of prior law enforcement and ex military and that there were approximately 50 cadets in his academy. (TX 9). Petitioner testified that he was 54 when he started the academy and that he was the oldest at the academy and believed the next oldest cadet was 46 years old. (TX 9-10).

Petitioner testified that the selection process for this academy was a "pretty rigorous, a long drawn out process. It included a testing, written test, oral interviews, background checks, a physical agility test or PFIT test, which consisted of a mile and-a-half run, sit-ups, sit and reach test." (TX 10). Petitioner testified that the academy started on Sunday and began with dormitory assignments, then included training the next day on Monday and "the next day was the PFIT test, the physical agility test, and then classroom training and then each morning was physical agility training followed by classroom." (TX 10-11). Petitioner indicated that they were provided water but no Gatorade or any other supplements, or electrolyte fluids. (TX 11). Petitioner testified that to his knowledge there was no medical personnel on-site to diagnose or deal with injuries or accidents. (TX 11).

Petitioner testified that he "sustained injury to my right calf muscle" on March 4, 2020, and indicated that he recalled noticing issues during PT that morning. (TX 12). Petitioner indicated that they were doing more of a crossfit type of training, including short 400 meter runs, burpees, kettlebell exercises, pull-ups. (TX 12). Petitioner testified that he initially noticed a cramping, but did not think much of it, due to the amount of physical exertion involved. (TX 12-13). Petitioner noted that he noticed the cramping after the run and "noticed the pain continued throughout the day. I could not get enough to drink. I was thirsty the entire time." (TX 13). Petitioner testified that he did not have cramping or pain in his right calf before March 4, 2020. (TX 13-14).

Prior to joining the academy, Petitioner underwent a PFIT test for either the Department of Corrections or Pike County Sheriffs Department, as the test is "a standard test throughout the State of Illinois as a minimum requirement for police officers to complete prior to their employment." (TX 14)

Petitioner notified their class counselor "which was, I believe Special Agent Johnson maybe." (TX 14). Petitioner also testified regarding Petitioner's Exhibit 6, which was text messages between him and Special Agent Tarod Deeder, who was the class coordinator for the fast track class. Petitioner indicated that these text messages were sent on the Saturday after his accident, or March 8th and March 9th. (TX 15). Petitioner was asked about a

discussion in the text messages about missing more than 10 percent of the academy and how that would affect his ability to pass, and indicated that he "never really understood the whole process myself, but basically what I was told was you cannot miss more than 10 percent of total training for the academy time period or any stand alone classes. I have no idea what classes were designated as stand alone classes, but that is one of the things that you were not allowed to miss. And referencing the text messages Special Agent Deeder said that PT, one week's worth of PT was worth approximately 2.5 hours, and that would count toward the 10 percent total time missed." (TX 25-26) Petitioner indicated that he did not think he would be able to pass the academy with this 10 percent rule. (TX 26).

Petitioner testified that his doctor told him to do no physical activity for 7 to 10 days. (TX 27). Petitioner returned to the academy the next Monday to discuss his options. (TX 28). Petitioner believed that he had two options after talking to Special Agent Deeder and the Colonel of the academy, to either "stay at the academy and go against my doctor's orders or I could resign." (TX 28). Petitioner filled out the paperwork to resign, but again stated it was not voluntary. (TX 28).

Petitioner testified that he could have been able to go back to the academy at some later date, but "the issue at hand with this academy was my age; mandatory retirement age of 60 for an Illinois State trooper, and my past state service of 14 and-a-half years the time frame would not match up for me to age wise to get my retirement and my medical and retire at a Tier 1 retirement with the state." (TX 29).

Petitioner went back to his previous job at the Pike County Sheriff's Department as a Sheriff's Deputy. (TX 29). Petitioner worked for Pike County until February 1, 2022, when he began working for the Office of the Inspector General as an investigator. (TX 29-32). Petitioner testified that he felt he was arguably "not an effective police officer now due to the leg issues that I have. (TX 30). Petitioner, when asked if he was able to perform all of his job duties as a Sheriff's Deputy indicated that he "managed. Not very well. I mean riding around for 12 hours a day in a car definitively bothered my leg. As far as could I take off and chase somebody, no." (TX 31). However, Petitioner testified that he continued to work for Pike County for approximately two years after his injury. (TX 37).

Petitioner testified that he was on vacation time with Pike County Sheriff's Department until released by Dr. VanMeter. (TX 30). Petitioner explained that he was "on terminal leave. I had vacation time that I used." (TX 37).

Petitioner testified that he did not voluntarily resign his position from the academy and that he never told Trooper Roan that he wanted to resign or quit the academy. (TX 15, 16). Petitioner indicated that he never told Trooper Johnson that he was resigning. (TX 16). Petitioner testified that he went to the emergency room at Passavant Hospital on Saturday morning, the 8th of March and "it was my interpretation from her [the emergency room doctor] that she did not want me to return to the academy. (TX 15-16).

Petitioner testified that he completed the training the entire first week until the class was sent home Friday evening. (TX 16-17). Petitioner testified that he was doing similar training on the two days after his injury, and noticed that his leg got progressively worse. (TX 17). As the dormitories were on the second floor, Petitioner indicated that "several times throughout the day we would go back to our dormitory in between classes. It was extremely painful climbing stairs. It was a constant cramping in my leg, my right calf. I noticed that my right calf muscle was swollen approximately twice the size of my left one." (TX 17-18). Petitioner described the intensity level of training during the first week as "very intense." (TX 18).

Petitioner testified that he first went to Prompt Care at Springfield Clinic in Jacksonville on Saturday morning, March 7th. (TX 18). Petitioner testified that he reported the training and was sent to Passavant Area Hospital for the pain and swelling in his calf. (TX 19). Petitioner indicated that while in training he was drinking as much water as he could but that he felt it was not helping his symptoms and that he "couldn't get enough to drink; and that pretty much continued throughout that latter part of the week." (TX 19). Petitioner confirmed that the emergency room performed a venous Doppler to test for DVT, which was negative. (TX 19-20). Petitioner indicated that after blood work was done, he was diagnosed with rhabdomyolysis. (TX 20). Petitioner testified that he was initially diagnosed with being severely dehydrated and was administered six bags of IV's. (TX 21). Petitioner felt that the IVs did not get rid of his symptoms but rather decreased the severity of his symptoms. (TX 22). Petitioner testified that he was admitted overnight and when he was released on Sunday March 8, 2020, his right calf was still swollen and sore, with cramping depending on activity. (TX 22, 23). Petitioner indicated that he was not physically able to return to the academy Sunday night, March 8, 2020, as he was released from Passavant a little after 11:00am and was supposed to be back at the academy on Sunday at 6p.m.. (TX 22-24). Petitioner thought there was a class that Sunday evening. (TX 25).

Petitioner testified that he followed up with Dr. VanMeter on March 19, 2020, but has not sought treatment with anyone else for his rhabdomyolysis condition after this treatment. (TX 20-21).

Regarding his condition today, Petitioner testified that how his right leg feels is "activity based. The more active I am the more it bothers me. I have to really be careful about my fluid intake. If I don't drink enough fluids I tend to have cramping in my leg and it still bothers me." (TX 32). Petitioner testified that he's gained about 20 or 25 pounds, as he is not able to exercise like he used to. (TX 32). Petitioner also noted that his leg has impacted his motorcycle riding habit, stating "I have been forced to sell my motorcycle due to the fact that I don't have the leg strength to hold a motorcycle up with myself and my wife on it." (TX 33). Petitioner testified that cramping in his leg is "activity driven and fluid intake. I have to, like I said, I really have to watch my fluid intake especially in the summertime or hotter weather." (TX 33). Petitioner indicated that if he would climb a flight of stairs he would notice his right calf bothering him, including fatigue in his leg and calf cramps. (TX 33-34). Petitioner indicated that he did not have this fatigue or cramping prior to his accident in March of 2020. (TX 34). When asked if he felt he could do the type of work he was doing as a police officer, Petitioner replied that "honestly to be fair to my co-workers and the public, no. I can't-I would consider myself not to be an effective police officer due to my, the physical aspect of it." (TX 34). Petitioner felt this was due to him not wanting to have to get in a ground tussle with someone. (TX 34).

Petitioner then made a statement to the Arbitrator discussing how it was a goal his entire lift to be an Illinois State Trooper, but was unable to as he did not have a college degree. (TX 35). Petitioner testified that by the grace of God he was accepted to be one of 50 selected out of over 1,000 applicants. (TX 35).

On cross-examination, Petitioner testified that he does not have any restrictions in relation to his leg; he is not currently treating for this injury; that he does not have any prescribed medications for this injury; and uses no brace or protective devises in relation to this injury. (TX 36-37). Petitioner testified that he passed the last physical he had and his bloodwork was okay. (TX 36).

Petitioner's supervisor, Tarod Deeder, testified at trial as well. He testified that he currently employed at the Illinois State Police as the basic training coordinator at the ISP academy and has had this job since October of 2019. (TX 39). Petitioner was one of the cadets in the class that Mr. Deeder was in charge of. (TX 39). Mr. Deeder confirmed that Petitioner's cadet class was a fast track class. (TX 39). Mr. Deeder testified that he was first notified of Petitioner's injury by a Master Sergeant from District 20. (TX 40). Mr. Deeder testified that once he

found out that Petitioner was in the hospital, he contacted Petitioner. (TX 42). Further testimony was presented regarding notice, but the Arbitrator notes that notice is not in dispute in this claim. Specifically, that Petitioner filled out a Form 1 on the day he was injured. (TX 43-44). Mr. Deeder confirmed the text messages contained in Petitioner's Exhibit 6, noting that "even with the restrictions if you miss that training you are forced to resign." (TX 45).

Mr. Deeder testified that Petitioner voluntarily resigned and that if he had not chosen to resign he would have been medically discharged if he missed more than the 10 percent. (TX 40). Mr. Deeder testified that if Petitioner had been medical discharged, he would "have had to become clear and eligible again, so he would have had to have been released from any restrictions by a medical doctor then he would have been recycled into the next available class." (TX 40-41). Mr. Deeder indicated that since Petitioner resigned, he would have had to reapply to join ISP. (TX 41). Mr. Deeder confirmed that Petitioner never attempted to rejoin the class that he was originally in. (TX 41). There is a medical personnel on-site if cadets in training were having physical issues or were injured. (TX 41). Mr. Deeder noted that at the time of Petitioner's injury "we were assigned with our EMS coordinator for the State Police. She was working at the academy in our facility. Her name is Amy Jeffers...Sergeant Tom Monte who was working at the academy, has since retired, he is a certified EMT; and Ms. Sharon White who was our previous EMS coordinator is still a current EMT was also on-site" (TX 45-46). Mr. Deeder indicated that he was not sure if they were at the actual physical training but they were in the building. (TX 46).

Medical Treatment

Petitioner first sought treatment on March 7, 2020 at Springfield Clinic urgent care. (PX 2, p 9). Petitioner noted right calf pain and swelling (PX 2, p8,9). Specifically, it was noted that "Patient is presenting with right lower extremity pain and swelling for 5 days. The course is worsening, he is not sure whether he injured it doing his police academy training which was intense. The swelling is located in the calf. There is no tingling or numbness. There is no redness. The degree at present is moderate. The pain increases with movement and walking. It decreases with rest." (PX 2, p 10).Petitioner was sent to Passavant emergency room for further evaluation.

Petitioner presented at Passavant Area Hospital on March 7, 2020. (PX 3). Admitting and discharge diagnosis was rhabdomyolysis and essential hypertension. (PX 3, p21). The Triage report noted "5 days ago noticed constant pain started after exercise in lower right calf. (PX 3, p 50). Physical exam showed the "right calf is mildly swollen, no erythema, moderate tenderness." (PX 3, p 53). Assessment noted "right calf pain after exertion with elevated CK>7000, c/w rhabdomyolysis. No kidney injury." (PX 3, p 56).

The chief complaint and history of present illness given on March 7, 2020, was that Petitioner "presents to the ED for right calf cramping. He states he started the police academy last week and has done a lot of physical activity that he isn't accustomed to his week. He states he is drinking lots of water but the cramping has persisted." (PX 3, p 58). Regarding Petitioner's right leg, physical examination noted no swelling, no erythema, and that the calf was tender to palpation with compartments soft. (PX 3, p, 59). It was noted that Petitioner could ambulate without help with a steady gait. (PX 3, p 73). The Admission Assessment Report noted that Petitioner reported intermittent localized pain at a 2/10 in his right calf. (PX 3, p80). It was noted that "Pt. in the State Police Academy. This week, there was so much physical exertion that Pt. became very dehydrated. Pt. has now had a 'cramp' in his right calf that he has had for several days and he cannot get rid of it. Pt. states it is painful." (PX 3, p 83). Petitioner's employer was listed as Pike County Sheriff's Department. (PX 3, p 115).

Petitioner underwent a US Venous Doppler of his right leg and it was noted that he had had "right calf pain for 4-5 days. No known injury." (PX 3, p 63). The Doppler found no deep venous thrombosis. (PX 3, p 63). Medication ordered was acetaminophen or ibuprofen every four hours as well as Zofran. (PX 3, p 40, 41, 46) Blood work on March 7, 2020 showed "MONO%" as the only thing higher than the normal rage under Hematology and that his glucose was high. (PX 3, 27-28). Petitioner denied need for pain medication and received IVF therapy. (PX 3, p 117).

Petitioner was discharged on March 8, 2020. (PX 3, p15). The History of present illness note from Passavant hospital stated that "he is a police officer, but has to go through police academy training when he is transferring between departments. He developed cramping and swelling in the right calf after finishing training last week…he was found to have normal vitals and blood work, but significantly elevated CK >7000. Doppler negative for DVT." (PX 3, p 22, 52). Petitioner was directed to follow up at SIU in 7-10 days. (PX 3, p 98).

Petitioner followed up at SIU and had additional bloodwork done on 3/19/2020. (PX 3, p5, PX 4, p7). This showed his total protein was slightly high at 7.9 with a reference range of 5.4-7.4 g/dL. (PX 3, p5). A CK Isoenzyme was ordered that date as well. (PX 3, p7). Petitioner's employer was listed as Pike County Sheriffs at this time. (PX 3, p8). CNP Vanmeter noted that "He had started the police academy and became dehydrated and had an injury to the right calf. He went to the ED and was admitted for rhabdo and given several bas of IVF's. This is a work comp claim. His right calf was significantly larger than the left which has essentially resolved. He has no PCP and has work comp forms needing completed by this office." (PX 4, p 7). Petitioner noted leg pain, including stiffness and calf tenderness, but no swelling, redness, ecchymosis, deformity instability, decreased range of motion, difficulty bearing weight, difficulty ambulating, hip pain, thigh pain, knee pain, numbness, tingling, weakness, warmth, joint catching, joint locking, fever, chills, or skin lesions were noted. (PX 4, p 7). At this time, Petitioner's left calf was 15.5" while his right calf was 15.75". (PX 4, p 9).

Petitioner sought no further treatment after March 19, 2020.

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

The date of accident is March 4, 2020. Accordingly, 820 ILCS 305/8.1(b) applies to this case. That section of the Act requires permanent partial disability to be established using five (5) criteria. Those criteria are:

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

The statute provides 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.

The AMA reported level of impairment

No impairment rating was submitted by either party. As such, the Arbitrator gives this factor no weight.

The occupation of the injured employee

Petitioner worked for the Illinois State Police on the date of accident as a cadet. Petitioner chose not to return to ISP as it was not beneficial to his retirement, as he would have been aged out of ISP prior to him meeting the requirements to retire at Tier 1. The Arbitrator notes that Petitioner never quit his prior job at Pike County Sherriff's department before beginning the academy at ISP and immediately returned to his job at Pike County as a Sherriff's Deputy. Petitioner continued working in law enforcement for two years before taking another job with the State at the Office of the Inspector General's office as an Investigator. The Arbitrator gives greater weight to this factor, as Petitioner testified that he did not return to a later academy at ISP due to his retirement plans, rather than due to this injury.

The age of the employee at the time of the injury

Petitioner was 53 years old on the date of accident. The Arbitrator gives moderate weight to this factor, as Petitioner is close to retirement age.

The employee's future earning capacity

Petitioner testified that he is currently employed with the State of Illinois at the Office of the Inspector General. Petitioner testified that he went back to his prior job in law enforcement. Additionally, Petitioner presented no evidence that his earning potential has been negatively impacted by this injury. As such, the Arbitrator gives greater weight to this factor.

Evidence of disability corroborated by the treating medical records

Petitioner provided no evidence of being unable to do his current job duties. While he testified he felt he was not an effective police officer anymore due to this injury, he returned to his job as a Sherriff's deputy and continued at that job for approximately two years.

The Arbitrator finds *Johnson v. State of Illinois/Southwestern Correctional Center* to be instructive. (2017 Ill. Wrk. Comp. LEXIS 168). In *Johnson*, Petitioner was awarded 15 weeks, or 3% person as a whole. (*Johnson* at *3). Petitioner in that claim was diagnosed with rhabdomyolysis secondary to dehydration. (*Id* at *11). Petitioner in that claim testified that he still treated twice per year for his injury and reported subsequent "difficulties in the following summers and that he experiences slight headaches and gets a little dizzy or sluggish. He testified that he cannot tolerate heat in the summers anymore and tries to avoid the heat when necessary. He testified that he brings water with him everywhere." (*Id* at *6).

The Petitioner in *Johnson* continued in the same job after his injury; similarly here, Petitioner continued his employment at Pike County Sheriff's Department for approximately two years after his accident. However, unlike the Petitioner in *Johnson*, Petitioner in this claim testified that he is not currently still seeing a doctor for his condition. Based on *Johnson* and the record in this claim, and taking into consideration that Petitioner's Application for Adjustment of claims lists the right lower extremity only, the Arbitrator awards 7% of the right leg, or 15.05 weeks.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC019681
Case Name	William Porter v. The American Coal Company
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0378
Number of Pages of Decision	14
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Kirk Caponi
Respondent Attorney	Julie Webb, Kenneth Werts

DATE FILED: 10/5/2022

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

William Porter,
Petitioner,

vs. NO: 17 WC 19681

The American Coal Company,
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 occupational disease, Sections 1(e)-(f) and permanent disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 7, 2022, is hereby affirmed and adopted.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $38,900.00. 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.

October 5, 2022
o9/28/22
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC019681
Case Name	PORTER, WILLIAM v. THE AMERICAN COAL COMPANY
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Kirk Caponi
Respondent Attorney	Kenneth Werts

DATE FILED: 3/7/2022

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

/s/Linda Cantrell, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

WILLIAM PORTER
Employee/Petitioner

v.

THE AMERICAN COAL COMPANY
Employer/Respondent

Case # **17** WC **019681**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin**, on **September 15, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Sections 1(d) – (f) of the Occupational Diseases Act**

FINDINGS

On **04/22/17**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$115,079.64**; the average weekly wage was $**2,213.07**.

On the date of accident, Petitioner was **66** years of age, ***married*** with **0** dependent children.

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

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

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

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

ORDER

Respondent shall pay Petitioner the sum of $**775.18 (Max. rate)**/week for a period of **50 weeks**, as provided in Section 8(d)2 of the Act, because the injuries sustained caused **10% loss of the body as a whole.**

Based on the totality of the evidence, the Arbitrator finds that Petitioner met the requirements of Sections 1(d)-(f) of the Occupational Diseases 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.

MARCH 7, 2022

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

WILLIAM PORTER,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 17-WC-019681
	)	
THE AMERICAN COAL COMPANY,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Herrin on September 15, 2021 on all issues. An Application for Adjustment of Claim was filed on July 7, 2017 wherein Petitioner alleges he sustained an occupational disease of his lungs, heart, pulmonary system, and respiratory tracts as the result of inhaling coal mine dust, including, but not limited to, coal dust, rock dust, fumes, and vapors for a period in excess of 45 years. The Application alleges a date of last exposure of April 22, 2017. The issues in dispute are accident, causal connection, nature and extent of Petitioner's injuries, and Sections 1(d)-(f) of the Occupational Diseases Act. All other issues have been stipulated.

TESTIMONY

Petitioner was 71 years of age, married, with no dependent children on the date of arbitration. Petitioner graduated high school and has two years of college with no degrees. Petitioner worked in the coal mines for over 45 years, the first 31 years underground. In addition to coal dust he was regularly exposed to and breathed silica dust, roof bolting glue fumes, diesel fumes and smoke from coal fires. He last worked in the coal mines on 4/22/17 for Respondent at their Galatia Mine. He was 66 years and 11 months of age with a job title of Director of Maintenance in the Prep Plant. This was his last day of work prior to being laid off.

Petitioner began working in the coal mines in 1971 for Monterrey Coal Company. He was first hired in as a general laborer and shuttle car operator. A shuttle car takes the coal from the face of the mine to the belt so that it can be removed. He was a shuttle car operator for approximately one year. He then became a maintenance man underground which meant he fixed vehicles and equipment that broke down in the mine. He worked on and repaired the equipment underground working near the face. Sometimes Petitioner said that he would be working on equipment in the returns where all the dust comes across. He was a mechanic until he left Monterrey in 1980 and worked for Old Ben Coal Company as a maintenance foreman. Petitioner

testified that his job duties were about the same as his duties at Monterrey. He worked for Old Ben for 8 months until he was laid off. He then went to work in a coal mine in Delta Colorado for the Grand Mesa Coal Company as a maintenance man with similar duties to what he had at the prior mines. He worked in Colorado for approximately 2 years before coming back to Illinois to work for Turris Coal Company in Elkhart, Illinois as a mechanic. Petitioner also had some training responsibilities as he was certified by the state as a mine examiner and mine manager. He then became a production foreman running a crew full-time. That required him to be at the face of the mine full time, where the coal is cut.

Petitioner stayed at Turris until April 1986 when he was hired by Kerr McGee which later became American Coal. He worked for Respondent until he was laid off in 2017. Petitioner started at this mine as a mechanic. He testified that both the mine in Colorado and Kerr McGee used diesel equipment where he had a lot of diesel exposure. Petitioner worked on the long wall which is a metal shear that runs along the face of the mine cutting the coal. Petitioner testified he was continually exposed to coal dust while working on the long wall. Petitioner testified he worked on the long wall for approximately 13 years. He then became an electrician which he worked for about 4 years before bidding on a job on the surface. He did this because he was trying to get away from the dust. On the surface he was a mechanic and then a shift foreman. Part of his responsibilities included checking reclaim tunnels. He described it as, "there being feeders on top feeding the coal down in there, and the coal would hit the belt and bring it back out into the belt feeding the plant. He would have to go down and check for your spills down in that area. A lot of times you were down there shoveling the coal on the belt because you had a spill, and the tail end was running in the coal." He also had to walk through the plant and check all the screens and pumps. Petitioner testified that it was just as dusty on the surface as it was underground. He was promoted to director of maintenance and held that position until he was laid off.

Petitioner first noticed breathing problems when he was on the long wall in 1996 or 1997. He stated he had to stop all the time and catch his breath. From the first time he started noticing breathing problems until he left the mine, he testified his breathing never improved and he sometimes felt worse. Since he left the mine until the time of trial, his breathing has stayed about the same. Petitioner testified that he can walk approximately three-fourth of a mile on level ground at a normal pace before becoming short of breath. Petitioner testified that his breathing affects his daily living. He used to go to the Tennessee Mountains and hike, but he can no longer do this activity. He has to stop and rest while weed-eating. Petitioner has a lake on his property where he used to go fishing on his boat but because of his breathing difficulties he cannot do that.

Petitioner's primary physician is Dr. Frank Jones. Petitioner is a never smoker. Besides breathing problems, Petitioner was diagnosed with PVCs in his heart in 2019 which required a heart catherization. He was also put on Metoprolol for his heart condition.

MEDICAL HISTORY

On 1/15/18, On a pulmonary function test was performed that was normal. (RX3, p. 216)

On 3/19/18, a pulmonary function test was performed at Methodist Hospital that revealed normal diffusion capacity.

On 6/24/18, a chest x-ray was performed that revealed no focal consolidation, pleural effusions, or pneumothorax. Cardiac silhouette and pulmonary vascularity were within normal limits. Degenerative changes were seen in the thoracic spine. Impression was no acute cardiopulmonary pathology. (RX3, p. 202)

Medical records from Prairie Cardiovascular were admitted into evidence. (RX4). An office visit of 4/26/17 states Petitioner presented for evaluation of palpations and shortness of breath, with an onset of two months ago. Petitioner denied chest pain, but his shortness of breath was worsening, and he had difficulty walking back and from to the pond on his property. On 8/2/17, Petitioner reported continued shortness of breath and was being worked up for a possible diagnosis of black lung given his prior occupational exposure.

On 10/8/18, Petitioner was positive for shortness of breath and negative for cough, hemoptysis, and wheezing. On 10/8/18, Petitioner's shortness of breath was stable and non-exertional. He was diagnosed with chronic shortness of breath and suspected black lung. Petitioner continued to follow up unchanged symptom and diagnoses. On 7/2/20, Petitioner was diagnosed with asthmatic bronchitis, black lung, and shortness of breath with exertion. Examination was negative for cough, hemoptysis, and wheezing. His diagnoses and symptoms remained the same at all subsequent visits through 11/30/20.

Medical records from Memorial Hospital of Carbondale were admitted into evident. On 6/24/18, Petitioner presented with a history of black lung. On 6/25/18, Petitioner had no wheezing on exam. The plan was to check for pro-BNP due to Petitioner's shortness of breath. On 12/6/18, final diagnosis was shortness of breath and coal worker's pneumoconiosis. On 2/12/20, Petitioner was diagnosed with black lung and shortness of breath with HR being low or irregular.

Medical records from Pulmonary and Critical Care revealed that on 8/29/18 Petitioner was examined for progressive effort dyspnea. It was noted Petitioner never smoke and was a coal miner for 45.5 years. He had been seen by Dr. Istanbouly for a black lung physical and was told he has black lung. He denied chest pains. He reported a PFT was performed that showed his lung function was down by 50% percent; however, the PFT was not available for review. His wife stated he gets short of breath after mowing the lawn. Petitioner has a rider and mows an acre. Past medical history as positive for black lung. He was positive for shortness of breath and negative for apnea, cough, choking, chest tightness, wheezing, and stridor. On 10/15/18, spirometry did not show any obstruction, with no significant improvement in the FEV-1 to bronchodilators, lung volumes were normal, and diffusion capacity was increased.

On 1/15/18, Petitioner was examined by Dr. Istanbouly who is board-certified in internal, pulmonary, critical care, and sleep medicine. He is associated with Southern Illinois Healthcare Hospitals in addition to all local hospitals including Harrisburg, DuQuoin, Marion, and Sparta. Petitioner gave Dr. Istanbouly a history of 45 and half years in the coal mine working 72 hours weeks. Dr. Istanbouly testified that that would mean those 45 and half years could turn into 65

years of coal dust exposure to the lungs. Petitioner gave history of coughing on a daily basis for at least 5 years, with occasional productive cough. Dr. Istanbouly performed pulmonary function testing that revealed Petitioner's FEV1 and FVC were within a range of normal, with a ratio of 74. According to the AMA Disability 6th Edition for Pulmonary Disease, any ratio less than 75% is considered abnormal. Dr. Istanbouly diagnosed simple coal worker's pneumoconiosis (CWP) and chronic bronchitis, both related to long term coal dust inhalation. He opined Petitioner could have no further exposure to the environment of the coal mine without endangering his health.

Dr. Istanbouly testified that CWP requires a tissue reaction in addition to just the deposition of coal mine dust in the lungs, commonly called scarring or fibrosis. Where that tissue reaction is located in the lung, the tissue cannot perform the same function as normal health lung tissue. A miner can begin his coal mining occupation at the top of the range of normal for pulmonary function testing, leave at the bottom range of normal, and have a significant loss of lung function yet at both times be within a normal range. A person can have CWP despite having no complaints of shortness of breath, having normal PFTs and ABGs and normal physical examination. There is no cure for CWP and it can progress even after the miner leaves the exposure. It is possible for an individual miner to have CWP for a significant period of time before he recognizes it. Dr. Istanbouly described chronic bronchitis as chronic inflammation of the small airways causing the patients to cough on a daily basis for at least 3 months per year for at least 2 consecutive years. If a person has chronic bronchitis it can progress to a very significant condition of COPD. If you read a chest x-ray as positive for CWP and you know the person had significant enough exposure to coal mine dust to cause the disease, those two things suffice to make a diagnosis of CWP. On the other hand, if you read the chest x-ray as being negative, that does not necessarily ever rule out the existence of CWP.

B-reader, Dr. Henry K. Smith, reviewed a grade 1 chest x-ray dated 4/27/17. Dr. Smith found interstitial fibrosis of classification p/p, bilateral mid to lower zones involved, of a profusion 1/0. There are no chest wall plaques, calcifications, or large opacities. Heart size is normal. There is calcified thoracic aorta. There is mid to lower dorsal levoscoliosis and spondylosis. Dr. Smith's impression was simple CWP with small opacities, primary p, secondary p, mid to lower zones involved bilaterally, of a profusion 1/0.

On 9/10/19, Dr. James Lockey performed a records review and provided deposition testimony on 12/16/20. Dr. Lockey opined that Petitioner did not demonstrate any objective findings of CWP or any objective evidence of pulmonary impairment related to coal dust exposure. On cross-examination Dr. Lockey agreed that a person can have radiographically or pathologically significant CWP with normal pulmonary function testing, normal physical examination of the chest, no particular complaints, and a normal diffusing capacity. Dr. Lockey agreed that due to Petitioner working six shifts a week, 12 hours per shift, he would be at a higher level of risk for chronic lung disease caused by coal mine dust than many other miners. If Petitioner coughed daily for five years with production of a teaspoon of sputum each day, that would fit the ATS definition of chronic bronchitis. Based on Petitioner's spirometry, lung volumes, and chest x-rays and CT scans, Dr. Lockey did not think there was any contribution from any potential unrecognized lung disease to his pulmonary hypertension. Dr. Lockey stated Petitioner's past history of productive cough with intermittent exasperation is most likely related in part to his 45-year history of exposure to coal and/or rock dust. In a never smoking coal miner

of 45 and a half years who works six shifts a week, twelve hours per shift, that coal mining exposure can cause chronic bronchitis. Scar tissue cannot perform the function of normal health lung tissue. He stated you can begin your coal mining career and have a loss or reduction of lung function but still be within the range of normal when you leave the mine. A miner can have CWP category 1 and still have normal blood gases, normal physical exam of the chest, no symptoms, and normal spirometry.

At Respondent's request, Dr. Cristopher Meyer reviewed a PA chest radiograph from Harrisburg Medical Center dated 4/27/17. Dr. Meyer testified by way of evidence deposition on 5/6/20. Dr. Meyer testified the chest radiograph was of diagnostic quality 2 which is just a minor limitation in quality due to rotation. Dr. Meyer's interpretation was that the lungs were clear, with no small, round, regular, or large opacities. His impression was no radiographic finding of CWP and clear lungs. On cross-examination, Dr. Meyer agreed that the gold standard of review to determine the existence of lung disease is pathological review as opposed to radiological review. Dr. Meyer agreed that it is fair to say that in category 1 CWP it probably could not be measured at the site of that tissue reaction. He agreed there would be some change in the function of the lung, which again probably could not be measured. The macule of CWP is a permanent abnormality. Once there is CWP that is progressing, there is no medicine or anything modern medical science can do to stop or reverse the progression. CWP can improve with removing the miner from the exposure. If a person has CWP at any time in their life, in as much as anything that causes CWP is coal mine exposure, it would be true that they probably had that CWP at some level when they left the coal mine. It is also true that when a coal miner has CWP that progresses, the rate of progression varies from miner to miner. Silica in the coal mine generally comes from the rock that's associated or intermixed with the coal that is being mined. Certain occupations in the mine, such as roof bolting or drilling or shooting, where you disturb the coal, there may be more rock involvement and greater silica exposures. It is true that a miner who has 1/0 CWP probably will not know he has it until he has a b-reading that confirms the condition. Dr. Meyer agreed that CWP can develop any time during a coal miner's career, including in the last month or so, even show up radiographically a month or so after leaving the mine.

CONCLUSIONS OF LAW

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

Issue (F): Is Petitioner's current condition of ill-being casually related to his occupational exposure?

The Arbitrator finds that Petitioner was exposed to an occupational disease that arose out of and in the course of his employment with Respondent. Section 1(d) of the Illinois Workers' Compensation Diseases Act states, in pertinent part:

> "A disease shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease. The disease needs not to have been foreseen or expected but

> after its contraction it must appear to have had its origin or aggravation in a risk connected with the employment and to have flowed from that source as a rational consequence. An employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when, for any length of time however short, he or she is employed in an occupation or process in which the hazard of the disease exists...If a miner who is suffering or suffered from pneumoconiosis was employed for 10 years or more in one or more coal mines there shall, effective July 1, 1973 be a rebuttable presumption that his or her pneumoconiosis arose out of such employment." 820 ILCS 310/1(d)

Petitioner worked as a coal miner for 45.5 years, 32 of which were underground. The remaining 13 years were spent above ground. Petitioner credibly testified that the dust exposure in his above ground work was just as heavy as his exposure underground. He worked 12-hour shifts, six days per week. Given this 72-hour per week work schedule, Dr. Istanbouly testified that his total mining exposure could be equivalent to 65 years of mining with a regular schedule. He is a lifelong never smoker of cigarettes. In addition to coal dust, Petitioner was also regularly exposed to silica dust, roof bolting glue fumes, diesel fumes, and smoke from underground coal mine fires.

The Arbitrator finds the opinions and testimony of Dr. Istanbouly more persuasive than those of Dr. Lockey; however, the Arbitrator notes that this was not due to a lack of credibility on the part of Dr. Lockey, who appeared to be even-handed in his opinions. Dr. Istanbouly conducted an independent medical examination to include a patient history and physical examination of the chest. Dr. Lockey never examined Petitioner nor took a patient history from him. The Arbitrator notes that Dr. Istanbouly and Dr. Lockey agreed on an unusual number of issues, including the fact that Petitioner suffers from chronic bronchitis as a result of his 45.5 years of coal mine exposure. They also agreed that the disease of chronic bronchitis represents an impairment in the function of the lungs and/or airways. Chronic cough with sputum is not a natural state and results from a thickening of the mucosal lining of the airways. Dr. Lockey testified that chronic bronchitis can make one more susceptible to recurrent pulmonary infections. The medical records indicate that on one occasion, Petitioner coughed so hard he dry heaved and he had been sent home from work because of his cough.

Dr. Lockey opined that Petitioner's capacity to perform heavy manual labor was related to his heart rather than his lungs; however, this opinion is not in agreement with that of Dr. Istanbouly or the treatment records. More than one treatment entry contains the opinion that Petitioner had more of a COPD-type picture rather than coronary, and that he had a history of black lung. Dr. Lockey testified that chronic bronchitis or COPD caused by coal mining is commonly referred to as black lung---any pulmonary disease caused by mining. Petitioner's medical records document that Petitioner was to be referred to a pulmonologist for suspected black lung. He ultimately treated with Dr. Pineda for pulmonary workup. The medical records include numerous prescriptions for pulmonary medicines for a number of years from more than one physician. Dr. Istanbouly described that chronic bronchitis and asthmatic bronchitis are similar and they can both be caused by coal dust exposure.

The Arbitrator notes a medical history of right heart failure or pulmonary hypertension. Dr. Istanbouly testified that such could be seen in any pulmonary disease including CWP and chronic bronchitis. Dr. Lockey testified that one of the items on the list of possible causes for pulmonary hypertension would be pulmonary fibrosis, which he stated is an element of CWP. He did not see CWP on the radiographic reports he read, but Dr. Lockey, Dr. Istanbouly, and Dr. Meyer testified that a miner can have CWP diagnosed pathologically when it was not appreciated radiographically. All three physicians cited studies that gave the percentage of long-term coal miners having CWP at autopsy to be from 50% to 95%. There was no disagreement that the risk for coal mine-induced lung disease is directly related to the amount of exposure of the miner, and Petitioner worked as a coal miner for 45.5 years, with work schedules that could make such the equivalent of 65 years of exposure. There was also no disagreement that as much as 50% of the weight of a miner's lungs can be accounted for by trapped coal mine dust or that some of the coal mine dust inhaled by the miner remains trapped in his lungs for the rest of his life.

The Arbitrator noted the treatment records contain radiographic studies finding fibrosis in Petitioner's lower lung fields. While Dr. Meyer and Dr. Lockey both testified that it is very rare for CWP to appear first in the middle and lower lobes of the lungs, they could cite no literature or positions from the American Thoracic Society, NIOSH, or other authorities to show that CWP *must* appear first in the upper lung zones. Petitioner's burden is not to prove conclusively that he has CWP, but merely to establish that is more likely than not that he has CWP. The record supports such finding.

Petitioner's pulmonary function testing was within the range of normal; however, the testimony supports that the diseases from which Petitioner suffers can be significant despite normal objective testing. Dr. Lockey testified that having pulmonary function testing within the range of normal does not mean one's lungs are free of injury or disease. He testified that Petitioner could have no further exposure to the environment of a coal mine without endangering his health in light of his multiple pulmonary diseases. Dr. Lockey testified that coal dust can result in chronic bronchitis as part of the disease of COPD, and that there are exposures in a coal mine such as diesel fumes or roof bolting glues that can cause or aggravate reactive airways disease or asthma. He also testified that if a person has the pre-existing condition of asthma, such could be aggravated by certain mining exposures, to include roof bolting glues or diesel fumes. He further testified that reactive airways disease or asthma can be aggravated by agents other than the ones that caused them; that they can wax and wane over time in terms of pulmonary function; and that during periods of apparent quiescence, the reactive airways disease or asthma has not gone away. It is just not being aggravated. Petitioner's uncontroverted testimony established that he was regularly exposed to both roof bolting glue and diesel fumes in his work as a coal miner.

Given the totality of the evidence, the Arbitrator finds Petitioner has satisfied the requirements of Section (d) of the Act and that Petitioner's coal workers' pneumoconiosis arose out of and in the course of his employment with Respondent. The Arbitrator further finds that Petitioner's condition of ill-being is causally connected to this exposure.

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

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment**: Petitioner's pulmonary function testing did not show objective measures of impairment. The impairment established and described by Drs. Istanbouly and Lockey is not subject to the objective measures of pulmonary function testing. The Arbitrator considers these facts and gives minimal weight to Petitioner's impairment rating.

(ii) **Occupation**: Petitioner was laid off by Respondent on 1/27/16. He did not obtain subsequent employment. The Arbitrator gives some weight to this factor.

(iii) **Age**: Petitioner was 66 years old at the time of his last exposure. Petitioner was laid off and did not seek further employment. The Arbitrator gives some weight to this factor.

(iv) **Earning Capacity**: Dr. Istanbouly testified that due to Petitioner's occupational lung diseases, Petitioner could not have additional exposure to coal dust without endangering his health as the damage to his lungs was moderate and significantly symptomatic. Petitioner's condition precluded him from further coal mine work which was the primary type of employment in Petitioner's working career. However, there was no evidence that Petitioner would not have continued to work for Respondent or in the coal mines had he not been laid off. Petitioner did not obtain subsequent employment after being laid off. The Arbitrator places some weight on this factor.

(v) **Disability**: Based on the medical records and testimony, Petitioner experienced increased respiratory difficulty with work and daily living activities. Dr. Istanbouly testified that the inhalation of coal dust that causes irritation and inflammation will ultimately form tiny scars. Dr. Istanbouly testified there is no cure for coal workers' pneumoconiosis and the condition is chronic. The Arbitrator places greater weight on this factor.

Petitioner testified he can walk approximately three-fourth of a mile on level ground at a normal pace before becoming short of breath. He testified that his breathing affects his daily living. He used to go to the Tennessee Mountains and hike, but he can no longer do this activity. He has to stop and rest while weed-eating. Petitioner has a lake on his property where he used to go fishing on his

boat but because of his breathing difficulties he cannot do that. The Arbitrator places greater weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator orders Respondent to pay Petitioner the sum of $**775.18 (Max. rate)**/week for a period of **50 weeks**, as provided in Section 8(d)2 of the Act, because the injuries sustained caused **10% loss of the body as a whole.**

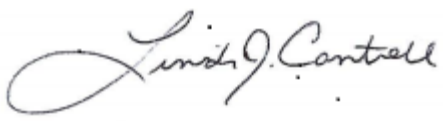
Issue (O): Sections 1(d)-(f) of the Occupational Diseases Act.

Section 1(e) of the Occupational Diseases Act states, in pertinent part, "{d}isablement" means an impairment or partial impairment, temporary or permanent, in the function of the body or any of the members of the body." 820 ILCS 310/1(e). Dr. Istanbouly testified that the inhalation of coal dust that causes irritation and inflammation will ultimately end up forming tiny scars. He testified there is no cure for coal workers' pneumoconiosis, and it is a chronic condition. The medical testimony supports that the scarring and fibrosis that occurs in the lungs from pneumoconiosis is irreversible and permanent. That the scarring and fibrosis is an alteration of the lung tissue and function of the involved lung tissue. Petitioner was diagnosed with chronic and asthmatic bronchitis which is a chronic pulmonary condition. Based on the evidence, the Arbitrator finds Petitioner has satisfied the requirements of Section 1(e) of the Act.

Section 1(f) of the Occupational Diseases Act states, in pertinent part, "[n]o compensation shall be payable for or on account of any occupational disease unless disablement, as herein defined, occurs within two years after the last day of the last exposure to the hazards of the disease." 820 ILCS 310/1(f). Petitioner last worked a day of coal mine employment on 4/22/17. Petitioner has not worked in the coal mines and has not had any other exposure to coal mine dust since that date. On 1/15/18, Dr. Istanbouly performed pulmonary function testing that revealed Petitioner's FEV1 and FVC were within a range of normal, with a ratio of 74. According to the AMA Disability 6th Edition for Pulmonary Disease, any ratio less than 75% is considered abnormal. Dr. Istanbouly diagnosed simple coal worker's pneumoconiosis (CWP) and chronic bronchitis, both related to long term coal dust inhalation. He opined Petitioner could have no further exposure to the environment of the coal mine without endangering his health.

Since Petitioner obtained the coal workers' pneumoconiosis diagnosis within two years of leaving Respondent's employment, he meets the requirement under Section 1(f) of the Act.

Based on the totality of the evidence, and the factual findings above, the Arbitrator finds that Petitioner met the requirements of Sections 1(d)-(f) of the Occupational Diseases Act.



Arbitrator Linda J. Cantrell DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC003162
Case Name	Michael Roach v. City of Anna
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0379
Number of Pages of Decision	17
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Glenn Blackmon

DATE FILED: 10/6/2022

/s/ Deborah Simpson, 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 WILLIAMSON	)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
			☐ PTD/Fatal denied
		☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael Roach,
Petitioner,

vs. NO: 19 WC 3162

City of Anna,
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 medical and permanent disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 28, 2022, is hereby affirmed and adopted.

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

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

There is no bond for the removal of this cause to the Circuit Court by Respondent pursuant to §19(f)(2) of the Act. 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.

October 6, 2022
o9/28/22
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC003162
Case Name	ROACH, MICHAEL v. CITY OF ANNA
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Kylee Jordan

DATE FILED: 2/28/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 23, 2022 0.71%

/s/Linda Cantrell, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MICHAEL ROACH
Employee/Petitioner

v.

CITY OF ANNA
Employer/Respondent

Case # **19** WC **003162**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin**, on **December 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? **(right knee)**
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? **(right knee)**
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **December 14, 2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being ***with respect to his right knee is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**51,759.20**; the average weekly wage was $**997.37**.

On the date of accident, Petitioner was **38** years of age, ***married*** with **2** dependent children.

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

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

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

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

ORDER

Based on the Arbitrator's findings that Petitioner's current condition of ill-being in his right knee is not causally connected to his work accident on 12/14/18, the Arbitrator finds Respondent is not liable for Petitioner's medical bills related to his right knee and all claims for said medical bills are denied.

Respondent shall pay Petitioner permanent partial disability benefits of **$598.42**/week for **162.5** weeks, because the injuries sustained caused **27.5%** loss of his body as a whole with respect to his lumbar spine injury, and **5%** loss of his body as a whole for his cervical spine injury, pursuant to Section 8(d)2 of the Act. Based on the Arbitrator's findings that Petitioner's current condition of ill-being in his right knee is not causally connected to his work injury on 12/14/18, permanent partial disability benefits with respect to his right knee are denied.

Respondent shall pay Petitioner compensation that has accrued from **8/24/20** through **12/20/21**, and shall pay the remainder of the award, if any, in weekly payments.

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

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

FEBRUARY 28, 2022

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MICHAEL ROACH,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 19-WC-003162
	)	
CITY OF ANNA,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Herrin on December 20, 2021 on all issues. The parties stipulated that on December 14, 2018 Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent when he was struck and thrown by a swing boom of a track hoe. The Arbitrator takes judicial notice of the Arbitrator Decision entered on February 20, 2020 pursuant to Section 19(b) of the Act, wherein this Arbitrator found Petitioner's lumbar spine condition was causally connected to his injury and awarded medical bills and temporary total disability benefits. This Arbitrator also concluded that the motor vehicle accident that occurred on September 6, 2019 did not constitute an intervening accident. No appeal was taken and said Decision became the Decision of the Commission. All findings contained in the previous 19(b) Arbitrator Decision are incorporated herein by reference.

The disputed issues in this proceeding are causal connection and medical bills with respect to Petitioner right knee, and the nature and extent of Petitioner's injuries with respect to his lumbar spine, cervical spine, and right knee. All other issues have been stipulated.

TESTIMONY

Petitioner testified he was employed by Respondent as a laborer for 22 years. He stated that on 12/14/18, he was hit in the head by the boom of a track hoe that knocked him approximately fifteen feet causing him to lose consciousness. Petitioner testified that since his initial testimony on 1/9/20 he continued to receive treatment for his low back and right knee. He stated his low back condition was much worse and it took priority, resulting in him not mentioning right knee pain to various medical providers. He stated his left knee injury was a result of the motor vehicle accident and not the work accident.

Petitioner testified that his low back improved following surgery, physical therapy, and home exercises. He stated he noticed pain in his right knee after his low back condition improved. His knee was painful, locking up, clicking with walking, and swelling. His knee symptoms worsened despite being off work for his lumbar spine treatment. Petitioner sought treatment with Dr. Bradley who performed a partial knee replacement. Petitioner stated that surgery, physical therapy, and home exercises improved his knee symptoms.

Petitioner testified that Dr. Gornet placed him on work restrictions when he released him from his care, but Dr. Gornet advised he could attempt to return to full-duty work if he wanted. He enlisted the services of a vocational expert to assist him in preparing a resume and perform job searches. He was successful in finding employment with Bass Farms that required a lot of driving to various farms to check fencing, livestock, feeders, etc. He stated his new position was within his work restrictions. He was employed by Bass Farms for six months. He was not offered employment by Respondent until his case was set for hearing. Petitioner returned to work for Respondent on 6/28/21 on a full-time basis making a higher rate of pay than prior to his accident. He testified he has not been offered overtime which he frequently worked on a mandatory and voluntary basis prior to his accident. He stated he has lost thousands of dollars in overtime income. Petitioner testified he is the highest seniority employee with Respondent.

Petitioner testified he still has back symptoms commensurate with his level of activity. He notices pain, stiffness, and loss of range of motion, which are typically aggravated by working or standing, sitting, or walking for prolonged periods of time. He stated he has completed treatment for his right knee. He has loss of range of motion, swelling, and numbness with working, standing, walking, and sometimes sitting for prolonged periods. His hobbies of playing with his children, coaching sports, hunting, fishing, and hiking have been adversely affected. He takes Flexeril to help him sleep and Mobic, Naproxen, or over-the-counter Ibuprofen daily to reduce his pain.

On cross-examination, Petitioner testified that when he returned to work for Respondent in June 2021, he took 66 days off for the remainder of 2021 using his benefit time. He stated he did so because he would lose his time if not utilized. He agreed that Respondent is accommodating his restrictions. He stated he began treating for both his knees following a motor vehicle accident on 9/6/19.

Dori Bigler testified on behalf of Respondent. Mrs. Bigler has been the Administrator for the City of Anna for just over two years. She manages the department heads, employees, budgets, and grants. She testified that Respondent did not have a written policy regarding light duty accommodations when she started employment. Mrs. Bigler and the City Council instituted a light duty policy as a result of another injured employee. Respondent agreed to take Petitioner back on a permanent basis within his restrictions. Mrs. Bigler stated Petitioner told her he was resigning his position and she told him to obtain a separation agreement from the Union. Petitioner ultimately did not resign his employment. Mrs. Bigler stated it is her understanding Petitioner has been offered overtime work, but she is not involved in shift scheduling.

MEDICAL HISTORY

Following the 19(b) hearing held on January 9, 2020, Petitioner returned to Dr. Gornet on 1/16/20, at which time Dr. Gornet noted the recent motor vehicle accident caused a new lumbar annular tear on the left at L4-5. (PX5). He noted Petitioner's cervical spine complaints referable to C5-6 and C6-7 were present prior to the motor vehicle accident and remained causally related to the 2018 work accident. Dr. Gornet recommended a new lumbar CT myelogram to assess Petitioner's fusion and prescribed Cyclobenzaprine.

On 3/12/20, Dr. Gornet noted Petitioner was treating with a chiropractor for localized knee pain. He gave Petitioner samples of Voltaren gel and recommended an MRI for his left knee. There is no mention of Petitioner's right knee. He also recommended a low back injection, specifying he attributed this and Petitioner's left knee complaints to the motor vehicle accident and not the work injury. (PX5). The lumbar CT scan demonstrated satisfactory positioning of Petitioner's L5-S1 hardware. (PX9).

On 4/27/20, Dr. Gornet noted Petitioner's motor vehicle accident of 9/6/19 caused left knee pain and aggravated his right knee which was already part of his work injury. Dr. Gornet stated the left knee MRI revealed a meniscal tear and partial tear of the ACL. Dr. Gornet noted some right knee discomfort which he believed was related to Petitioner's work injury. He referred Petitioner to his partner Dr. Paletta for further treatment of his bilateral knees. Dr. Gornet recommended a functional capacity evaluation for Petitioner's neck and back injuries attributable to the work accident. He stated Petitioner's work status remained temporarily totally disabled.

On 5/14/20, Petitioner underwent a left-sided C6-7 injection by Dr. Helen Blake per Dr. Gornet's orders.

On 6/12/20, an FCE was completed at Apex Physical Therapy, during which Petitioner's effort was consistent with acceptable effort despite "moderate to high" pain levels of 6-7/10 during testing. (PX13). Petitioner's pain slowly increased during testing, and his quality of motion decreased as he adjusted his body mechanics to accommodate his increasing symptoms. Petitioner was able to perform tasks within the medium physical demand category.

On 6/23/20, Petitioner came under the care of Dr. Matthew Bradley. Petitioner reported his history of injury on 12/14/18 and stated he twisted his right knee when he was struck in the head by a boom. He reported his treatment with Dr. Gornet. Petitioner reported he has had medial-sided knee pain since his work accident that comes and goes, and it did not seem to be getting better or worse. His treatment to date involved rest, Ibuprofen, and Tylenol. He denied instability, catching, clicking, or locking.

Dr. Bradley noted a previous work-related right knee injury in 2013. Petitioner was treated conservatively and made a full recovery. He has worked as a heavy duty laborer and machine operator since then and has had no pain in his knee until his 12/14/18 incident. Dr. Bradley was not in possession of the left knee MRI ordered by Dr. Gornet which was the result of an automobile accident. Dr. Bradley ordered a right knee MRI and opined that Petitioner's

twisting injury on 12/14/18 was at least a precipitating factor in his ongoing symptoms and the need for workup and treatment.

On 6/23/20, Petitioner was examined by Dr. Timothy Farley pursuant to Section 12 of the Act. Dr. Farley reviewed Petitioner's medical records, including emergency room records of 9/6/19 following Petitioner's car accident. Dr. Farley diagnosed Petitioner with a medial meniscus tear in the left knee, with areas of medial compartment chondromalacia. He stated there was a combination of a horizontal tear of the medial meniscus and mild-to-moderate degenerative joint disease of the medial compartment of the left knee. He stated that the right knee did not have MRI imaging, but it would not be unreasonable to think the same degree of chondromalacia was present in the right knee as well. He said whether or not there was a horizontal tear of the medial meniscus was unknown.

Dr. Farley opined that Petitioner's current condition of ill-being was not causally related to the December 2018 work injury. Petitioner gave no complaints related to his knees for months after his incident. He said there was no objective evidence to state that the 12/14/18 injury caused or aggravated his alleged knee conditions. Dr. Farley felt that Petitioner was capable of working full duty without restrictions as it pertained to his knees.

On 7/2/20, Dr. Bradley performed a left knee ACL reconstruction, chondroplasty of the medial femoral condyle, and a partial medial meniscectomy.

On 8/24/20, Dr. Gornet noted Petitioner felt the steroid injection at C6-7 performed on 5/14/20 did not provide significant relief. Dr. Gornet considered a CT myelogram for Petitioner's neck as he believed Petitioner may have sustained a disc injury adjacent to his prior injuries. Dr. Gornet opined the better option would be to place permanent restrictions on Petitioner and he could return for any cervical issues on an as-needed basis. Dr. Gornet placed Petitioner at MMI and recommended permanent restrictions of no lifting greater than 25 pounds and no overhead work. (PX5). Dr. Gornet stated he did not believe it would physically harm Petitioner to work but it may increase his symptoms. He stated Petitioner can contact him for a trial of full duty and he would accommodate him, but Dr. Gornet had reservations about doing so. He prescribed Cyclobenzaprine and Tramadol upon discharge.

On 8/26/20, Dr. Bradley reviewed the MRI images and the radiologist's report of Petitioner's right knee dated 8/24/20. He believed the MRI revealed a very large complex tear to the mid body and posterior horn of the medial meniscus extending into the root, multiple peri-meniscal cysts, some subluxation or extrusion of the medial meniscus involving the posterior root ligament, a significant amount of loss of cartilage in the area of the meniscus tear with areas of Grade IV noted along the medial femoral condyle with corresponding lesions noted to the tibial plateau, with no significant degenerative disease or thinning of the cartilage. Dr. Bradley noted Petitioner continued to have medial-side only pain, worse with weightbearing, twisting or turning exercises, and going up or down stairs or steps or inclines. Dr. Bradley recommended a medial unicompartmental arthroplasty or partial knee replacement. (PX14). He opined that Petitioner likely tore his meniscus on 12/14/18 and the last two years of walking around has led to loss of cartilage on the medial aspect of his knee, which increases the bone-on-bone contact area and the area of the tear.

On 8/28/20, Petitioner underwent a full medial unicompartmental arthroplasty, partial patellectomy, and right knee injection. (PX15). Intraoperative findings indicate the medial meniscus was completely extruded medially, with full thickness defects noted to the medial portion of the medial femoral condyle and a corresponding defect on the tibia. On 9/8/20, Petitioner was doing well overall, with moderate pain with prolonged standing or any activity. (PX14). Dr. Bradley referred him for physical therapy, refilled his prescriptions for Percocet and Valium, and kept Petitioner off work.

On 10/8/20, Petitioner reported dramatic improvement and he was able to fully extend his knee. Dr. Bradley encouraged him to continue making progress in physical therapy and manage his symptoms with ice and medication as needed. He allowed Petitioner to return to work with sedentary restrictions. On 11/17/20, Petitioner reported continued progress with physical therapy and home exercises but had residual pain along the medial aspect of his knee at the MCL. Dr. Bradley recommended over-the-counter Voltaren gel two-to-three times daily. Dr. Bradley prescribed Percocet to be used before physical therapy as Petitioner complained of a significant amount of pain following therapy. Petitioner was allowed to return to light duty work. Dr. Bradley complied with Petitioner's request to go deer hunting as long as he did not climb or pull deer.

On 11/15/20, Dr. Timothy Farley rendered an addendum report. Dr. Farley reviewed Petitioner's MRI and medical records from Dr. Bradley both dated 6/23/20, and the right knee MRI dated 8/24/20. He stated that the surgery performed on Petitioner was not totally unreasonable, but more aggressive than he would recommend. Dr. Farley advised that his causation opinions from his 6/23/20 report were unchanged. He stated he was not aware of any objective medical evidence that demonstrated problems in Petitioner's right knee until an extended period after the December 2018 injury. Additionally, he felt that the motor vehicle accident of September 2019 seemed to have led him to a point of discomfort that had manifestly changed his overall level of symptoms. Dr. Farley felt that "the straw that broke the camel's back" was most reasonably associated with the motor vehicle accident.

On 1/25/21, Petitioner returned to Dr. Bradley and reported swelling and tightness in his knee with prolonged standing and repetitive activity and he was pushing his knee to maintain motion and strength. (PX14). Dr. Bradley suspected post-operative scar tissue and irritation from the indwelling metal implant. He recommended an intraarticular steroid injection to break down tissue and control the inflammation.

On 6/21/21, Petitioner followed up with Dr. Gornet who noted Petitioner continued to do well as long as he stayed within his restrictions. Petitioner reported having no issues performing his job duties at Bass Farms and he felt quite good. Dr. Gornet continued Petitioner on yearly follow up visits. Petitioner saw Dr. Bradley the same day who diagnosed capsulitis along the medial aspect of Petitioner's knee. He recommended anti-inflammatory medication and home exercises.

On 8/16/21, Petitioner reported medial pain directly over the medial femoral condyle with significant use of his right knee with no reports of interval trauma. Dr. Bradley again

administered an intraarticular steroid injection. Petitioner had no restrictions as it related to his right knee.

On 11/29/21, Petitioner reported the intraarticular injection gave him excellent pain relief for a couple of weeks; however, his pain gradually returned. Petitioner reported that most days he was pain free and did very well, and then he will experience a sudden catching sensation and severe pain. Dr. Bradley noted the medial anterior aspect of Petitionre's knee seemed to be the main pain generator, with occasional episodes of severe pain and catching. Dr. Bradley believed this to be related to scar tissue in the capsule that was getting pinched from time to time. He recommended Lidoderm patches for significant pain, as well as Voteran gel for the next 6 to 8 weeks. Petitioner was to continue working full duty without restrictions and advised to follow up in 2 to 3 weeks.

Dr. Matthew Bradley testified by way of evidence deposition on 9/17/20. (PX17). He is a board-certified orthopedic surgeon with approximately 50% of his practice devoted to joint replacement surgery. He reviewed Petitioner's treatment records, imaging studies, and the opinion of Dr. Farley. Dr. Bradley testified that Petitioner's right knee treatment was delayed because his spine injuries were the first and foremost injury addressed following the accident. He recommended a partial knee replacement because Petitioner's meniscus tear was large and had torn off the whole meniscus where it attaches to the back of the knee. He stated it had also worn a groove or a hole on the inside of his knee. Being his injury was almost two years old and the groove was present, a simple arthroscopic procedure would not have relieved his pain. Dr. Bradley stated that the rest of Petitioner's knee, such as the ligaments and ACL, appeared normal without any substantial degeneration, which led him to believe that this was not the result of a pre-existing degenerative condition.

Dr. Bradley testified that his surgical findings were consistent with the pain and symptoms Petitioner reported. He stated he took a very detailed history of Petitioner's right knee injuries, including the 2013 and 2018 injuries. He stated he did not have records from 2013 through 2018 that supported Petitioner's claim that his right knee was pain free during that period. However, he relied on Petitioner's history that his right knee symptoms began following his December 2018 accident and so Dr. Bradley was left to conclude that that injury is what caused his medial meniscus tear and need for surgery. He testified that Petitioner's injury was consistent with a twisting injury.

On cross-examination, Dr. Bradley admitted he was relying on Petitioner's history of twisting his knee on 12/14/18 when rendering his causation opinion. Dr. Bradley acknowledged Petitioner did not mention twisting his knee on the registration form. He stated that if Petitioner did not have any complaints of right knee pain before his motor vehicle accident or seeing Dr. Bradley, it would be something to consider. He stated that the absence of documented knee pain would not change his opinion.

Dr. Bradley did not review any medical records from Petitioner's motor vehicle accident. He admitted if those records showed Petitioner had a contusion to this right knee on 9/6/19, that would definitely say there was some sort of direct trauma to his knee. He stated Petitioner tore his left ACL and meniscus due to the vehicle accident and it was certainly possible he could have

just as easily torn the meniscus to the right knee during the same accident. He agreed that if there were no complaints of right knee pain up until Petitioner's motor vehicle accident, he would see how one would attribute the accident to his knee pain. He agreed that motor vehicle accidents were a consistent mechanism for meniscal tears and orthopedic injuries. Dr. Bradley testified that when patients tear their meniscus, the symptoms run the gamut, including pain, locking, difficulty twisting, turning, steps, and swelling. He admitted he did not recall any documenting of severe swelling or effusion in Petitioner's right knee.

On re-direct examination, Dr. Bradley testified that the emergency room radiologist only x-rayed Petitioner's left knee following his 9/6/19 automobile accident, suggesting Petitioner only injured his left knee in the accident. He acknowledged that Petitioner's right knee was also not x-rayed in the emergency room following his December 2018 work accident. Dr. Bradley distinguished the occurrence stating the severe nature of the work accident and Petitioner's loss of consciousness likely made it difficult for Petitioner to fully espouse the state of condition of his entire body or pinpoint where all of his pain was coming from.

Dr. Timothy Farley testified by way of evidence deposition on 12/1/20. Dr. Farley is an orthopedic surgeon who has been practicing medicine for 23 years. He testified consistent with his Section 12 report. He testified that the pertinent findings on physical examination of Petitioner's right knee were no swelling or crepitus, the patella tracked well over the front of the femur, some tenderness along the inner or medial side of the knee, with no tenderness laterally. Dr. Farley testified that Petitioner's ligaments were all stable when he was tested, and he had normal strength and reflexes.

He noted Dr. Gornet's office note of April 2020 wherein Petitioner reported right knee pain was sixteen months after his work accident. Petitioner was scheduled to be examined by Dr. Matthew Bradley that day following the Section 12 exam for his right knee. He opined Petitioner had normal x-rays and did not sustain a good mechanism for an injury. Dr. Farley testified that Petitioner may have had a meniscus tear with some mild chondromalacia or cartilage damage, but it was not caused or aggravated by his work accident.

Dr. Farley testified that Petitioner did not really recall what had happened to him following his work accident because he was struck in the head causing him to be thrown to the side and lose consciousness. Dr. Farley testified that mechanism of injury would normally knock you straight off your feet, and a meniscus would typically tear with a planted foot and a twist. Dr. Farley noted that Petitioner presented to the emergency room after his accident, and he felt that if Petitioner had an acute tear of the meniscus he would have been evaluated there or certainly it would have come up prior to sixteen months after the accident. Dr. Farley testified that Petitioner did not require additional treatment to his right knee or work restrictions, and he had reached MMI.

On cross-examination, Dr. Farley testified that although he stated Dr. Bradley's surgery was not entirely unreasonable, he was being "diplomatic" and he in fact "vehemently disagreed" with the type of surgery performed as it was too aggressive for Petitioner's age and would likely lead to a revision. Dr. Farley admitted he was not provided with the Application for Adjustment of Claim indicating Petitioner suffered a right knee injury as a result the accident. He admitted it

was not unreasonable for Petitioner to wait to get treatment for his right knee until his spinal injuries were addressed.

CONCLUSIONS OF LAW

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

The Arbitrator finds that Petitioner has failed to prove that the current condition of ill-being in his right knee is causally connected to his work accident on 12/14/18. Although Petitioner argues that the gap in treatment with respect to his right knee was logically explained, given that his spine injuries were more severe and of primary importance, the medical records are void of any evidence of right knee complaints or injury following his work accident for well over one year. The only mention of a right knee injury prior to 4/27/20 is the Application for Adjustment of claim signed on 1/15/19 which alleges Petitioner injured his right knee, ankle, and foot as a result of his work accident. However, Petitioner was never diagnosed with a right ankle/foot condition and did not receive treatment for same following his work accident. It was not until 4/27/20 that any issues with Petitioner's right knee were documented, contemporaneous with treatment of his left knee that was injured in the September 2019 motor vehicle accident.

Petitioner was seen in the emergency room immediately following his work accident. The ER records contain no mention of right knee pain, nor are there any positive physical exam findings on the right knee. The first mention of right knee symptoms at all, much less in relation to Petitioner's work accident, occurred on 4/27/20, over fifteen months after Petitioner's work accident. On that date, the medical information sheet Petitioner completed by hand stated "[r]ight knee is like left was last visit;" which leads to the conclusion that Petitioner was only complaining of left knee pain on 3/12/20. Nevertheless, Dr. Gornet opined that Petitioner's motor vehicle accident on 9/6/19, "caused left knee pain and aggravated his right knee, which was already part of his work injury…". (RX9). Dr. Gornet's statement ignored the previous lack of symptoms and the significant length of time that passed between the work accident and his evaluations. Dr. Gornet's records are void of any evidence that Petitioner complained of right knee symptoms that would support his conclusion that Petitioner's right knee condition was "already part of his work injury".

Dr. Farley concluded that if there was anything that might represent some sort of significant aggravation or cause of an injury, it might be the motor vehicle accident Petitioner was involved in that had injured his left knee. Dr. Farley had a more accurate understanding regarding the timeline of the onset and cause of Petitioner's knee complaints. Dr. Farley reviewed the emergency room records following Petitioner's motor vehicle accident and understood that Petitioner's bilateral knee complaints started only after the same accident. Dr. Farley summarized the emergency room records from St. Francis Medical Center dated 9/6/19 in his report, which included reddened areas above the "knees" described as having a burning sensation. Petitioner described his first degree burns above both knees and x-rays of the left knee showed no acute osseous abnormalities.

Dr. Bradley did not review any medical records from Petitioner's motor vehicle accident, nor did Petitioner offer said medical records into evidence at trial. Dr. Bradley admitted if those records showed Petitioner had a contusion to this right knee on 9/6/19, that would definitely say

there was some sort of direct trauma to his knee. Dr. Bradley testified that the motor vehicle accident was a consistent mechanism for lots of different types of orthopedic issues, including meniscal tears. He opined that Petitioner tore his left ACL and meniscus due to that motor vehicle accident and conceded that it was certainly possible Petitioner could have just as easily torn the meniscus to the right knee during that same accident. Although Dr. Bradley seemed unsure of when Petitioner's knee complaints began, he testified that he could see how the right knee condition could be attributed to the motor vehicle collision if there were no complaints before Petitioner's motor vehicle accident. After all, the motor vehicle accident was significant enough that it caused Petitioner to undergo a left knee ACL reconstruction and partial medial meniscectomy. (RX9).

Dr. Bradley admitted he was relying on Petitioner's history of twisting his knee in the 12/14/18 incident when rendering his causation opinion. Dr. Bradley acknowledged Petitioner did not mention twisting his knee on the registration form. He stated that if Petitioner did not have any complaints of right knee pain before his motor vehicle accident or seeing Dr. Bradley, it would be something to consider. However, he stated that the absence of documented knee pain would not change his opinion.

As previously stated, the record lacks any mention of right knee complaints prior to the motor vehicle accident. Additionally, Petitioner testified he did not have any right knee treatment until after his motor vehicle accident. As such, the Arbitrator finds the opinions of Dr. Farley to be more informed and credible.

Consideration of the evidence in its totality reveals there were no right knee complaints for well over a year after Petitioner's work accident. The complaints only appeared after a motor vehicle accident that was severe enough to require an ACL reconstruction and partial medial meniscectomy on Petitioner's other knee. The length of time between the work accident and the appearance of right knee complaints is too remote to support a finding of causal connection. The credible medical evidence does not mandate a different conclusion.

Further, even if one were to assume that the work accident caused Petitioner to experience right knee pain, despite no objective evidence to support this argument, Petitioner did not require right knee treatment until after sustaining the motor vehicle accident. Thus, any need for treatment would be attributable to the motor vehicle accident.

Therefore, the Arbitrator concludes Petitioner has failed to establish that the current condition of ill-being in his right knee is causally connected to his work accident on 12/14/18.

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

Based on the Arbitrator's finding as to causal connection, the Arbitrator finds Respondent is not liable for Petitioner's medical bills related to his right knee and all claims for said medical bills are denied.

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

Pursuant to § 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.b(b)(v).

(i) **Level of Impairment**: Neither party submitted an AMA rating. Therefore, the Arbitrator gives no weight to this factor.

(ii) **Occupation**: Petitioner returned to his position as a union Laborer for Respondent. Petitioner does have permanent restrictions, which are being permanently accommodated by Respondent. The Arbitrator gives greater weight to this factor.

(iii) **Age**: Petitioner is 41 years old and has worked as a heavy duty laborer and machine operator for Respondent for 22 years. He has permanent restrictions and must live and work with his disability for a substantial period of time. The Arbitrator places greater weight on this factor.

(iv) **Earning Capacity**: There is no evidence of diminished future earning capacity in the record. Petitioner is still employed in the same position as a Laborer for Respondent and has received raises since his accident occurred. Petitioner testified that his hourly wage is currently more than it was prior to his accident. The Arbitrator gives some weight to this factor.

(v) **Disability**: As a result of Petitioner's accidental injuries, he underwent a L5-S1 laminotomy, anterior decompression, and fusion. Petitioner underwent a previous cervical disc replacement at C3-4 related to a work accident in October 2013 and had returned to full duty work as of 5/11/15, without significant issues. A CT myelogram performed after Petitioner's 12/14/18 work accident revealed lucency around the prosthesis at C3-4, with small paracentral protrusions at C5-6 and C6-7, resulting in dural displacement, and a central broad-based protrusion at C2-3 which Dr. Gornet causally related to Petitioner's work accident. Petitioner underwent C6-7 injections which improved his symptoms.

Dr. Gornet ordered a functional capacity evaluation in related to Petitioner's neck and back injuries, which revealed Petitioner was capable of working at a medium physical demand level. On 8/24/20, Dr. Gornet noted Petitioner felt the steroid injection at C6-7 performed on 5/14/20 did not provide significant relief. Dr. Gornet considered a CT myelogram for Petitioner's neck as he believed he may have sustained a disc injury adjacent to his prior injuries. Dr. Gornet opined the better option would be to place Petitioner on permanent restrictions and he could return for any cervical issues on an as-needed basis. Dr. Gornet placed Petitioner at MMI and recommended permanent restrictions of no lifting greater than 25 pounds and no overhead work. Dr. Gornet stated he did not believe it would physically harm Petitioner to work but it may increase his symptoms. He stated Petitioner can contact him for a trial of full duty and he would

accommodate him, but Dr. Gornet had reservations about doing so. He prescribed Cyclobenzaprine and Tramadol upon discharge. On 6/21/21, Dr. Gornet noted Petitioner continued to do well as long as he stayed within his restrictions. Petitioner reported having no issues performing his job duties and he felt quite good. Dr. Gornet continued Petitioner on yearly follow up visits.

Petitioner testified he still has back symptoms commensurate with his level of activity. He notices pain, stiffness, and loss of range of motion, which are typically aggravated by working or standing, sitting, or walking for prolonged periods of time. His hobbies of playing with his children, coaching sports, hunting, fishing, and hiking have been adversely affected. He takes Flexeril to help him sleep and Mobic, Naproxen, or over-the-counter Ibuprofen daily to reduce his pain. Petitioner did not testify as to ongoing cervical symptoms or limitations and there is no evidence Petitioner has returned to Dr. Gornet since 6/21/21 at which time he reported no cervical issues. However, Dr. Gornet's recommendation for the FCE was due to Petitioner's lumbar and cervical conditions, which resulted in permanent restrictions. Petitioner continues to work for Respondent on a full duty basis. The Arbitrator places greater weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator finds Petitioner sustained permanent partial disability to the extent of 27.5% loss of his body as a whole with respect to his lumbar spine injury, and 5% loss of his body as a whole for his cervical spine injury, pursuant to Section 8(d)2 of the Act. Based on the Arbitrator's findings that Petitioner's current condition of ill-being in his right knee is not causally connected to his work injury on 12/14/18, permanent partial disability benefits with respect to his right knee are denied.

Respondent shall pay Petitioner compensation that has accrued from 8/24/20 through 12/20/21, and shall pay the remainder of the award, if any, in weekly payments.

Linda J. Cantrell, Arbitrator

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC010661
Case Name	Terrell Murphy v. LaFournette Bakery
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0380
Number of Pages of Decision	13
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Thomas Lichten
Respondent Attorney	Carol Cesaretti

DATE FILED: 10/6/2022

/s/ Deborah Baker, Commissioner

Signature

22IWCC0380

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 PPD	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TERRELL MURPHY,

Petitioner,

vs. NO: 16 WC 10661

LA FOURNETTE BAKERY,

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 the nature and extent of Petitioner's injuries, §19k penalties, §19(l) penalties, §16 attorney fees, whether Respondent should pay the $896.02 it owed in medical expenses to the Illinois Department of Healthcare and Family Services directly to that agency, and "evidentiary issues," and being advised of the facts and law, modifies 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 hereby incorporates by reference the findings of fact and conclusions of law contained in the Decision of the Arbitrator, except as stated below. As it pertains to the nature and extent of Petitioner's injury, the Decision of the Arbitrator awarded Petitioner $345.89/week for 6.075 weeks, as the injuries sustained caused a 7.5% loss of use of both his right index finger (3.225 weeks) and middle finger (2.85 weeks), pursuant to Section 8(e) of the Act.

The Commission views the evidence differently than the Arbitrator, and thus modifies the award as stated below. Regarding subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the record reflects that during occupational therapy on March 5, 2015, Petitioner complained of dropping items, lack of feeling in his fingertips, and difficulty picking up items from his pocket with his index and middle fingers. Therapist Gary Poncinie noted

that Petitioner had a 60-79% palmar pinch impairment in the right hand. Moreover, on March 19, 2015, therapist Bonnie Bala examined Petitioner and noted an average palmar pinch strength of 13 pounds on the uninvolved left hand, but an average palmar pinch strength of 5 pounds on the injured right hand. Additionally, Ms. Bala noted an average 78-pound grip strength on the left hand and a 49-pound average grip strength on the right hand. Petitioner testified at trial that his gripping issues are still present. The Commission finds that these ongoing issues will have a negative effect on Petitioner moving forward, as he will engage in palmar pinching and gripping as a Bakery Worker. Based on these facts, the Commission believes that Petitioner's disability demands an increased permanent partial disability award from 7.5% loss of use of both his right index and middle fingers up to 15% loss of use of both his right index and middle fingers. These awards equate to $345.89/week for a period of 6.45 weeks for the index finger and $345.89/week for a period of 5.7 weeks for the middle finger.

All else is affirmed.

IT IS THEREFORE FOUND BY THE COMMISSION that the Decision of the Arbitrator filed September 27, 2021, as modified above, is hereby affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services of $166.00 (PX 3), pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall also satisfy the subrogation claim asserted by the Illinois Department of Healthcare and Family Services (PX 2).

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $384.33 per week for a period of 2 & 6/7ths weeks, commencing February 21, 2015 through March 2, 2015, that being the period of temporary total incapacity for work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the temporary total disability benefits that have accrued from February 21, 2015 through August 18, 2021, and shall pay the remainder of the award, if any, in weekly payments.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall receive credit of $1,115.94 for temporary total disability benefits that have been paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $345.89 per week for a period of 6.45 weeks, as provided in Section 8(e) of the Act, for the reason that the injuries sustained caused a 15% loss of use of the right index finger.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $345.89 per week for a period of 5.7 weeks, as provided in Section 8(e) of the Act, for the reason that the injuries sustained caused a 15% loss of use of the right middle finger.

IT IS FURTHER ORDERED BY THE COMMISSION that the Commission declines to find Respondent liable for penalties and fees.

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 the Respondent is hereby fixed at the sum of $4,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

October 6, 2022

O: 8/10/22
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

DECISION SIGNATURE PAGE

Case Number	16WC010661
Case Name	MURPHY, TERRELL v. LAFOURNETTE BAKERY
Consolidated Cases	No Consolidated Cases
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Molly Mason, Arbitrator

Petitioner Attorney	Thomas Lichten
Respondent Attorney	Amy Turnbaugh

DATE FILED: 9/27/2021

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 21, 2021 0.04%

/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)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Terrell Murphy
Employee/Petitioner
v.
LaFournette Bakery
Employer/Respondent

Case # **16** WC **010661**

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 **8/18/2021**. 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. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **2/20/2015**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**12,682.73**; the average weekly wage was $**576.49**.

On the date of accident, Petitioner was **35** 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 $**1,115.94** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**1,115.94**.

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 $384.33/week for 2-6/7 weeks, commencing 2/21/2015 through 3/12/2015, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 2/21/2015 through 8/18/2021, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be given a credit of $1,115.94 for temporary total disability benefits that have been paid.

Respondent shall pay Petitioner permanent partial disability benefits of $345.89/week for 6.075 weeks, because the injuries sustained caused the 7.5% loss of use of the right index finger (3.225 weeks) and 7.5% loss of use of the right middle finger (2.85 weeks), as provided in Section 8(e) of the Act.

For the reasons set forth in the attached decision, the Arbitrator declines to find Respondent liable for penalties and fees.

Respondent shall pay reasonable and necessary medical services of $166.00 (PX 3), pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall also satisfy the subrogation claim asserted by the Illinois Department of Healthcare and Family Services. PX 2.

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

SEPTEMBER 27, 2021

Signature of Arbitrator

Terrell Murphy v. LaFournette Bakery
16 WC 10661

Severance/Summary of Disputed Issues

The parties agreed to sever this case from a previously consolidated claim numbered 16 WC 10660, in which Petitioner alleges baker's asthma. That claim is wholly disputed and remains pending.

While the cases were consolidated, the Arbitrator met with Petitioner's counsel and various attorneys for Respondent on innumerable occasions. On many of those occasions, the Arbitrator suggested that the parties resolve the instant case, which involves undisputed, minor injuries to two fingers occurring years ago. Due to lack of progress, the Arbitrator set the instant case for final resolution, via trial, dismissal or settlement, on August 18, 2021. At the hearing held on that date, Petitioner, a bakery worker, testified that, on February 20, 2015, his right index and middle fingers became trapped in the chain of a machine when the machine suddenly turned on while he was removing excess flour. One of the owners of the bakery had to move the master link of the chain to extricate Petitioner. Petitioner was transported to Stroger Hospital's Emergency Room via ambulance. He was diagnosed with a crushing injury. There were no open wounds and X-rays showed no abnormalities. Petitioner returned to the Emergency Room a week later. He complained of some loss of sensation in the tips of the affected fingers. He subsequently underwent two sessions of occupational therapy, with the second occurring on March 19, 2015. He has had no additional care since then.

No witnesses testified for Respondent. Respondent offered into evidence a response to Petitioner's penalties petition. RX 1.

The disputed issues include causal connection, medical expenses, nature and extent and penalties/fees. Arb Exh 1.

Arbitrator's Findings of Fact

Petitioner testified he is right-handed. He began working at Respondent bakery in September 2014. Respondent makes and sells various types of bread and pastries.

Petitioner denied injuring his right index and middle fingers prior to the undisputed accident of February 20, 2015. Petitioner testified he worked the night shift on that date. He finished his regular duties a little early and was then asked to perform some "detail cleaning." As he was sweeping up excess flour, the machine suddenly turned on. Petitioner testified his right index and middle fingers were smashed in the chain of the machine. He was alone at the time. He waved at a security camera to get someone's attention. Pierre and Nico, the owners, came downstairs and began trying to extricate Petitioner's fingers. They called the Chicago Fire Department for assistance but Nico was able to remove the master link of the chain before the Chicago Fire Department arrived. Paramedics transported Petitioner to Stroger Hospital. The

run sheet reflects that Petitioner's right index and middle fingers were pinned between the chain and wheel of a machine and that it took about twenty minutes for the fingers to be extricated. Petitioner complained of 5/10 pain and numbness in the distal ends of the affected fingers. PX 1, pp. 18-19.

The Emergency Room records reflect that Petitioner was cleaning a piece of bakery equipment at the end of his shift when he slipped. Petitioner reported bracing his fall with his right hand, "which landed inside the machine," and hitting the "on" button with his left hand. Petitioner indicated that his right index and middle fingers were caught in the machine for twenty minutes. On examination, Dr. Rothfeld noted deformity on the dorsum and palmar aspects of the right second and third fingers over the distal phalanx only. The doctor described sensation as intact but motor function was limited at the DIP joint only. He ordered right hand X-rays which showed no fractures or dislocations. Dr. Rothfeld contacted an orthopedic surgeon due to "concern for possible developing compartment surgeon." He noted that the orthopedic surgeon evaluated Petitioner and ruled out compartment syndrome "since patient's fingers have regained original size." PX 1, p. 34 of 75. He recommended that Petitioner apply ice to his hand and keep the hand elevated. He prescribed Norco for pain and discharged Petitioner. PX 1, p. 31 of 75.

Petitioner returned to Stroger Hospital's Emergency Room on February 27, 2015 and indicated he was "feeling better but still unable to fill [sic] the tips of his fingers." Petitioner "wanted to know how much longer" he would be off work. PX 1, p. 12 of 47. On examination, Dr. Lu noted "circumferential edema to the second and third digits of the right hand" along with diminished sensation and decreased range of motion of those fingers. Dr. Lu prescribed occupational therapy and directed Petitioner to remain off work and follow up at the hospital's hand clinic on March 20th. PX 1, pp. 13, 20, 33 and 36 of 47.

On March 5, 2015, Petitioner underwent an initial occupational therapy evaluation at Stroger Hospital. Petitioner provided a history of the work accident and complained of 4/10 intermittent pain over the dorsal third MCP, lack of feeling in the affected fingertips and difficulty picking up items using the affected fingers. The therapist prescribed home exercises. PX 1, pp. 4 and 9 of 15.

Petitioner participated in another occupational therapy session on March 19, 2015. The therapist noted that Petitioner's pain was unchanged and that he was still experiencing loss of sensation in the affected fingers. The therapist again prescribed home exercises. PX 1, p. 8 of 14.

Petitioner testified that the therapist at Stroger Hospital stuck the affected fingers with needles to check sensation and gave him balls and other small items to manipulate. He last underwent occupational therapy on March 19, 2015. The nails of both the affected fingers turned black and fell off. The nails eventually grew back. Sometimes he experiences numbness in the tips of those fingers, where the skin is hardened. His grip strength is reduced. He has dropped cans of soda. He has dark lines running across the nails of both affected fingers.

Sometimes he visualizes the accident. He does not have nightmares but the accident "comes back" to him.

Under cross-examination, Petitioner testified that the nails of the affected fingers fell off maybe two months after the accident. He was released to work and resumed full duty. He has continued to work 40 to 45 hours per week. He was a salaried employee at the time of the accident but later became hourly. He did not sustain any lacerations at the time of the accident. He arrived at the Emergency Room at about 9 AM on February 20, 2015. If his records show that, by 10:30 AM or so, the deformity had resolved and his fingers looked okay, he would disagree. His fingers were "real flat" right after the accident. Later they became swollen.

On redirect, Petitioner testified that, when he was first hired, he was offered a set salary of $40,000 per year but no real schedule. As time went by, he realized he was working more and not getting paid for overtime. He told Pierre it "wasn't working out" because he was working fifty rather than forty hours per week. Pierre then began paying him on an hourly basis and he started earning more.

In addition to the Stroger Hospital records, Petitioner offered into evidence correspondence received from the Department of Healthcare and Family Services (PX 2) and a $166.00 bill from Stroger Hospital for the therapy session of March 19, 2015 (PX 3). Petitioner also offered letters he sent to Respondent's counsel on April 17 and 18, 2017 and July 12, 2021 requesting that Respondent reimburse the State of Illinois Department of Healthcare and Family Services $896.02 for payments it made toward the treatment Petitioner underwent on February 20 and 27, 2015. Petitioner further offered an undated Petition for Penalties and Fees requesting an award of $10,000.00 in Section 19(l) penalties based on Respondent's failure to pay the ambulance bill, three Stroger Hospital bills and a medication-related expense. In this pleading, Petitioner alleged that the Illinois Department of Healthcare and Family Services paid certain of these bills. PX 4.

No witnesses testified on behalf of Respondent. Respondent offered into evidence a Response to Petition for Penalties and Fees and various attachments, including multiple Emails between Petitioner's counsel and various Respondent attorneys. RX 1.

Arbitrator's Credibility Assessment

Petitioner was a believable witness who provided a detailed account of his undisputed work accident and the treatment that followed. The Arbitrator finds credible Petitioner's testimony as to the fingernail loss/regrowth and the persistent, albeit intermittent, loss of sensation in the tips of the two affected fingers.

Arbitrator's Conclusions of Law

Did Petitioner establish a causal connection between the undisputed work accident of February 20, 2015 and his current right index and middle finger condition of ill-being?

The Arbitrator finds that Petitioner established a causal connection between the undisputed work accident and his current right index and middle finger condition of ill-being. In so finding, the Arbitrator relies on the following: 1) Petitioner's credible denial of any pre-accident problems involving his right index and middle fingers; 2) the fact that the treatment records contain no reference to any such problems; 3) Petitioner's credible and detailed account of the mechanism of injury; 4) the histories set forth in the paramedic run sheet and the Emergency Room records; and 5) Petitioner's credible denial of any post-accident injuries to his right index and middle fingers.

Is Petitioner entitled to reasonable and necessary medical expenses?

Petitioner claims one unpaid medical bill in the amount of $166.00 (Stroger Hospital, occupational therapy, March 19, 2015). Petitioner also seeks reimbursement of the $896.02 in expenses paid by the Illinois Department of Healthcare and Family Services.

Respondent did not have Petitioner examined and does not dispute the reasonableness or necessity of his care.

The Arbitrator awards Petitioner the $166.00 bill from Stroger Hospital, subject to the fee schedule, and directs Respondent to reimburse the Illinois Department of Healthcare and Family Services for its payment.

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 determining the nature and extent of Petitioner's injury. That section sets forth five factors to be considered in assessing permanency, with no single factor predominating. The Arbitrator assigns no weight to the first factor, any AMA Guides impairment rating, since neither party offered such a rating into evidence. The Arbitrator assigns some weight to the second and third factors, Petitioner's age at the time of the accident and occupation. Petitioner was a 35-year-old bakery worker at the time of the accident. The Arbitrator views him as a young individual who could remain in the workforce for many more years. The injury required minimal treatment and a brief period of time off work. The Arbitrator also assigns some weight to the fourth factor, future earning capacity. There is no evidence suggesting that the accident resulted in a diminution of salary. Petitioner resumed his usual duties for Respondent within about three weeks of the accident. While he testified he later changed from a salaried to an hourly employee, at his request, he did not suggest that this change had anything to do with the accident. He acknowledged he earns more as an hourly employee than he did when he was salaried. As for the fifth and final factor, evidence of disability corroborated by the treatment records, the Arbitrator notes that Emergency Room personnel diagnosed Petitioner with a crush-type injury, that there were no open wounds and

that the X-rays were negative. The Arbitrator also notes that Petitioner last underwent treatment in March 2015, more than six years before the hearing.

The Arbitrator, having considered the foregoing along with Petitioner's credible testimony concerning the effects of the injury, finds that Petitioner established permanency equivalent to 7.5% loss of use of the right index finger and 7.5% loss of use of the right middle finger.

Is Respondent liable for penalties and fees?

Petitioner argues that Respondent is liable for the maximum statutory amount of Section 19(l) penalties ($10,000), along with Section 19(k) penalties and attorney fees, based on its failure to pay the undisputed $166.00 bill from Stroger Hospital and reimburse the Illinois Department of Healthcare and Family Services for its $896.02 payment. Respondent agrees it is liable for the $166.00 bill. Respondent attributes the delay in paying the bill to the lack of "all the required data elements" and correlating medical records. Respondent also agrees to satisfy the claim for reimbursement asserted by the Illinois Department of Healthcare and Family Services.

There is evidence that a credit company acting on behalf of Stroger Hospital dunned Petitioner for unpaid medical expenses relating to his pending baker's asthma case (see collection notices in PX 5) but no similar evidence relating to the $166.00 occupational therapy bill.

The Illinois Department of Healthcare and Family Services issued a Subrogation Notice to Respondent in June 2016 and informed Respondent it would only refer the matter to the Attorney General's office for legal action if it concluded that its claim for reimbursement was not being honored. PX 5. There is no evidence indicating that such a referral ever took place.

One of Respondent's attorneys extended an offer in this case approximately four and a half years before the hearing and indicated she would recommend an increased amount four years before the hearing. [See Emails in RX 1.] Petitioner's counsel rejected the overtures and took no steps to sever this case and bring it to trial.

The Arbitrator views both parties as having delayed the resolution of this undisputed, relatively minor claim. Petitioner, unfortunately, was the victim of this delay. The Arbitrator is convinced that the claim would still be pending had she not set a final hearing date.

Given the foregoing circumstances, the Arbitrator declines to award penalties and fees.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC020846
Case Name	Arthur Beese v. Village of Streamwood
Consolidated Cases	11WC020847; 12WC027471;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0381
Number of Pages of Decision	15
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Paul Cronin
Respondent Attorney	Theodore Powers

DATE FILED: 10/7/2022

/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

ARTHUR BEESE,

Petitioner,

vs. NO: 11 WC 20846

VILLAGE OF STREAMWOOD,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, wages, medical expenses, prospective medical, temporary total disability, nature and extent, fees and penalties, and evidentiary rulings, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 11, 2019, 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.

October 7, 2022
o081622
TJT/ldm
051

/s/*Thomas J. Tyrrell*
Thomas J. Tyrrell

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

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BEESE, ARTHUR
Employee/Petitioner

Case# **11WC020846**

11WC020847
12WC027471

VILLAGE OF STREAMWOOD ILLINOIS
Employer/Respondent

On 7/11/2019, 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 2.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0496 PAUL J CRONIN
ATTORNEY AT LAW
5701 N SHERIDAN RD #12 U
CHICAGO, IL 60660

0863 ANCEL GLINK
DOUGLAS SULLIVAN
140 S DEARBORN ST SUITE 600
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

Arthur Beese
Employee/Petitioner

v.

Village of Streamwood, Illinois
Employer/Respondent

Case # **11 WC 20846, 11 WC 20847, 12 WC 27471**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brian T. Cronin**, Arbitrator of the Commission, in the city of **Chicago**, on **3/15/2018, 6/18/2018, 1/22/2019 and 1/23/2019**. 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. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☒ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **12/15/2009**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

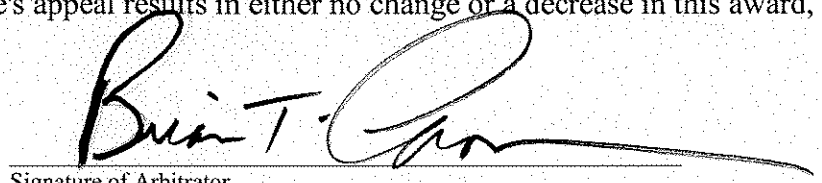
On the date of accident, Petitioner was **52** years of age, ***married*** with **1** dependent child.

ORDER

Based on his findings and conclusions on the issue of causation, the Arbitrator denies compensation. All other issues have been rendered moot.

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

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



Signature of Arbitrator

7-5-2019
Date

JUL 11 2019

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Arthur Beese
Employee/Petitioner

v. Case No. 11 WC 20846,
Consolidated w/ 11 WC 20847 & 12 WC 27471

Village of Streamwood, Illinois
Employer/Respondent

FINDINGS OF FACT

Arthur Beese ("Petitioner") worked as an M-1, the lowest laborer level, in the Public Works Department of the Village of Streamwood, Illinois ("Respondent"), from December 17, 2001 until November 19, 2017. (Tr. 6/18/18, pp. 8-10) His job duties included the following: lifting of 100 pounds frequently, breaking up concrete with a jackhammer, performing pick and shovel work, shoveling snow, shoveling wet concrete, installing and excavating sewers by hand, entering and performing bottom work on sewer installations, removing debris from creeks and feeding, by hand, branches, tree trunks and brush into a chipper. (PX 1) Petitioner's testimony, as well as the voluminous medical records in evidence, reveal a steady stream of treatment for work-related sprains, strains cuts, and scratches.

In evidence are extensive records, which date as far back as 2002, from Advanced Physical Medicine, Alexian Brothers Medical Group, n/k/a Amita Health Medical Group, Illinois Spine Institute, Illinois Pain Institute, Alexian Brothers Medical Center, St. Alexius Medical Center, Northwest Community Hospital and Core Orthopedics and Sports Medicine. (PX 16, 17, 18, 19, 20, 21)

Petitioner submitted three Applications for Adjustment of Claim: one for case # 11 WC 20847, which he filed on June 1, 2011 and alleged an August 5, 2008 accidental injury to his lower back while chipping a tree (AX 2), one for case #11 WC 20846, which he filed on June 1, 2011 and alleged a December 15, 2009 accidental injury to his right knee when he hyperextended it (Ax.4), and one for 12 WC 27471, which he filed on August 10, 2012 and alleged an August 2, 2010 accidental injury to his right knee during an FCE. (AX 6)

With regard to the reason he waited so long to file his Applications for Adjustment of Claim, Petitioner testified: "Well, if I filed a workers' comp case, I was afraid of losing my job. So, I waited until before the time ran out before I filed." When asked why he was afraid of losing his job, Petitioner testified: "To make a workers' comp

case, I was afraid I would be given all the terrible jobs and basically just breaking me down where I couldn't physically do it anymore." (Trans. 6/18/18, pp. 122-125)

Chris Sullivan, a co-worker of Petitioner who had difficulty recalling when he began working for Respondent, wrote the following:

> "There is a hostile environment at the Village of Streamwood. A worker who someone in management doesn't like can be given the worst possible assignments until he quits. People are threatened with discharge without adequate basis. You are criticized for using sick days. People are written up for the most minor or even non-existent infractions. I recall Tim Holloway the Superintendent saying that anyone who didn't report an accident within a day would be written up. Sometimes you don't even realize you have been hurt until sometime later ..." (PX 30)

Karen Gray testified on behalf of Respondent. Her job title at the time of Petitioner's alleged accidents was Executive Assistant to the Village Manager. As such, she maintained the workers' compensation files. Ms. Gray testified that Respondent has a safety policy that states basically any unsafe incidents are to be reported and any injuries, no matter how minor, are to be reported to supervisors. Ms. Gray further testified that over her 20 years working for Respondent, she has not been aware of any Village policy whereby an employee would be threatened with job termination if he or she filed a claim or reported an accident. If she had heard of such a thing, she would say that that is not correct. Petitioner never brought her any off-work slips or medical bills. Ms. Gray testified that Petitioner never came to her to express concern about any such threat or punishment of termination. Ms. Gray denied that any employee has been fired or disciplined for reporting a work accident or filing a workers' compensation claim. (Trans. 1/22/19)

Case #11 WC 20846:

Petitioner testified that in 2005, a 175-pound street light pole rolled off sawhorses and onto his legs, which caused pain in both of his legs. (Trans. 6/18/18, pp. 39-40). Petitioner was kneeling at work at the time. Petitioner testified that he did not receive any medical treatment as a result of the light pole incident. (Trans. 6/18/18, p. 40) He testified that he did not miss any time as a result of the light pole incident. (Id.) He testified that he did not "believe" he received any medical treatment for his knee following the 2005 light pole incident until 2008 when he "thought" he had an injection in the knee due to an "irritation" that he described as a cut inside his knee. (*Supra* at pp. 40, 42) Petitioner did not file a claim for this 2005 incident.

On February 25, 2009, Petitioner drew a pain diagram wherein he marked that he was experiencing aching pain in the anterior aspect of both knees. (PX 18, p. 5)

On April 23, 2009, x-ray images of Petitioner's right knee were taken. The indication: "52-year-old male with right knee pain." The findings: "There is no fracture

or dislocation seen. The joint spaces are well-maintained. No joint effusion." The impression: "Unremarkable views of the right knee." (PX 16, p. 93)

On June 21, 2009, MR images of Petitioner's right knee were taken. The radiologist noted that Petitioner is a 52-year-old male with knee pain and clicking. The radiologist's impression is as follows:

1. Evidence of tear of the posterior horn of the medial meniscus. Also, suspect mild degenerative type tear of the posterior horn of the lateral meniscus.
2. The right knee ligaments are intact.
3. Probable degenerative changes with small subchondral cyst formation, lateral femoral condyle.
4. Chondromalacia patellae. Mild lateral patellar subluxation.
5. Small joint effusion.
6. Mild prepatellar subcutaneous edema. (PX 17, pp. 34-35)

On August 11, 2009, Petitioner complained to Dr. Yu of right knee pain, which is 3/10, and seems to hurt more than his back hurts. (PX 17, p. 45)

On September 8, 2009, Petitioner complained to Dr. Yu of 8/10 pain in his right knee. Dr. Yu then examined the knee and administered a right knee intraarticular injection of 10 mg. of Celestone and 1.5mL of 0.25% Marcaine. (PX 17, pp. 48, 47)

On October 2. 2009, Petitioner saw Dr. Yu for his back. He told Dr. Yu that he would like to have his back treated before his right knee. He also told the doctor that his knee has gotten much better since the injection. (PX 20, p. 222)

On November 4, 2009, Petitioner saw Dr. Iza for an upper respiratory infection. Included in the section entitled Past Medical History is the following: "RT THIGH RECONSTRUCTION FROM INJURY." Dr. Iza then examined Petitioner and provided the following Assessment and Plan:

"**KNEE PAIN (719.48)** meniscus tear
Plans: Referred to Referral to Orthopedics
URI (465.9)" (PX 20, pp. 164-165)

On a form bearing a "Date of Request" of "11/05/09," Dr. Iza requested an in-network referral to "Dr. Drake Gregory" (sic) for a right knee meniscus tear/chondromalacia. The form indicates that office visits expire on "12/31/09." (RX 3)

Petitioner testified that he was working in December of 2009 with Mark Schiferl chipping branches on a snow-covered path. He testified that Mark Schiferl drove the truck, with the chipper attached, up to him. Petitioner walked up to Schiferl, who had the window on the driver's-side door open. As he went up to the driver's door and was talking to Schiferl, Petitioner continued, it felt like someone hit him in the right knee "with a sledgehammer." Petitioner hung on the driver's door. Schiferl asked: "What

happened?" Petitioner responded: "I don't know. And I didn't." Then, Petitioner testified, he backed up and noticed his footprints in the snow. Petitioner noticed, from the footprints, that his right heel had collapsed through the snow and that there was an indentation of 3". (Trans. 6/18/18, pp. 43-44) Petitioner reiterated twice that he had "no idea what happened." (Trans. 6/18/18, p. 44) He testified that from the footprints, he saw that his heel had gone in and theorized that his right knee had bent backward. Petitioner further testified that did not measure the indentation to determine that it was 3 inches deep. (Trans. 6/18/18, pp. 45-46)

Petitioner testified in greater detail. Petitioner testified that he walked up to the truck, and when it occurred, he was standing still at the side of the door. He was holding onto the door and was 1½ feet from Mark Schiferl. (Trans. 6/18/18, pp. 46-47)

Petitioner testified that he felt severe pain in his right knee and "knew right away that that really did it in." He testified that it was difficult for him to even walk to the passenger side of the truck to get in. Petitioner then had a conversation with Schiferl, whom he told what had happened. Then, Petitioner continued, he showed him what had happened with the snow. It was break time, so Schiferl drove him back to Public Works. When they arrived, Petitioner went to the washroom and then sat down in his usual chair in the break room. Petitioner further testified that he then stated that he screwed up his right knee, and thought that Mike Keycewicz, Tim Alltop, Chris Engelking, John Ring, and Mark Schiferl were all there at the time. He told them that the snow had broken underneath his heel, his knee had bent backward, and that his knee is killing him. He testified that Mike Keycewicz then advised him to take it easy on the knee and hoped that it would get better. (Trans. 6/18/18, pp. 47-53)

Petitioner testified that approximately 3 days after this incident, he saw Dr. Iza for his right knee, and then, maybe 5 days post-incident, he saw Dr. Yu. Petitioner testified that he told Dr. Yu that his knee bent backward in the snow. (Trans. 6/18/18, pp. 53-54)

On cross-examination, Petitioner testified that his heel did crack through the snow. Petitioner agreed that he was standing by the driver's door talking to Mark Schiferl. Petitioner did not recall that he had treatment on his knee before December 15, 2009. He testified that he had a street pole fall across his legs in 2005, and that it hurt, but that he worked through the pain and did not think he had any treatment. Petitioner then testified that he did have an MRI of his right knee taken prior to December 15, 2009. Petitioner admitted that an MRI would be considered treatment. Either Dr. Iza or Dr. Yu prescribed such MRI. Petitioner testified that he did not know or did not remember if anyone told him before December 15, 2009 that he had a torn meniscus, chondromalacia and arthritis in his right knee. (Trans. 1/22/19, pp. 29-32)

On December 19, 2009, Petitioner saw Dr. Yu. He complained to the doctor of 6/10 right knee pain as well as back pain. He stated that 3 days ago he hyperextended his right knee and it seems to have really bothered him. He also stated that oftentimes at work he has to stand in awkward positions, which really seems to aggravate his knee pain. Upon examining Petitioner's right knee, Dr. Yu found that Petitioner had slightly

swollen warmth with no erythema. As it relates to his right knee only, Dr. Yu assessed Petitioner with a right knee medial meniscus tear, osteoarthritis in the right knee, and right knee pain. Dr. Yu then administered a right knee intraarticular injection. Petitioner requested a repeat injection in 1 month. (PX 20, pp. 220-221)

Dr. Drake testified that he first saw Petitioner for his right knee on December 22, 2009. On this date, Petitioner completed a CORE ORTHOPEDICS & SPORTS MEDICINE form in which he identified the part of the body affected as the right knee and the date of injury as "3-21-2005." (PX21A, p. 25)

That same day, Petitioner completed a PATIENT ASSESSMENT form at CORE ORTHOPEDICS & SPORTS MEDICINE in which he located the pain in his right knee. Petitioner responded to these two questions as follows:

"Approximate date of the onset of the *present* problem: 5-21-2005

How did **this** problem occur? STREET Light Pole fell on my KNEES." (Italics were added, but bold was not.) (RX 4)

On December 31, 2009, Petitioner saw Dr. Yu. He complained of 4/10 lower back pain that is constant and burning. Dr. Yu's chart notes also indicate that Petitioner saw Dr. Drake for his knee and that he is scheduled for upcoming arthroscopic surgery. Dr. Drake noted that Petitioner "does have some right knee pain after his last injection did not significantly help him." With regard to the right knee, Dr. Yu assessed him with osteoarthritis of the right knee and a right knee medial meniscus tear, separately significant. With regard to the right knee, Dr. Yu wrote the following "Plan": "The patient has previously had a right knee injection with minimal pain relief. The patient is considering surgical options with Dr. Drake, the patient was thinking possibly around springtime. He is quite pleased with his experience with Dr. Drake."

Dr. Drake performed the first surgery on Petitioner's right knee on June 9, 2010.

Dr. Drake testified to the following:

"**Q:** Okay. Do you have an opinion, doctor, whether the accident a week before his - - the first time you saw him was a likely factor in Mr. Beese's referral to your office?

MR. SULLIVAN: Objection, Ghere. The doctor has not provided any opinions or any records. There are no notes in his records regarding any opinions. He's a treating physician, not an examiner. *Overruled.*

THE WITNESS: Well, if I'm just going purely off of what Mr. Beese put down in his intake form, he was referred to me by Dr. Iza for his right knee from his injury dating back to 2005." (PX 23, p. 14)

Dr. Drake also testified to the following:

"**Q:** Do you have an opinion, doctor, whether this hyperextension that's referred to in Plaintiff's Exhibit Number 3 might or could have caused further tearing of already torn cartilage?

A: I don't know too much about the incident. I mean, if it was just a little hyperextension and there's not a lot of trauma, it probably did not. If it was significant, I suppose it could have. But he already had a pre-existing tear." (PX 23, p. 17)

Finally, Dr. Drake testified to the following:

"**Q:** And Dr. Drake, you testified that you believe that all of Mr. Beese's knee complaints emanate from that 2005 history?

A: That's the history that was given to me by him, yes." (PX 23, p. 52)

Mark Schiferl testified that he began working for Respondent in 2007 or 2008 and left there in 2012. Schiferl testified that he worked with Petitioner when he observed him injure his leg. Schiferl did not know the date of such incident but knew that it was in the winter and that it occurred just before lunch or just before morning break. At the time of the incident, Schiferl testified, he was in the dump truck and was getting ready to pull it forward. He testified that he observed Petitioner through the driver's mirror. Petitioner was on Schiferl's left and was 6-7 feet away from him. Petitioner was coming toward the truck at that time. Schiferl further testified that he was looking in the mirror, and Petitioner started to talk to him, and then all of the sudden Petitioner stumbled and fell and put his hands up on the side of the truck. Petitioner was close enough where both hands were on the side of the truck. It was almost like Petitioner tripped or stumbled on something at the time Schiferl was watching through the mirror. Schiferl then saw Petitioner all the way down on the ground on both knees. Schiferl then jumped out of the truck and walked over toward him and found that he was in a lot of pain. Petitioner was moaning and grimacing. After Petitioner got up, he took a step and where he had stumbled, there was a hole in the snow. When they arrived at the Public Works building, it took Petitioner a while to get out of the truck. Schiferl further testified that Petitioner was limping when he walked into the building. Petitioner went to the bathroom and Schiferl went into the office where the foreman and 2 others were. In the room were John Ring, Chris Engelking, and Tim Alltop. For the rest of the day, Schiferl testified, "we weren't back out there, we were just doing stuff in the shop, I believe." Schiferl testified that in the days and weeks following this incident, he noticed that Petitioner did not get around as well; you could tell his knee was bothering him. (Trans. 3/15/18, pp. 123-140)

On cross-examination, Schiferl testified that he had no personal knowledge of Petitioner's 2005 right knee injury. With regard to the condition of Petitioner's right knee one month before the December 2009 incident, Schiferl testified that Petitioner

"walk fine and all that." Schiferl knew nothing about Petitioner having prior injections to his knees. (Trans. 3/15/18, pp. 140-142)

On redirect examination, Schiferl testified that from the time Schiferl began working there until December of 2009, Petitioner would walk fine. He would do any job. (Trans. 3/15/18, pp. 142-143)

Stephan Miller, a co-worker of Petitioner, testified that prior to 2009, he observed an indication that Petitioner had knee pain. Miller was present at the time of the light pole incident in 2005. Miller observed a light pole that was being wired up and was laying across two horses. The light pole rolled off the horses and fell across Petitioner's legs. Petitioner had been kneeling down at the time. Between that time and December of 2009, Miller did not observe Petitioner having continual knee pain or knee problems. So, from the best of Miller's observation, Petitioner did not have any after-effect from the 2005 incident. Miller observed Petitioner's knee and saw how swollen it was when he rolled up his pant leg. (Trans. 3/15/18, pp. 107-118)

On cross-examination, Miller testified that the height of the aluminum light pole that fell on Petitioner's legs in 2005 was 30 feet. He estimated the weight of such light pole to be 175 pounds. When this light pole hit Petitioner's legs, Petitioner certainly made a sound. Miller recalled seeing the bruises on Petitioner's legs after Petitioner had been working on the Prairie Path. Miller did not have any personal knowledge of any treatment Petitioner received for his right knee before his observation on the day Petitioner came off the Prairie Path. From the time Miller started working with Petitioner, he has noticed that Petitioner, at various times, was not been able to perform his work at full duty. (Trans. 3/15/18, pp. 118-123)

Terry Ritz, a co-worker of Petitioner, completed a written statement on February 12, 2016. Ritz wrote, in pertinent part, the following: "I was never a superior of Art Beese. I heard about Art's second injury within 24 hours because management called us in and said Art's not going to be here, so we have to pick up the slack." Yet, Petitioner did not undergo surgery until June of 2010 after which he alleges he lost nearly 8 weeks of work. (PX 32, AX 1)

Tony Bosio, a co-worker of Petitioner, completed a written statement on April 11, 2016. Bosio wrote, in pertinent part, the following: "Once during the winter Art told me that he had twisted his knee that day or the day before. He said the injury took place while he was walking up to the truck near the path." (PX 31)

Petitioner did not miss work following the December 2009 incident. He returned to work after break time. He did not seek immediate medical treatment. He did not submit any medical bills to his employer.

On direct examination, Petitioner did not offer a specific date of accident but thought it occurred in the morning. (Trans. 6/18/18, p. 46) With regard to the Petitioner's

witnesses, there was no testimony that Petitioner sustained an accident on December 15, 2009.

Petitioner filed his Application for Adjustment of Claim approximately 2½ years after the date of the alleged accident. (AX 4)

CONCLUSIONS OF LAW

In support of his decision with regard to issues (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 as follows:

The Arbitrator finds, by a preponderance of the evidence, that on December 15, 2009, Petitioner sustained an accident that arose out of and in the course of his employment by Respondent. As an M1 for Respondent, Petitioner was a traveling employee as he traveled to different areas in the Village to repair, maintain, excavate and chip. The Arbitrator finds that Mark Schiferl's testimony is largely consistent with Petitioner's testimony.

However, the Arbitrator also finds that on December 15, 2009, Petitioner sustained a temporary aggravation of a pre-existing condition of his right knee and therefore concludes that Petitioner's present condition of ill-being of his right leg is not causally related to this accident.

A right knee MRI that was taken on June 21, 2009 revealed a medial meniscus tear and possibly a mild degenerative type tear of the lateral meniscus as well as probable degenerative changes and chondromalacia of the patella. Pre-accident, Petitioner had consistent complaints of right knee pain. On November 5, 2009, Dr. Iza referred Petitioner to Dr. Drake, an orthopedic surgeon, for his right knee meniscus tear/chondromalacia.

Petitioner told Dr. Yu on December 19, 2009 that he hyperextended his right knee 3 days ago. Yet Dr. Drake's chart notes of December 22, 2009 make no mention of a hyperextension injury. Instead, Petitioner indicated on the intake forms that his present right knee problem is related to the light pole incident of 2005.

The Arbitrator relies on the testimony of Dr. Drake as well as on the PATIENT ASSESSMENT form from CORE ORTHOPEDICS & SPORTS MEDICINE dated December 22, 2009. (RX 4)

Compensation is hereby denied. All other issues have been rendered moot.

7-5-2019

Brian T. Cronin, Arbitrator

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC020847
Case Name	Arthur Beese v. Village of Streamwood
Consolidated Cases	11WC020846; 12WC027471;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0382
Number of Pages of Decision	21
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Paul Cronin
Respondent Attorney	Theodore Powers

DATE FILED: 10/7/2022

/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

ARTHUR BEESE,

Petitioner,

vs. NO: 11 WC 20847

VILLAGE OF STREAMWOOD,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident date, notice, causal connection, medical expenses, temporary total disability, nature and extent, fees and penalties, and evidentiary rulings, 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 Commission finds that Petitioner's condition of ill-being reached maximum medical improvement on February 25, 2009. In so finding, the Commission relies upon the opinions of Dr. Babak Lami. On February 25, 2009, Petitioner was evaluated by Dr. Lami at Illinois Spine Institute, at the referral of his primary care physician, Dr. Marcos Iza. Dr. Lami reviewed the MRI dated February 12, 2009 as "essentially normal with mild degenerative changes in the facet joints." RX2. Dr. Lami noted the imaging was "age appropriate." His impression was lower back pain with no deficit. He stated, "This patient is not a surgical candidate. I believe he should continue on an exercise program and strengthen his paraspinal muscles and engage in a weight loss program." *Id*. Dr. Lami did not document any need for ongoing treatment or work restrictions.

The Commission modifies the Arbitrator's award as to the nature and extent of the injury from 10% to 8% loss of use of the person as a whole pursuant to Section 8(d)2 of the Act. In so

finding, the Commission notes that Petitioner's current condition of ill-being is not related to the accident, as he reached maximum medical improvement on February 25, 2009. During the causally connected period, Petitioner underwent chiropractic care and worked full duty.

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 11, 2019, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $630.00 per week for a period of 40 weeks, as provided in §8(d)2 of the Act, for the reason that the injury sustained caused the loss of use of 8% of the person.

IT IS FURTHER ORDERED BY THE COMMISSION that penalties and fees are denied.

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.

October 7, 2022

O: 081622
TJT/ahs
051

/s/*Thomas J. Tyrrell*
Thomas J. Tyrrell

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

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BEESE, ARTHUR
Employee/Petitioner

Case# **11WC020847**

11WC020846
12WC027471

VILLAGE OF STREAMWOOD ILLINOIS
Employer/Respondent

On 7/11/2019, 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 2.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0498 PAUL J CRONIN
ATTORNEY AT LAW
5710 N SHERIDAN RD #12 U
CHICAGO, IL 60660

0863 ANCEL GLINK
DOUGLAS SULLIVAN
140 S DEARBORN ST SUITE 600
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

Arthur Beese
Employee/Petitioner

Case # **11 WC 20847,**

v.

Consolidated cases: **11 WC 20846 & 12 WC 274711**

Village of Streamwood, Illinois
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 **Brian T. Cronin**, Arbitrator of the Commission, in the city of **Chicago**, on **3/15/2018, 6/18/2018, 1/22/2019 and 1/23/2019**. 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. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☒ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **8/5/2008**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**59,830.47**; the average weekly wage was $**1,050.00**.

On the date of accident, Petitioner was **51** years of age, ***married*** with **1** dependent child.

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

ORDER

Respondent shall pay Petitioner $**630.00**/week for **50** weeks since, as a result of the **8/5/2008** accident, Petitioner has sustained a loss of use of his person as a whole to the extent of **10%** thereof, pursuant to Section 8(d)2 of the Act.

The Arbitrator concludes that all the medical bills related to Petitioner's low back accident of August 5, 2008 have been paid through the group carrier. Respondent is entitled to a credit for all such medical bills paid, pursuant to Section 8(j) of the Act. Petitioner shall be held harmless from any such 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.

Signature of Arbitrator

7-2-2019
Date

JUL 11 2019

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Arthur Beese
Employee/Petitioner

v. Case No. 11 WC 20847,
Consolidated w/ 11 WC 20846 & 12 WC 27471

Village of Streamwood, Illinois
Employer/Respondent

FINDINGS OF FACT

Arthur Beese ("Petitioner") worked as an M-1, the lowest laborer level, in the Public Works Department of the Village of Streamwood, Illinois ("Respondent"), from December 17, 2001 until November 19, 2017. (Tr. 6/18/18, pp. 8-10) His job duties included the following: lifting of 100 pounds frequently, breaking up concrete with a jackhammer, performing pick and shovel work, shoveling snow, shoveling wet concrete, installing and excavating sewers by hand, entering and performing bottom work on sewer installations, removing debris from creeks and feeding, by hand, branches, tree trunks and brush into a chipper. (PX 1) Petitioner's testimony, as well as the voluminous medical records in evidence, reveal a steady stream of treatment for work-related sprains, strains cuts, and scratches.

In evidence are extensive records, which date as far back as 2002, from Advanced Physical Medicine, Alexian Brothers Medical Group, n/k/a Amita Health Medical Group, Illinois Spine Institute, Illinois Pain Institute, Alexian Brothers Medical Center, St. Alexius Medical Center, Northwest Community Hospital and Core Orthopedics and Sports Medicine. (PX 16, 17, 18, 19, 20, 21)

Petitioner submitted three Applications for Adjustment of Claim: one for case # 11 WC 20847, which he filed on June 1, 2011 and alleged an August 5, 2008 accidental injury to his lower back while chipping a tree (AX 2), one for case #11 WC 20846, which he filed on June 1, 2011 and alleged a December 15, 2009 accidental injury to his right knee when he hyperextended it (Ax.4), and one for 12 WC 27471, which he filed on August 10, 2012 and alleged an August 2, 2010 accidental injury to his right knee during an FCE. (AX 6)

With regard to the reason he waited so long to file his Applications for Adjustment of Claim, Petitioner testified: "Well, if I filed a workers' comp case, I was afraid of losing my job. So, I waited until before the time ran out before I filed." When asked why he was afraid of losing his job, Petitioner testified: "To make a workers' comp

case, I was afraid I would be given all the terrible jobs and basically just breaking me down where I couldn't physically do it anymore." (Trans. 6/18/18, pp. 122-125)

Chris Sullivan, a co-worker of Petitioner who had difficulty recalling when he began working for Respondent, wrote the following:

> "There is a hostile environment at the Village of Streamwood. A worker who someone in management doesn't like can be given the worst possible assignments until he quits. People are threatened with discharge without adequate basis. You are criticized for using sick days. People are written up for the most minor or even non-existent infractions. I recall Tim Holloway the Superintendent saying that anyone who didn't report an accident within a day would be written up. Sometimes you don't even realize you have been hurt until sometime later …" (PX 30)

Karen Gray testified on behalf of Respondent. Her job title at the time of Petitioner's alleged accidents was Executive Assistant to the Village Manager. As such, she maintained the workers' compensation files. Ms. Gray testified that Respondent has a safety policy that states basically any unsafe incidents are to be reported and any injuries, no matter how minor, are to be reported to supervisors. Ms. Gray further testified that over her 20 years working for Respondent, she has not been aware of any Village policy whereby an employee would be threatened with job termination if he or she filed a claim or reported an accident. If she had heard of such a thing, she would say that that is not correct. Petitioner never brought her any off-work slips or medical bills. Ms. Gray testified that Petitioner never came to her to express concern about any such threat or punishment of termination. Ms. Gray denied that any employee has been fired or disciplined for reporting a work accident or filing a workers' comp. claim. (Trans. 1/22/19)

Case #11 WC 20847:

In the late summer of 2008, Petitioner testified, he was assigned to a tree chipping detail with Brian Bennett, a seasonal worker. Petitioner drove the truck with the tree chipper attached to the home of a Village resident. He pulled up to the pile of branches and they began chipping the branches. As he was pushing the tree branches into the back of the chipper, Petitioner testified, the chipper grabbed the branches and "it was like it popped my back." Petitioner testified in more detail. The chipper jerked him, twisted him sideways, and then something popped in his back. He testified that he experienced severe pain that went from his lower back through his backside and down his lower leg. It locked up his left leg. He testified that it was like somebody "had hit a railroad spike in my back." (Tr. 6/18/18, p. 11-13) He described the pain as a 10 on a scale of 1-10. (Tr. 6/18/18, p. 16)

Petitioner testified that the chipper has a large drum that rotates with four blades attached. These blades chop off little pieces at a really fast speed. For safety purposes, workers were advised to feed material into the chipper from the side rather than the rear, which is what Petitioner did. (Tr. 6/18/18, pp. 12-15) (Px.2, 2A) After they shut down the

chipper, Petitioner testified, Brian Bennett asked him what was wrong, and Petitioner told him that he just screwed up his back. Petitioner testified that at that point, it was difficult for him (Petitioner) to move and walk and get in the truck. (Tr. 6/18/18, pp. 16-17)

Petitioner testified that it was break time, so he drove back to the Public Works Department and reported the occurrence to Mike Keycewicz, his foreman, and John Ring, an M-2 or assistant foreman, both of whom were his superiors and proper parties for reporting an accident. (Tr. 6/18/18, p.18) Petitioner testified that Mike Keycewicz told him to wait a day or two and see if the pain went away. The rest of the day, Petitioner limited himself to driving and operating the controls. He testified that he could not really bend down and pick up things. (Tr. 6/18/18, pp. 25-26)

Petitioner testified that in the days and weeks that followed, he had a lot of pain in his lower left back for which he would take Tylenol and hot baths and use heating pads. He hoped that it would get better. He testified: "[I]t was better than when it first happened but it never went away. And depending on what I did it would get worse, but it was a constant pain." (Trans. 6/18/18, p. 26)

Petitioner testified that he first sought medical attention about a month later after he experienced problems doing everyday functions. Moreover, working became very difficult.

The medical records indicate that on September 24, 2008, Petitioner saw Marcos J. Iza, M.D. (PX 20) The History of Present Illness states:

"Patient's words: est. pt. dr. m. iza, pt here for LT lower back pain injured on Aug. 5. Pt has tried Celebrex. The patient is a 52-year-old male who presents with complaints of back pain. The onset of the pain has been sudden and has been occurring in persistent pattern for weeks. The course has been constant. The pain is characterized as a dull ache and stabbing. The pain is described as being located in the lower back. The pain does not radiate. The pain is precipitated by heavy weight lifting. The symptoms are aggravated by exertion and weight lifting. The pain has been associated with back stiffness and hip pain, while there has been no bladder dysfunction or leg weakness."

Upon examination, Petitioner exhibited a decreased range of motion with flexion restricted and extension painful. He had a paraspinous muscle spasm, but straight leg raising was negative. Dr. Iza's assessment was BACK PAIN and FATIGUE OR MALAISE. The doctor prescribed Ultracet and Flexeril. (PX 20)

When the pain did not go away, Petitioner testified, Dr. Iza sent him to a chiropractor who "moved [him] around, tried to free up [his] back." The chiropractor also treated him with a heating pad and a TENS unit, but the pain was still there. (Trans. 6/18/18, p. 28)

On February 12, 2009, MR images, without contrast, of Petitioner's lumbar spine were taken. The impression of radiologist David Albritton, M.D., is as follows:

"Severe degenerative changes at the left L5-S1 facet joint. Noted is increased fluid signal within the L5-S1 facet joint, however, in the absence of an elevated white blood cell count, this is not felt to represent an infected joint space. Clinical correlation is advised." (PX 17, p. 7)

Petitioner next saw Babak Lami, M.D., of Illinois Spine Institute on February 25, 2009. The handwritten SPINE PATIENT HISTORY QUESTIONNAIRE indicates that Dr. Iza referred him to Dr. Lami. (PX 18, p. 4) Dr. Lami noted that Petitioner presents with a history of back pain since August 2008. Petitioner localized the pain in his lower back without radicular symptoms. After examining Petitioner, Dr. Lami opined that he is not a candidate for surgery and felt that he should continue with an exercise program and strengthen his paraspinal muscles and engage in a weight loss program. (PX 18)

Petitioner testified that he next saw Andrew Yu, M.D., at Illinois Pain Institute. In a letter to Dr. Iza dated February 25, 2009, Dr. Yu wrote, in part, the following:

"Thank you for allowing us to evaluate your patient at the Illinois Pain Institute. Mr. Beese is a very pleasant 52-year-old male who is seen with a chief complaint of lower back pain, which started on August 5, 2008. He states that he was pushing branches into a chipper and had severe pain in his left lower back and hip. He states that he has tried conservative treatment which included muscle relaxants and some anti-inflammatory medications which did help somewhat. He has not had any accidents otherwise related to this pain such as car accidents. Things that make it better is heat, things that make it worse is standing still. His pain on the visual analog scale is approximately 7 out of 10 … He has tried chiropractic manipulation of his lower back with minimal pain relief. He has also been seen by the Illinois Spine Institute by Dr. Lami who did not recommend any surgical intervention at this time … Lumbar extension and bilateral rotation reproduced his pain on the ipsilateral side." (PX 17, p. 5)

Petitioner testified as to his treatment at Illinois Pain Institute as follows:

"… they would sedate me with an IV, and they put you in -- it's like an x-ray machine … they inject … like a steroidal fluid … in my back to relieve the pain. And they also did radiofrequency lesionings that actually burn the nerves … so the pain doesn't get to your brain. (Trans. 6/18/18, p. 30)

On a scale of 1 to 10, Petitioner described the average pain in his back immediately before he receives the steroidal injections as a 6 … and the next day as a 2 or a 3. The RFLs are the same probably, 6, 5, 6. An RFL (radiofrequency lesioning) takes about a week before you know if it has any results, but since you are just laying about and not doing anything, it's pretty much motionless, it's like a 2 or 3. He further testified that he was sedated when he received the steroidal injections and the RFLs most every time. The effect is one is totally sleeping. He had no pain and no recollection of what happened. He was asked to sign a form every time he had a procedure at Illinois Pain Institute. (Trans 6/18/18, pp. 30-36) Petitioner testified that he received well over 100 injections and 35 probably plus RFL's. (Trans. 6/18/18, p. 38)

Mr. Beese routinely operated machinery on his job … Part-time summer workers were not allowed to drive the truck or the chipper. He was the only one who could drive it. When he had steroidal injections and RFLs, he lost work the day of the procedure and the day after. He would fill out a form for vacation, sick, personal. It's a form that is filled out and given the foreman usually a couple weeks or more in advance. And then he would look to see what's happening. The foreman okayed and signed it, and then he'd write on the calendar that Petitioner would be gone those days in a week, a couple weeks away. No one from the Village ever asked him for a note when he took time off for medical attention. (Trans 6/18/18, pp. 36-37)

Illinois Pain Institute records (PX 17) thereafter through January 30, 2014, reflect the following:

3/09/09 IPI	p. 12 and 13 First left-sided lumbar steroidal injection "His pain on the visual analog scale is approximately 6 to 7 out of 10 … the pain is located in his lower back mostly on the left side, described as an aching, straining, pulling pain … The patient states that he occasionally has radicular symptoms that seem to run down his left posterior thigh …"
3/28/09 IPI	p. 16 Left-sided lumbar steroidal injection. Pain 5 out of 10.
4/11/09 IPI	p. 18 Medial branch blocks of L2, L3, L4 and dorsal ramus of L5
4/22/09 IPI	p. 21 Left-sided lumbar steroidal
5/04/09 IPI	p. 23 First Radiofrequency neurotomy (back) … L2, 3, 4, 5
6/ 01/09 IPI	p. 27 "He states that now his pain is down the center of his lower back and he said that although it is a different kind of pain it is not as bad as it was. He states that he starts feeling now right knee pain, possibly due to the decreased pain in his back. It is intermittent, things that make it worse is bending over at his job, he works for Streamwood Public Works, which requires him to kind of bend over which seems to somewhat make his pain worse."
6/8/09 IPI	p. 29 Transforaminal selective nerve root blocks (back)
7/28/09 IPI	p. 42 Dr. Yu "The patient's pain in his lower back is worse than the other areas. He states that he was working for the Streamwood Park and required heavy lifting as they just recently had a festival."
11/26/10 IPI	p. 49 Left pars injection … Facet injections L3-L4, L4-L5 and L5-S1
01/29/11 IPI	p. 52 Left L4-L5, L5-S1 and left L5 injections

4/30/11 IPI	p. 55 Left-sided lumbar facet injections L3-L4,L 4-L5, L5-S1
07/18/11 IPI	p. 58 Left-sided lumbar injection
08/08/11 IPI	p. 64 Radiofrequency Neurotomy
6/15/12 IPI	p. 67 Left-sided lumbar injection
08/17/12 IPI	p. 69 Left-sided lumbar injection
09/07/12 IPI	p. 73 Left-sided lumbar injection
10/06/12 IPI	p. 76 MRI "A dark linear focus through the left lamina at L5-S1 is also stable and could represent an old lamina fracture site."
10/22/12 IPI	p.80 Radiofrequency Neurotomy
12/08/12 IPI	p. 82 Left-sided lumbar injection
01/06/13 IPI	p. 87 Left-sided lumbar injection
02/02/13 IPI	p. 90 Caudal epidural steroid injection
03/02/13 IPI	p. 93 Left-sided lumbar injection
04/13/13 IPI	p. 96 Left-sided lumbar injection
06/06/13 IPI	p. 99 Left-sided lumbar injection
07/20/13 IPI	p. 101 Bilateral lumbar facet injections
08/05/13 IPI	p. 105 Radiofrequency Neurotomy
09/09/13 IPI	p. 108 Radiofrequency Neurotomy
01/18/14 IPI	p. 114 MR scan "There is a widening of the L5-S1 facet joint containing fluid … possible old linear fracture in the left lamina."
01/30/14 IPI	p. 117 Left-sided lumbar injection

Gregory N. Drake, D.O., Petitioner's treating physician, is affiliated with Core Orthopedics & Sports Medicine. Dr. Drake is board-certified by the American Osteopathic Board of Orthopedic Surgery. (PX 23, Dep. Ex. 1) Dr. Drake subspecializes in the shoulder and the spine. Dr. Drake has seen Petitioner for both his back and his knee. Dr. Drake testified that he believed Dr. Yu referred Petitioner to him. (PX 23, p. 6) Dr. Drake was still treating Petitioner for his back at the time of the June 13, 2017

deposition. (PX 23, p. 37) Before he was deposed, Dr. Drake reviewed, *inter alia*, records from a chiropractor, records from Dr. Iza, Petitioner's personal physician, and records from Dr. Yu, Petitioner's pain management physician. (PX 23, pp. 6-7) Dr. Drake's recollection was that in reviewing medical records that date back to 2002, Petitioner had not sought or received attention for lower back problems prior to August 5, 2008. (PX 23, p. 36)

Dr. Drake testified that he first examined Petitioner for a lower back problem in July of 2010. He testified that he thought Petitioner self-referred to him. (PX 23, p. 35)

Dr. Drake's medical records reflect that when he saw Petitioner on July 29, 2010 for a post-op visit for his right knee, he also examined Petitioner's lumbar spine. (PX 21B, p. 384) Then, on August 24, 2010, Petitioner completed a "New Injury Form" for Dr. Drake wherein he indicates that Dr. M. Iza referred Petitioner to Core Orthopedics/Dr. Drake. (PX 21B, p. 300) Dr. Drake diagnosed Petitioner with lumbar disc disease and facet arthritis. (PX 21B, p. 381) Dr. Iza's record of Petitioner's June 4, 2010 visit and his record of Petitioner's next visit on August 6, 2010 make no mention of a referral to Dr. Drake or to any other surgeon. In fact, these records make no mention of back pain at all. (PX 20, pp. 158-161)

Dr. Drake testified that when he saw Petitioner, he found that he had tenderness over L5-S1 and a spondylolisthesis at L5-S1. (PX 23, pp. 34-37) His records also indicate that Petitioner had a pars fracture at L5 and disc degeneration at L5-S1. Dr. Drake opined the par fracture is most likely the result of a congenital condition whereby he was born with a weakened bone that fractured thereafter. (PX 23, p. 44)

On July 25, 2011, MR images of Petitioner's lumbar spine were taken. Radiologist Djordje Boskov, M.D., offered the following impression:

1. Diffuse lower lumbar spondylosis with multilevel annular disc bulging and hypertrophy of posterior elements as detailed above.
2. No evidence of fracture, dislocation or high-grade spinal canal or neural foraminal stenosis.
3. More prominent left facet arthropathy at L5-S1 when compared to prior study, and again noted partial fatty replacement of the erector spinae on the right. The etiology of this is unclear. (PX 17, p, 39)

Dr. Drake's recollection was that Petitioner, at a March 20, 2014 visit to his office, stated that his low back pain was triggered in August 2008 while tossing wood into a wood chipper. (PX 23, pp. 36-37) Dr. Drake further testified that his review of the records indicates that Petitioner had received many, many injections from Dr. Yu, which would include several cortisone injections and radiofrequency ablations, as well as physical therapy and anti-inflammatories. (PX 23, pp. 37, 44) Petitioner has a back condition with which he is going to have to live. It is multifactorial, but it can be quieted down with injections. (PX 23, p. 45)

On March 20, 2014, Dr. Drake recommended that Petitioner undergo a spinal fusion.

> Due to his instability from his fracture and degenerative spondylolisthesis at L5-S1, I recommended a fusion at L5-S1 when his pain dictates. He would like to wait at this time. He will notify me when he wishes to proceed. (PX 21A, p. 13)

Petitioner testified that he was prevented from obtaining the spinal fusion and knee surgeries recommended by Dr. Drake because he did not have enough sick time and vacation time since he was not paid compensation after his previous operations and recovery. (Trans. 1/22/19, pp. 136-137)

Dr. Drake opined the accident of August 8, 2008 aggravated Petitioner's pre-existing conditions. He testified: "I think regardless of a degenerative condition or not, if you get strained or pulled forward suddenly that you can get a strain of your low back. (PX 23, pp. 39-40) When Drake last saw Petitioner, "clinically, he was doing fairly well. Radiographically, it was worsening." He further testified: "If his back pain becomes severe, he does have a condition that could potentially improve with an operation … It would be a fusion … At L5-S1." (PX 23, p. 40-41)

Petitioner testified that he has back pain every minute of every day. His only respite from this pain was the 45-minute period when he came out of the Dilaudid anesthesia after his knee surgery. Dr. Drake has recommended surgery when he can't stand the pain anymore. He would fuse Petitioner's back and install two metal rods. In the meantime, Dr. Drake instructed him to continue to treat with Dr. Yu. Petitioner rates the pain in his back as a 7 out of 10. (Trans. 6/18/18, pp. 114-116)

Brian Bennett gave his video deposition April 3, 2017. He started working for Respondent in late May or early June of 2008, which was the summer he finished high school, and worked there over 4 summer vacations. He has had no social relationship with Petitioner outside of work and last saw or spoke with him in 2012, which was his last year at Respondent. Mr. Bennett knew Petitioner to be an honest, by-the-book employee who worked harder than the other employees, didn't complain about his job and did whatever he was assigned without dragging his feet or cutting corners. He knew Petitioner's reputation for truth and honesty at Respondent as that of a straight shooter. (PX 22, pp. 10, 16, 17, 18)

In the summer of 2008, Brian Bennett worked full time on the tree-chipping program. Roughly every week and a half during the 2 to 3 months preceding Petitioner's August 2008 accident, Bennett worked a full, 10-hour day chipping trees with Petitioner. During this period Mr. Bennett was never told of and never knew of any physical problem or limitation Petitioner was having and never heard him complain of or evince back pain.

One morning, before lunch, in the late summer of 2008, Petitioner had been performing his duties the same as always, adequately, without issue. At the time in

question, Brian Bennett had picked up some branches from a pile and upon turning around to bring them to the chipper, he saw Petitioner near the chipper, kind of down on one knee, clutching his back. Petitioner did not have anything in his hands at that time. The look on Petitioner's face clearly indicated that he was in pain. Bennett did not observe Petitioner at the moment he said he hurt his back. After Bennett throttled the chipper down, Petitioner told him he had hurt his back and needed to go back to the shop. Bennett stayed outside while Petitioner went into the shop. The rest of the day Petitioner mostly just drove the truck. (PX 22, pp. 10, 11, 12, 13)

Before he returned to school in late October, Bennett heard discussion about Petitioner's injury in the break room and the lunch room. (PX 22, pp. 14)

From the time of the incident until late October, Bennett testified, he noticed that Petitioner was slower than he had been. Certain things would tweak his back and he would complain about it. (PX 22, p. 13) In the succeeding years, Bennett heard from Petitioner and others that Petitioner's back was still hurting him. (PX 22, p. 16)

In a letter dated January 24, 2014, Respondent denied Petitioner's back claim on the basis of accident and notice and stated, *inter alia*, that Foreman Michael Keycewicz denied notice of the accident. (PX 35)

Mike Keycewicz testified that he has worked for Respondent over 20 years and has held the position of foreman there for probably 13 or 14 years. He is currently foreman of the Forestry Electrical Department for the Village of Streamwood, Public Works Department. As foreman, Keycewicz was the proper person to whom Petitioner would report an injury. Keycewicz worked for Respondent at the time Petitioner started working there. He frequently worked with Petitioner. They picked up branches, removed trees, and repaired street lights together. Petitioner had to pass a physical examination before he began working for Respondent. Keycewicz recalled an instance in which Petitioner came to him and reported that he had injured his back. Petitioner came into his office and advised that he had hurt his back while chipping that day. Keycewicz's common response would have been to tell Petitioner to wait a day or two to see if the pain went away. He further testified that Respondent had a relaxed accident policy in those days so that no paperwork would have been completed at the time of the initial report of injury. (Trans. 3/15/18, pp. 53-64)

On cross-examination, Keycewicz testified that once Petitioner reported the back injury in August of 2008 or whenever he found out about it, he would have told him to go home, and if the pain got worse, then they would proceed with medical treatment and paperwork. Keycewicz had no recollection of Petitioner returning to him a couple of days later and telling him he went to the doctor. Keycewicz further testified that Petitioner would not take any unscheduled sick time - - it was always scheduled - - and that Petitioner continued to work full duty as far as he knew. Petitioner continued to work and did not complain and is kind of a stoic, hard worker. He and Petitioner had a good relationship when they worked together. Neither felt intimidated by the other. Keycewicz used to be president of the union out there. (Trans. 3/15/18, pp. 64-71)

Christopher Sullivan, an M-1, started working for Respondent in 2006 and worked there for 8 or 9 years. He had frequent occasion to work with Petitioner on various jobs, including chipping trees and removing snow, and knew him to be a hard worker and not prone to complaining. (Trans. 3/15/18, pp. 31, 24-26) Christopher Sullivan testified that one of the reasons he left Respondent was that he "didn't like the way most employees were treated there … everybody was always worried about getting written up for minor infractions and, you know, having disciplinary action taken against them for just about anything." (Trans. 3/15/18, p. 51)

Christopher Sullivan wrote the following:

"Art Beese is one of the most honest people I have ever known and he is conscientious to a fault about work. He is very reluctant to do or say anything that could jeopardize his job." (PX 30)

Terry Ritz and Tony Bosio also gave written statements. (PX 31, PX 32)

Mark Schiferl worked for Respondent from 2007 or 2008 and left in 2012. Mark had frequent opportunities to work with Petitioner. Prior to December of 2008, he was never told of Petitioner having, and never observed him showing, any sign of knee or back pain. Schiferl worked with Petitioner on the day he injured his leg. During the period of time that Schiferl continued to work for Respondent, he noticed that Petitioner was not the same. He used to be the first one to jump in and help you load something into the truck. But after the accident, he was "taking it easier." He would come and help, but you could tell he was in pain. He would get there slower, so you get it loaded and that, before he got there … he walked different … you could tell he was sore. Petitioner "loved to walk behind the mower, but he would never say I will go and do that because he couldn't walk … it hurt him to walk that much." (Trans. 3/15/18, pp. 125-126, 136-139)

John Ring is presently employed as an M2 at Respondent where he has worked for 28½ years. He did not personally witness the chipper incident. He remembers a discussion about something that happened to Petitioner when he was chipping wood. Ring observed Petitioner on or about August 5, 2008, and noticed that he "was having some difficulty in his normal maneuvers … He seemed to be hurting … His difficulty in movement being his back." (Trans. 3/15/18, pp. 74, 81, 82, 83) On cross-examination, Ring testified that Petitioner was a hardworking guy, not a complainer, and did not take time off work. (Trans. 3/15/18, pp. 92-93)

Stephan J. Miller is employed at Respondent where he has worked for 15 years. During that time, he had frequent occasions to work with Petitioner on many different jobs including snow removal and tree chipping. Prior to August of 2008, he never observed Petitioner experiencing back pain. He heard Petitioner discuss an incident concerning the tree chipping operation. (Trans. 3/15/18, pp. 107-108) On cross-examination, Miller testified that Petitioner was a hardworking guy and a good guy. (Trans. 3/15/18, p. 118)

CONCLUSIONS OF LAW

In support of his decision with regard to issues (C) "Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?", and (E) "Was timely notice of the accident given to Respondent?", the Arbitrator finds as follows:

By a mere preponderance of the evidence, the Arbitrator finds that on August 5, 2008, Petitioner sustained an accident that arose out of and in the course of his employment by Respondent and that he provided timely notice of such accident to Respondent.

Although Petitioner testified that the accident occurred in late summer of 2008, he reported an injury date of August 5th when he first sought treatment with Dr. Iza on September 24, 2008. Dr. Iza's record indicates the following: "pt. here for LT lower back pain injured on Aug. 5."

No evidence was presented that Petitioner experienced any pain in his low back or sought treatment for his low back before August 5, 2008. Petitioner did, however, have a a cyst or tumor removed from his back and also had a pars fracture at L5. Dr. Drake opined that such fracture is most likely the result of a congenital condition whereby he was born with a weakened bone that fractured when he was a young man. (PX 23, p. 44)

Brian Bennett worked with Petitioner on a day in the late summer of 2008 when Petitioner sustained a back injury while chipping. Although Bennett did not observe Petitioner at the moment he said he hurt his back, he observed Petitioner shortly thereafter near the chipper, kind of down on one knee, clutching his back. Petitioner did not have anything in his hands at that time. Bennett further testified that the look on Petitioner's face clearly indicated that he was in pain. After Bennett throttled down the chipper, he was told by Petitioner that he had hurt his back and needed to go back to the shop.

Petitioner testified that after the chipper incident, he drove back to the Public Works Department and reported the occurrence to Mike Keycewicz, his foreman, and John Ring, an M-2 or assistant foreman, both of whom were his superiors and proper parties for reporting an accident. (Tr. 6/18/18, p.18) Petitioner testified that Mike Keycewicz told him to wait a day or two and see if the pain went away.

John Ring did not recall Petitioner making a specific statement on August 5, 2008 - - "[t]hat was a long time ago."

Foreman Keycewicz recalled an instance in which Petitioner came to him and reported that he had injured his back. Petitioner came into his office and advised that he had hurt his back while chipping that day. Keycewicz's common response would have been to tell Petitioner to wait a day or two to see if the pain goes away. He further

testified that Respondent had a relaxed accident policy in those days so that no paperwork would have been completed at the time of the initial report of injury.

On cross-examination, Keycewicz testified that once Petitioner reported the back injury in August of 2008 or whenever he found out about it, he would have told him to go home, and if the pain got worse, then they would proceed with medical treatment and paperwork. Keycewicz had no recollection of Petitioner returning to him a couple of days later and telling him he went to the doctor.

In support of his decision with regard to issue (F) "Is Petitioner's current condition of ill-being causally related to the injury?", the Arbitrator finds as follows:

The Arbitrator finds Petitioner's current condition of ill-being of his back to be casually related to the tree chipping incident of August 5, 2008.

Despite experiencing a sensation that he likened to someone hitting a railroad spike into his back, Petitioner, over the course of the following 7 weeks, continued to work and sought no medical attention.

Petitioner initially treated for his back with Dr. Iza, his family doctor, who referred him to a chiropractor. When treatment by the chiropractor did not prove effective, Dr. Iza referred him to Dr. Lami at Illinois Spine Institute. Dr. Lami noted that Petitioner presents with a history of back pain since August 2008. Such pain is localized in his lower back without radicular symptoms. Petitioner's MRI was essentially normal with mild degenerative changes in the facet joints and an abnormality of the lamina at the L5 level. He found no spinal stenosis, no compressive pathology, and age appropriate MRI films. Dr. Lami diagnosed Petitioner with lower back pain with no deficit and opined that he is not a surgical candidate. He felt that Petitioner should continue with an exercise program and strengthen his paraspinal muscles and engage in a weight loss program. (RX 2)

Petitioner testified that he next saw Andrew Yu, M.D., at Illinois Pain Institute. Dr. Yu administered numerous injections and radiofrequency neurotomies, which brought about short-term pain relief to Petitioner.

Petitioner then began treating with Dr. Drake upon self-referral or on a referral from Dr. Iza. Dr. Drake testified that Petitioner's back pain is partially coming from the congenital pars defect fracture he has had his entire life and the subsequent overloading of his disc "because that's life." However, Dr. Drake also testified as follows: "I think regardless of a degenerative condition or not, if you get strained or pulled forward suddenly that you can get a strain of your low back." (PX 23, pp. 39-40) He also stated: "There is no doubt in my mind that his injury pre-existed the disc degeneration and his fractures pre-existed his condition."

"Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was *a* causative factor in the resulting condition of ill-being." *Rock Road Construction v. Indus. Comm'n*, 37 Ill.2d 123, 122, 227 N.E.2d 65 (1967)

The medical records indicate that Petitioner has had consistent complaints of low back pain and substantial conservative treatment for such condition since the August 5, 2008 accident.

In support of his decision with regard to issue (K) "What temporary benefits are in dispute? TTD", the Arbitrator finds as follows:

Petitioner claims "lost time of 220.50 hours from work at various times while obtaining outpatient medical attention related to his back condition representing 5.5 weeks TTD." (AX 1 Addendum)

However, as it relates to the condition of ill-being of his low back since the August 5, 2008 accident, Petitioner continued to work full duty and did not offer into evidence any doctors' off-work slips or opinions.

Therefore, the Arbitrator denies Petitioner's claim for TTD benefits.

In support of his decision with regard to 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 Arbitrator finds as follows:

In support of Section 7 of AX 1, Petitioner attached a list entitled "ARTHUR BEESE UNPAID BACK MEDICAL." This list has columns labeled DATE, PROVIDER, SERVICE RENDERED, and PAID. However, this list does not include the unpaid medical bills, which are required by Section 7.

Moreover, in Section 7 of AX 1, Respondent claimed that they paid all the medical bills through their group carrier for which credit may be allowed under Section 8(j) of the Act. Petitioner agreed with this claim. (AX 1, §7) Respondent did not identify the dollar amount in medical bills paid for which they are seeking an 8(j) credit.

The Arbitrator concludes that all the medical bills related to Petitioner's low back injury of August 5, 2008 have been paid through the group carrier. Respondent is entitled to a credit for all such medical bills paid, pursuant to Section 8(j) of the Act. Petitioner shall be held harmless from any such bills.

In support of his decision with regard to issue (L) "What is the nature and extent of the injury?", the Arbitrator finds as follows:

As it relates to his low back condition, Petitioner continued to work full duty after the August 5, 2008 accident but frequently used sick time and vacation time to receive treatment. As noted, Petitioner did not file a workers' compensation claim for this accident until June 1, 2011.

Mike Keycewicz agreed with Respondent's Counsel that Petitioner was a "stoic, hard worker."

Petitioner was 52 years old at the time of the accident.

Petitioner worked as an M1 laborer for Respondent. His job duties included the following: lifting of 100 pounds frequently, breaking up concrete with a jackhammer, performing pick and shovel work, shoveling snow, shoveling wet concrete, installing and excavating sewers by hand, entering and performing bottom work on sewer installations, removing debris from creeks and feeding, by hand, branches, tree trunks and brush into a chipper.

Petitioner continued to work for Respondent until November of 2017 at which time he applied for and received Social Security Disability Benefits. Among other conditions, Petitioner has conditions of ill-being of his low back, right knee, and left shoulder. The evidence shows that following treatment for his left shoulder, Petitioner refused to undergo a fitness evaluation as a condition of his return to work and was therefore let go.

For the August 5, 2008 accidental injury to his back, Petitioner underwent physical therapy, chiropractic treatment, and wore a TENS unit. Petitioner then received numerous injections and many radiofrequency neurotomies from which he received short-term pain relief.

Dr. Drake testified as follows: "I think regardless of a degenerative condition or not, if you get strained or pulled forward suddenly that you can get a strain of your low back." He also testified: "There is no doubt in my mind that his injury pre-existed the disc degeneration and his fractures pre-existed his condition."

Dr. Drake did not specifically relate the need for an L5-S1 fusion surgery with the August 5, 2008 accident.

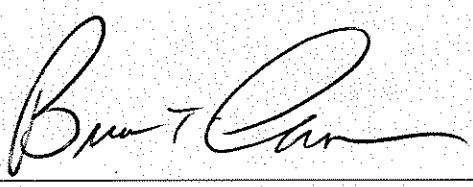
Petitioner testified that he has back pain every minute of every day and rates such pain as a 7 out of 10. Yet, he did not proceed with fusion surgery through group.

Based on the foregoing, the Arbitrator finds that as a result of the August 5, 2008 accident, Petitioner has sustained a loss of use of his person as a whole to the extent of 10%.

In support of his decision with regard to issue (M) "Should penalties or fees be imposed upon Respondent?", the Arbitrator finds as follows:

The Arbitrator finds that neither penalties nor attorney's fees are warranted in this case. Respondent had bona fide disputes as to the issues of accident and causation.

Petitioner notified Mike Keycewicz of the accident on the day it occurred. However, Keycewicz has no recollection of Petitioner following up with him 2-3 days later and telling him he needed to see a doctor. No accident report was completed. Petitioner waited 7 weeks to seek treatment. Respondent had no opportunity to investigate the accident. With the medical providers, Petitioner did not submit any of the bills through workers' compensation. He did not submit any of these bills to Karen Gray or anyone at Respondent. Petitioner filed this Application for Adjustment of Claim 2 years and 10 months after the accident occurred. The first documented detailed history of accident, which includes the mechanism of injury, appears in Dr. Yu's February 25, 2009 chart note, which was more than 6 months post-accident. At trial, Petitioner did not testify to a specific date of accident - - only that it occurred in the late summer of 2008. Furthermore, Brian Bennett, Mark Schiferl, and Christopher Sullivan did not identify a specific date of accident. Moreover, at the time of accident, Petitioner had a pre-existing pars fracture at L5.



7-2-2019

Brian T. Cronin

Date

Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC027471
Case Name	Arthur Beese v. Village of Streamwood
Consolidated Cases	11WC020846; 11WC020847;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0383
Number of Pages of Decision	18
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Paul Cronin,
Respondent Attorney	Theodore Powers

DATE FILED: 10/7/2022

/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

ARTHUR BEESE,

Petitioner,

vs. NO: 12 WC 027471

VILLAGE OF STREAMWOOD,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, medical expenses, temporary total disability, nature and extent, fees and penalties, and evidentiary rulings, 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 Commission finds that Petitioner's condition of ill-being reached maximum medical improvement on September 17, 2012. Petitioner underwent right knee surgery on June 27, 2012. PX21, p. 110. His surgeon, Dr. Drake, released him to return to work full-duty on September 17, 2012. PX21, p. 15. Petitioner was also seen at Northwest Community Healthcare Occupational Health Services on this date and cleared for full duty. RX6.

The Commission relies upon the opinions rendered by Dr. Verma on September 21, 2016, wherein he stated, "I do not see that the patient's condition is in anywhere related to the date of injury of August 5, 2008. His current condition is consistent with degenerative arthritis with degenerative meniscal pathology. Although current treatment recommendations may include intermittent ongoing injections with possible need for total knee arthroplasty in the future, his need for total knee arthroplasty is unrelated to any work condition." RX8.

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 11, 2019, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of $725.80/week for 16-6/7 weeks, commencing June 27, 2012 through September 16, 2012, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $653.22 per week for a period of 32.25 weeks, as provided in §8(e) of the Act, for the reason that the injury sustained caused the loss of use of 15% loss of use of the right leg.

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

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

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.

October 7, 2022

O: 081622
TJT/ahs
051

/s/*Thomas J. Tyrrell*
Thomas J. Tyrrell

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

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BEESE, ARTHUR
Employee/Petitioner

Case# **12WC027471**

11WC020846
11WC020847

VILLAGE OF STREAMWOOD ILLINOIS
Employer/Respondent

On 7/11/2019, 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 2.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0496 PAUL J CRONIN
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0863 ANCEL GLINK
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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

Arthur Beese
Employee/Petitioner

Case # **12 WC 27471**

v.

Consolidated cases: **11 WC 20846 & 11 WC 20847**

Village of Streamwood, Illinois
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 **Brian T. Cronin**, Arbitrator of the Commission, in the city of **Chicago**, on **3/15/2018, 6/18/2018, 1/22/2019 and 1/23/2019**. 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. ☒ 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: Ghere Objections

FINDINGS

On **8/2/2010**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned an average weekly wage of $**1,088.70**

On the date of accident, Petitioner was **53** years of age, ***married*** with **1** dependent child.

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

ORDER

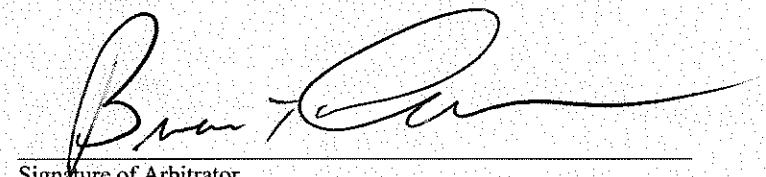
Respondent shall pay Petitioner $**725.80**/week from **6/27/12** through **9/16/12**, which is a period representing **16-1/7** weeks, because Petitioner was temporarily totally disabled during this time, in accordance with Section 8(b) of the Act.

Respondent shall pay Petitioner $**653.22**/week for **32.25** weeks since, as a result of the **8/2/10** accident, Petitioner has sustained a loss of use of his right leg to the extent of **15%** thereof, pursuant to Section 8(e)12 of the Act.

The Arbitrator concludes that all the medical bills related to Petitioner's right knee accident of August 2, 2010 have been paid through the group carrier. Respondent is entitled to a credit for all such medical bills paid, pursuant to Section 8(j) of the Act. Petitioner shall be held harmless from any such 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.



Signature of Arbitrator

7-11-2019
Date

JUL 11 2019

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Arthur Beese
Employee/Petitioner

v. Case No. 12 WC 27471,
Consolidated w/ 11 WC 20846 & 11 WC 20847

Village of Streamwood, Illinois
Employer/Respondent

FINDINGS OF FACT

Arthur Beese ("Petitioner") worked as an M-1, the lowest laborer level, in the Public Works Department of the Village of Streamwood, Illinois ("Respondent"), from December 17, 2001 until November 19, 2017. (Tr. 6/18/18, pp. 8-10) His job duties included the following: lifting of 100 pounds frequently, breaking up concrete with a jackhammer, performing pick and shovel work, shoveling snow, shoveling wet concrete, installing and excavating sewers by hand, entering and performing bottom work on sewer installations, removing debris from creeks and feeding, by hand, branches, tree trunks and brush into a chipper. (PX 1) Petitioner's testimony, as well as the voluminous medical records in evidence, reveal a steady stream of treatment for work-related sprains, strains cuts, and scratches.

In evidence are extensive records, which date as far back as 2002, from Advanced Physical Medicine, Alexian Brothers Medical Group, n/k/a Amita Health Medical Group, Illinois Spine Institute, Illinois Pain Institute, Alexian Brothers Medical Center, St. Alexius Medical Center, Northwest Community Hospital and Core Orthopedics and Sports Medicine. (PX 16, 17, 18, 19, 20, 21)

Petitioner submitted three Applications for Adjustment of Claim: one for case # 11 WC 20847, which he filed on June 1, 2011 and alleged an August 5, 2008 accidental injury to his lower back while chipping a tree (AX 2), one for case #11 WC 20846, which he filed on June 1, 2011 and alleged a December 15, 2009 accidental injury to his right knee when he hyperextended it (Ax.4), and one for 12 WC 27471, which he filed on August 10, 2012 and alleged an August 2, 2010 accidental injury to his right knee during an FCE. (AX 6)

With regard to the reason he waited so long to file his Applications for Adjustment of Claim, Petitioner testified: "Well, if I filed a workers' comp case, I was afraid of losing my job. So, I waited until before the time ran out before I filed." When asked why he was afraid of losing his job, Petitioner testified: "To make a workers' comp

case, I was afraid I would be given all the terrible jobs and basically just breaking me down where I couldn't physically do it anymore." (Trans. 6/18/18, pp. 122-125)

Chris Sullivan, a co-worker of Petitioner who had difficulty recalling when he began working for Respondent, wrote the following:

> "There is a hostile environment at the Village of Streamwood. A worker who someone in management doesn't like can be given the worst possible assignments until he quits. People are threatened with discharge without adequate basis. You are criticized for using sick days. People are written up for the most minor or even non-existent infractions. I recall Tim Holloway the Superintendent saying that anyone who didn't report an accident within a day would be written up. Sometimes you don't even realize you have been hurt until sometime later ..." (PX 30)

Karen Gray testified on behalf of Respondent. Her job title at the time of Petitioner's alleged accidents was Executive Assistant to the Village Manager. As such, she maintained the workers' compensation files. Ms. Gray testified that Respondent has a safety policy that states basically any unsafe incidents are to be reported and any injuries, no matter how minor, are to be reported to supervisors. Ms. Gray further testified that over her 20 years working for Respondent, she has not been aware of any Village policy whereby an employee would be threatened with job termination if he or she filed a claim or reported an accident. If she had heard of such a thing, she would say that that is not correct. Petitioner never brought her any off-work slips or medical bills. Ms. Gray testified that Petitioner never came to her to express concern about any such threat or punishment of termination. Ms. Gray denied that any employee has been fired or disciplined for reporting a work accident or filing a workers' comp. claim. (Trans. 1/22/19)

Petitioner testified he was not fired after he filed a WC claim for his shoulder. (Tr. 1/22/19, p.107)

Case #12 WC 27471:

Petitioner testified that Dr. Drake performed the first operation on his right knee in June of 2010, he believed. Just after the July 4th holiday, Dr. Drake gave him a written release to return to work. Petitioner further testified that he brought this written release to the foreman of Public Works. When Petitioner attempted to return to work, Respondent would not take him back to work. Respondent sent him to their doctor, Dr. Newberg. Petitioner saw Dr. Newberg. Dr. Newberg is in Arlington Heights and is associated with Northwest Community Hospital. Petitioner identified PX 28, which is a copy of a request by Dr. Newberg to have him undergo an FCE before returning to work. Accordingly, Petitioner underwent an FCE at the Northwest Community Hospital outpatient facility. (Trans. 6/18/18, pp. 69-74)

Petitioner testified that his knee "felt great" and "felt wonderful" when Dr. Drake released him. He had no grinding sensation and no swelling. When asked if he had any pain, Petitioner replied: "No. It felt pretty good." He underwent the FCE on August 2nd

and August 3rd. Present at the time of the FCE was Anita Stehmeier and another lady. Before he started the FCE, they required him to take his shirt off "because they wanted to see [him] shake." He had to perform 13 tests in 2 days. He had to perform these tests in a sitting position and a squatting position on the floor and at different levels. He had to use grippers for his hands for the strength tests. Petitioner opined that their gauge was faulty. He had to lift weights They had a metal basket that weighed 5 pounds. Then, they "incremented it up" 20 pounds each time. Then they set it on the floor and told him to squat all the way down. He had to squat all the way down so that his rear end touched his heels. Then, he had to pick up this basket and walk around the room, walk up and down stairs, and go over to a shelf. They would take half of that weight and ask him to put it overhead on a shelf. Petitioner testified that he would have to squat down and pick up a metal milk crate filled with weights that added up to 245 pounds, and then walk around the room with this crate. Petitioner knew that the weight-filled crate weighed 245 pounds because he added up the weights as they went along. (Trans. 6/18/18, pp. 74-80)

Petitioner testified that while he was taking this FCE, he noticed that he was becoming very sore. His whole body ached from head to toe due to the strenuous exercises. At the end of the first day of testing, the FCE examiner asked him to return for a second day of testing. Petitioner told her that he is very sore and that he really hurt. She said that that was normal and advised him to get plenty of rest before he returns the following day. The next day, Petitioner continued, he went through the same tests. Following testing that day, he found it difficult to walk or to move. When he got home, he noticed that he had bruising on the insides of his thighs. Then, he felt severe pain in his right knee and it started to move back and forth. It was grinding, like gravel in his knee. He testified: "And then I knew that it was shot. It didn't survive." (Trans. 6/18/18, pp. 82-84)

After the first day of the FCE, Petitioner noticed that his right knee was really sore. He had so much muscle pain and everything hurt. He did not exercise his knee at home. He went home and laid down. He did not recall any swelling of the knee after the first day. (Trans. 6/18/18, p. 85)

PX 5 and PX 6 are photos of Petitioner's legs that show bruising of his thighs. PX 6 was taken on August 6, 2010, and PX 5 was probably taken on August 4th because he was wearing an orange shirt. He returned to work on Wednesday, August 4th, and the orange shirt was a shirt that he wore to work. (Trans. 6/18/18, pp. 85-87)

When he returned to work, Petitioner spoke to Pete Jones, who was Foreman of the Water Department but also Acting Superintendent. He believes that he told Jones that he "f-d up [his] knee" at the FCE. Petitioner then pulled up his shorts and showed him the bruising. Petitioner further testified that he then worked his leg up and down and you could the knee - - like gravel grinding in it. (Trans. 6/18/18, pp. 87-88)

After that, Petitioner believed he called Dr. Iza to make an appointment. As soon as he saw Dr. Iza, he asked him if he could get a referral to see Dr. Drake. Petitioner then testified he actually saw Dr. Yu 4 days after the FCE. He told Dr. Yu that he injured his

knee in the FCE. Petitioner then worked on his knee and it sounded like gravel crunching. Petitioner believed that he then saw Dr. Drake the next week. Petitioner told Dr. Drake that the knee "he had given him" is screwed up and it's grinding. He examined Petitioner's knee. In the summer of 2012, Petitioner testified, Dr. Drake performed the second surgery. Dr. Drake told him that it would be a more involved surgery. (Trans. 6/18/18, pp. 88-99)

Since the second surgery, Petitioner testified, he has constant pain in the knee. Since then, he has had several steroidal injections. Petitioner estimated the average pain in his right knee immediately before he received each steroidal injection was a 5/10. After each injection, he estimated, the average pain in his knee was a 2/10. (Trans. 6/18/18, pp. 99-102)

Petitioner testified that he prepared a document for his attorney wherein he explained all of the time he lost from work as a result of his various injuries. In that document, Petitioner also advised him of the hourly rate of pay for each of the years in question. Petitioner wrote it all down, his wife, Irene, typed up the document, and they gave it to Petitioner's attorney. The document detailed the dates he lost from work as well as the sick time and vacation time that he used up. Petitioner's attorney stated that he did not bring this document with him but will bring it the next time. (Trans. 6/18/18, pp. 108-110)

Petitioner testified that Dr. Drake has recommended right knee replacement surgery. (Trans. 6/18/18, p. 116)

However, Dr. Drake denied that he ever advised Petitioner that he needs a knee replacement. (PX 23, p. 33)

Petitioner testified that, presently, he is experiencing 3/10 knee pain. (Trans. 6/18/18, p. 116)

Petitioner testified that he retired before he was granted SSDI benefits. He testified that he retired because he is disabled and Respondent forced him out. (Trans. 6/18/18, pp. 117-118)

On cross-examination, Petitioner testified that after the knee surgery in June 2010, Dr. Drake released him to full-duty work. Then, because Petitioner had been off work for a little bit and they wanted to make sure he could do the job, Respondent asked Petitioner to see another doctor whose name was Newberg. Dr. Newberg examined him on July 2, 2010. Dr. Newberg asked him how he was feeling. Dr. Newberg could have indicated that Petitioner's right knee was a little puffy and swollen. Dr. Newberg found that Petitioner was able to squat to 60°. Dr. Newberg told him that he did not want Petitioner to go back to work yet, and that he wanted Petitioner to see him after he sees Dr. Drake. So, Petitioner went to this appointment with Dr. Drake, and Dr. Drake reiterated that he thought Petitioner could return to work. He then went to see Dr. Newberg later that same day and Dr. Newberg said everything looked good. He gave Petitioner a clean bill of

health and released him. However, at that appointment with Dr. Newberg, he said Petitioner should undergo an FCE on August 2 and 3, 2010. (Trans. 1/22/19, pp. 34-41)

Petitioner testified that he has seen the FCE report and that it is incorrect. After he underwent the FCE, he saw Dr. Iza, then Dr. Yu, then Dr. Drake. Petitioner believed that even after Dr. Drake saw him following the FCE, he still released Petitioner to full, unrestricted-duty work. So, by early August 2010, Petitioner returned to full-duty work without restrictions with Respondent but was in pain. (Trans. 1/22/19)

Petitioner testified that after the FCE, it took a while for the bruising to develop in his thighs. The Stehmeier woman said that that's normal and that the pain is normal. Petitioner testified that the bruising was on the insides of his thighs and was not at his knees. (Trans. 1/22/19, pp. 90-91)

At the time he underwent the FCE, Petitioner thought that he may have weighed 270. Petitioner testified that he made a notation of 245 pounds on a copy of the FCE report and that this was confirmed by Anita Stehmeier. Petitioner testified that he lifted more than the weights listed on the little chart thing. Petitioner testified that it makes sense to him now that this is the FCE evaluator's assessment of what he *can* do as part of his job. (Trans. 1/22/19, pp. 92-95)

Petitioner testified that when he saw Dr. Drake for an examination after the FCE, he told him that he thought he had damaged his knee during the FCE. Dr. Drake was very brief. Petitioner overheard the doctor speaking on the phone to the FCE lady at which time he reamed her out and told her never to do that again. (Trans. 1/22/19, pp. 112-113)

Petitioner agreed with Respondent's counsel that after the FCE, he was given non-steroidal anti-inflammatories and was allowed to go back to work full-duty. He also testified that on June 27, 2012, he underwent the second surgery on his knee to have loose bodies removed. (Trans. 1/22/19, pp. 113-114)

On redirect examination, Petitioner testified that he was threatened with being fired after his shoulder incident but before he received SSDI benefits. He testified that his director said that he can retire and submit the paperwork on Friday or go to Village Hall and be terminated on Monday. (Trans. 1/22/19, pp. 127-129)

Karen Gray testified that as a condition of returning to work after his shoulder surgery and recovery, Respondent required Petitioner to pass a fit-for-duty physical examination. She further testified that Petitioner, on more than one occasion, refused to undergo such examination and therefore Respondent was unable to return him to work.

On July 29, 2010, which was 4 days prior to the claimed date of accident, Petitioner saw Dr. Drake. Petitioner's chief complaint was STATUS POST PARTIAL MEDIAL AND LATERAL MENISCECTOMIES, PATELLOFEMORAL CHONDROPLASTY. Petitioner states he is quite happy with the [surgical] results.

Upon conducting a physical examination, Dr. Drake found that he had 5/5 strength in his right knee, that the incisions are nicely healed, and that there was no effusion. (PX 21B, p. 384)

On August 2 and 3, 2010, Petitioner underwent the FCE.

Dr. Iza's chart notes of August 8, 2010 indicate that this is an office visit by an established patient to Dr. Iza for post-surgical follow up as he is still in pain. Petitioner was found to be 74 inches tall, weighed 299 lbs., and have a BMI of 38.39. The HPI states: "The patient is a 54-year-old male who presents with a complaint of bruising. The onset of the bruising has been sudden and has been occurring in a persistent pattern for 2 days. The course has been constant. The bruising is described as being located on the skin of both lower extremities (INNER THIGHS). The bruising was precipitated by trauma (DID FUNCTIONAL CAPACITY EVAL AND PT WAS FORCED TO LIFT 240 LBS.) **** Knee pain is described as the following: The onset of knee pain has been gradual and has been occurring in a persistent pattern for 2 days. The pain is described as mild. **** **Physical Exam** **** **Peripheral Vascular**, Lower Extremity, Palpation: Edema – Bilateral – 1+ Pitting edema **Musculoskeletal** **** **Knee, Swelling – Right** - Effusion (MODERATE) **Movements- Right** – No decrease in range of motion." Dr. Iza assessed Petitioner with knee pain and referred him to orthopedics. Dr. Iza also assessed Petitioner with ecchymoses, edema, bilateral dependent, and umbilical hernia. (PX 20, p. 158)

On August 10, 1010, Petitioner saw Dr. Drake per Dr. Iza's referral. Petitioner's chief complaint was STATUS POST RIGHT KNEE ARTHROSCOPY.

HISTORY: Arthur returns to my clinic. He is quite upset as am I, as I have now returned him to work full duty on two occasions. However, another physician out of Northwest Community, Dr. Newburg, states that he is not capable of returning to work. Dr. Newburg ultimately sent him for an FCE this past Monday and Tuesday. I spoke with the physical therapist on the phone, who said that they did the FCE without having a job description of Mr. Beese's. Arthur presents to me with bruising on either sides of his inner thigh. He has a mildly swollen right knee. He has exacerbation of low back pain for which he had injections by Dr. Yu over the weekend.

PHYSICAL: Right knee reveals a mild effusion. Full range of motion. Patellofemoral crepitance.

RECOMMENDATIONS: He did pass his FCE. I have asked him to return to work once again. He has been back to work this Wednesday and Thursday, and he did see Dr. Iza on Friday. Because of him having a job description, he was concerned that they may terminate his position if he did not give full effort. Therefore, on Monday, before the job description was given to the therapist, who said that they received it on Monday night, after their first evaluation, he was lifting very heavy weight, up to 245 lbs. On the following day, the therapist stated they tried to rain (sic) him back from doing some of the activity, however, the therapist said he was trying to prove himself, so he could return

to work. I told the therapist that I was quite concerned that now we have a patient that wishes to return to work, per my recommendations, and that they started this FCE without a prior job description. I have asked that he return to work. Anti-inflammatory as needed. Questions were answered with the patient. The patient was happy with the care. (PX 21B, p. 383)

Petitioner testified that between the time of FCE and the second surgery on his right knee, Dr. Drake administered a series of 5 SUPARTZ injections to the knee.

On May 31, 2012, which was approximately 1 month prior to the second surgery on his right knee, Petitioner saw Dr. Drake. Dr. Drake took the following **History of Present Illness:**

"Patient returns today for a follow up on his right knee. He previously underwent a right knee scope and was he was doing well until he was pushed too far during an FCE and his pain returned. Prior to the FCE, the patient was pain free knee (sic) and no effusion or crepitation that was significant. After return of the functional capacity evaluation the patient had an effusion, crepitation and pain. Patient states that his pain is interfering with his activities of daily living. He is frustrated and wishes to have this addressed surgically. We discussed in detail the arthroscopy with debridement as well as possible microfracture. He understands that this may be a longer recovery.

Pain is moderate with a rating of 5/10. He describes the symptoms as stabbing. The symptoms do not differ between day or night. Additional symptoms include stiffness, weakness and sleep disturbances. Since the onset, the symptoms have improved. Symptoms are made worse with activity, lifting and movement. The symptoms are relieved with rest and ice/cold. ****

Right Knee Examination

Inspection: No significant effusion
Palpation: Tenderness along the patellofemoral joint as well as the medial joint line. There is patellofemoral crepitation.
Range of Motion: Full range of motion in all areas tested.
Strength: Strength testing is 5/5 in all muscle groups tested.
Sensation: Sensation is intact distally to the lower extremity.
Reflexes: Reflexes are normal and symmetrical.
Special Tests: No calf tenderness.
Gait Pattern: Gait pattern is normal with no limp."

X-rays of the right knee revealed osteoarthritis with narrowing of the medical joint line.

Dr. Drake's impression: Pain knee/Lower extremity, Internal Derangement-knee

Unsp. Right knee loose bodies, meniscal tear, and osteoarthritis.

Dr. Drake's treatment plan was to proceed with a right knee arthroscopy with joint debridement, possible medial lateral meniscectomies, possible microfracture.

On June 27, 2012, Dr. Drake proceeded with arthroscopic surgery on Petitioner's right knee.

On June 13, 2017, the parties deposed Dr. Drake. (PX 23)

CONCLUSIONS OF LAW

In support of his decision with regard to issues (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 as follows:

Dr. Drake testified that while the FCE may have aggravated his pre-existing degenerative arthritis, he did not believe that the additional meniscal tear was related to either the hyperextension incident or the FCE. (PX 23, p. 30)

On August 10, 2010, which was 8 days after the alleged accident, Dr. Drake recommended anti-inflammatory medication and released Petitioner to return to work; no mention is made of any restrictions. The FCE report documented full participation without any indications of injury.

Petitioner testified that he did not notice bruising of his thighs until 2 days later. There was no indication of any bruising of either knee. The testimony and medical records indicate that Petitioner had gone on cross-country driving vacation with his son following the FCE and before returning to work.

However, between the time of the FCE and the second surgery on his right knee, Dr. Drake administered a series of 5 SUPARTZ injections to the knee.

Petitioner testified that Dr. Drake recommended he undergo a right total knee replacement. When Dr. Drake was asked if he recommended such surgery, he replied: "No. Not that I know of."

Based on the opinions of Dr. Drake, the medical records, which document increased right knee pain following the FCE and the subsequent SUPARTZ injections, and Petitioner's testimony, the Arbitrator finds that Petitioner sustained an accident on August 2, 2012. He further finds that on that day, Petitioner aggravated the osteoarthritis in his right knee and consequently, that his current condition of ill-being of his right knee is causally related to the accident of August 2, 2010.

The Arbitrator points out that Petitioner loaded his joints during the FCE. Petitioner testified that at some point during the August 2nd and 3rd FCE, he lifted and carried 245 lbs. and the medical records reveal that on August 10, 2012, he weighed 299 lbs. and had a BMI 38.39. (PX 21B, p. 327, PX 20, p. 158)

Dr. Drake performed the second knee surgery, a repeat arthroscopy, on June 27, 2012. He testified that Petitioner had a medial and lateral meniscus tear and arthritis underneath the kneecap. So, he debrided the medial and lateral compartments, cleaned up the loose bodies, and did a patellofemoral microfracture. Dr. Drake testified that Petitioner "had significant patellofemoral arthritis prior to seeing me on his initial MRI in June … I think that the FCE probably aggravated his patellofemoral arthritis, but I think the arthritis primarily in his knee is degenerative in nature." (PX 23, p. 31)

When asked if he had an opinion as to whether the condition for which he performed the second surgery was causally related to the FCE, Dr. Drake testified: "It certainly aggravated his condition." (PX 23, pp. 27-28)

Because Dr. Drake addressed the patellofemoral arthritis in the same surgery in which he cleaned up the loose bodies and debrided the medial and lateral compartments, the Arbitrator finds that the need for this second knee surgery of June 27, 2012 is causally related to the accident of August 2, 2010.

In support of his decision with regard to issue (E) "Was timely notice of the accident given to Respondent?", the Arbitrator finds as follows:

The Arbitrator finds that Petitioner gave timely notice to Respondent of the August 2, 2010 accident.

Petitioner testified that he returned to work on Wednesday, August 4, 2010. When he returned to work, Petitioner testified, he spoke to Pete Jones, who was Foreman of the Water Department but also Acting Superintendent. He believes that he told Jones that he "f-d up [his] knee" at the FCE.

Pete Jones was not called to testify.

In support of his decision with regard to issue (G) "What were Petitioner's earnings?", the Arbitrator finds as follows:

In Arbitrator's Exhibit #1, Petitioner claims that his average weekly wage is $1,236.53 and Respondent claims that Petitioner's average weekly wage is $1,088.70.

Petitioner failed to prove that his AWW is $1,236.53. Petitioner did not offer pay stubs for the 52 weeks immediately preceding August 2, 2010 or other documentary evidence. He offered the Labor Agreement between Respondent and AFSCME, Council

31, Local 909, AFL-CIO, but that agreement only applied to Petitioner for the period of January 1, 2016 through December 31, 2018.

Therefore, the Arbitrator finds that Petitioner's average weekly wage here is $1,088.70.

In support of his decision with regard to issue (K) "What temporary benefits are in dispute? TTD", the Arbitrator finds as follows:

Petitioner claims he was "off of work from the June 27th 2012 (sic) until September 21st 2012 for his 2nd knee surgery for a total of 7.28 weeks TTD." (AX 1, Attachment) Moreover, Petitioner wrote the following: "In addition he lost another 128 hours at various times for outpatient care for his knee at various medical providers for an additional 3.2 weeks TTD." (Id.)

Because Dr. Drake, on June 27, 2012, performed the patellofemoral microfracture surgery for the arthritis at the same time he debrided the medial and lateral compartments and cleaned up the loose bodies for the meniscus tear, the Arbitrator finds that Petitioner is entitled to TTD benefits from June 27, 2012, the date of the second right knee surgery, through September 16, 2012. In his chart note of September 11, 2012, Dr. Drake wrote: "Return to work without restrictions as of 9/17/12. FU prn." (PX 21A, p. 15)

Petitioner did not submit off-work slips or chart notes indicating he was to be off work for the additional "128 hours at various times for outpatient care for his knee at various medical providers for an additional 3.2 weeks TTD." It is the Arbitrator's understanding that these 128 hours, or 3.2 weeks, were not continuous but consisted of an afternoon here, a morning there, and that Petitioner worked full duty during this these times. The Arbitrator denies Petitioner's claim for 128 hours of TTD.

In support of his decision with regard to 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 Arbitrator finds as follows:

In support of Section 7 of AX 1, Petitioner attached a list entitled "ARTHUR BEESE UNPAID KNEE MEDICAL." This list has columns labeled DATE, PROVIDER, SERVICE RENDERED, and PAID. However, this list does not include the unpaid medical bills, which are required by Section 7.

Moreover, in Section 7 of AX 1, Respondent claimed that they paid all the medical bills through their group carrier for which credit may be allowed under Section 8(j) of the Act. Petitioner agreed with this claim. (AX 1, §7) Respondent did not identify the dollar amount in medical bills paid for which they are seeking an 8(j) credit.

The Arbitrator concludes that all the medical bills related to Petitioner's right knee injury of August 2, 2010 have been paid through the group carrier. Respondent is entitled to a credit for all such medical bills paid, pursuant to Section 8(j) of the Act. Petitioner shall be held harmless from any such bills.

In support of his decision with regard to issue (L) "What is the nature and extent of the injury?", the Arbitrator finds as follows:

The Arbitrator finds that, as a result of the aggravation of his osteoarthritis of his right knee on August 2, 2010, Petitioner has sustained a loss of use of his right leg to the extent of 15%. Between the time of the FCE and the second surgery on his right knee, Dr. Drake administered a series of 5 SUPARTZ injections to the knee. Later, Dr. Drake performed a second right knee surgery on Petitioner on June 27, 2012, which included the microfracture procedure to address Petitioner's osteoarthritis. Petitioner continues to have complaints of right knee pain.

In support of his decision with regard to issue (M) "Should penalties or fees be imposed upon Respondent?", the Arbitrator finds as follows:

The Arbitrator finds that neither penalties nor attorney's fees are warranted in this case. Respondent has bona fide disputes as to the issues of accident and causation.

Although Petitioner provided unrebutted testimony that he reported the accident on August 4, 2010 to Pete Jones, Petitioner did not file an Application for Adjustment of Claim until 1½ years later. Petitioner received a full-duty release after the FCE. Dr. Newberg's records indicate that he personally spoke with the FCE evaluator and was told that no injury or accident occurred during the FCE. Moreover, Petitioner did not submit medical bills related to post-FCE care for his right knee to Karen Gray or anyone at Respondent for payment by workers' compensation.

As to causation, Petitioner experienced an injury to his right knee in 2005 when a light pole fell on it. Then, in a highly disputed claim (case # 11 WC 20846), Petitioner alleged that he aggravated his right knee when he hyperextended it in the snow while in the course of his employment on December 15, 2009.

In support of his decision with regard to issue (O) "Ghere Objections", the Arbitrator finds as follows:

Respondent raised *Ghere* objections throughout the deposition of Dr. Drake and argued that Dr. Drake was offering opinions on medical records from other doctors that were not included in Dr. Drake's subpoenaed records. Dr. Drake only reviewed such records the night before the deposition and, therefore, Petitioner had not furnished these opinions to Respondent 48 hours before the deposition. The Arbitrator overruled these objections.

In *Ghere v. Indus. Comm'n*, 663 N.E.2d 1046, 278 Ill. App.3d 840, 215 Ill. Dec. 532 (4th Dist. 1996), Jim Ghere (Decedent), while working as a flagman for Howell Asphalt (Respondent/ Employer) on August 22, 1990, collapsed and died of a heart attack. Ghere was 63 years old at the time. On behalf of Ghere, Dr. Raymond Climaco, an emergency room physician, testified that he treated Decedent on several occasions beginning in December 1979. The last time Decedent saw Dr. Climaco was in the early part of 1990. Dr. Climaco testified that he never treated Decedent for heart problems. The Employer objected to Dr. Climaco giving any opinions regarding the cause of Decedent's death and regarding whether Decedent's work activities or work environment was causally related to his death because his opinions on these matters were not furnished to the Employer 48 hours before the arbitration hearing. The Arbitrator sustained that objection.

In their analysis, the Appellate Court noted that Dr. Climaco's records do not mention that he ever treated Decedent for a heart condition. There was nothing in Dr. Climaco's records to put the Employer on notice that Dr. Climaco had an opinion regarding causal connection which the employer could have requested. The Court held, consequently, that the Arbitrator was correct in sustaining the Employer's objection to Dr. Climaco's testimony regarding the above matters.

In the case at bar, however, Dr. Drake testified that he has treated Petitioner for his low back, his right knee, and his left shoulder.

Moreover, Respondent was in possession of Petitioner's Applications for Adjustment of Claim. Petitioner submitted three Applications for Adjustment of Claim: one for case # 11 WC 20847, which he filed on June 1, 2011 and alleged an August 5, 2008 accidental injury to his lower back while chipping a tree (AX 2), one for case #11 WC 20846, which he filed on June 1, 2011 and alleged a December 15, 2009 accidental injury to his right knee when he hyperextended it (Ax.4), and one for 12 WC 27471, which he filed on August 10, 2012 and alleged an August 2, 2010 accidental injury to his right knee during an FCE. (AX 6)

Dr. Iza's subpoenaed records include a September 24, 2008 chart note wherein he documents Petitioner's report of an August 5th injury to his lower back. (PX 20) Dr. Iza's subpoenaed records also include a December 19, 2009 chart note of Dr. Yu wherein Dr. Yu wrote that Petitioner hyperextended his right knee 3 days ago and it seems to have really bothered him. (PX 20, p. 221)

Based on the foregoing, the Arbitrator finds that Respondent could hardly claim that he was surprised, or that he was not put on notice, that Dr. Drake would be rendering causation opinions as to the condition of Petitioner's low back and right knee.

Brian T. Cronin
Arbitrator

7-11-2019
Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC013235
Case Name	Christi Canada v. State of Illinois - Choate Mental Health Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0384
Number of Pages of Decision	11
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 10/7/2022

/s/ Thomas Tyrrell, 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

Christi Canada,

Petitioner,

vs. NO: 18 WC 013235

State of Illinois,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission corrects a scrivener's error in the Arbitrator's Decision under Medical History, the fourth sentence of the eighth paragraph of this section, should read as follows, "However, on 1/3/20…"

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 30, 2021, is modified as stated herein, and is otherwise affirmed and adopted.

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)*.

October 7, 2022
o: 9/6/2022
TJT/ahs
51

/s/ *Thomas J. Tyrrell*
Thomas J. Tyrrell

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC013235
Case Name	CANADA, CHRISTI v. STATE OF ILLINOIS/CHOATE MENTAL HEALTH CENTER
Consolidated Cases	
Proceeding Type	
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	Shannon Rieckenberg

DATE FILED: 11/30/2021

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 30, 2021 0.09%

/s/ Linda Cantrell, Arbitrator

Signature

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

November 30, 2021

/s/ Brendon O'Rourke

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

CHRISTI CANADA
Employee/Petitioner

v.

STATE OF ILLINOIS/CHOATE MENTAL HEALTH CENTER
Employer/Respondent

Case # **18** WC **013235**

Consolidated cases: _____

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin**, on **September 16, 2021**. By stipulation, the parties agree:

On the date of accident, **3/28/18**, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $**35,992.41**, and the average weekly wage was $**692.16**.

At the time of injury, Petitioner was **43** years of age, ***married*** with **4** dependent children.

Necessary medical services and temporary compensation benefits have been **or will be** provided by Respondent.

Respondent shall be given a credit of $**47,404.46** for TTD, $**0** for TPD, $**0** for maintenance, and $**1,500.00 for advanced PPD payments**, for a total credit of $**48,904.46**.

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 $**415.30**/week for a further period of **125** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused permanent partial disability to the extent of **25%** loss of the person as a whole. As mentioned above and pursuant to the parties' stipulation, Respondent shall receive credit for permanent partial disability benefits advanced in the amount of $1,500.00.

Respondent shall pay Petitioner compensation that has accrued from **2/22/21** through **9/16/21**, and shall pay the remainder of the award, if any, in weekly payments.

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

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

NOVEMBER 30, 2021

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

CHRISTI CANADA,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No.: 18-WC-013235**
	)	
STATE OF ILLINOIS/CHOATE MENTAL HEALTH CENTER,	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Herrin on September 16, 2021. The parties stipulate that on March 28, 2018 Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent and that her current condition of ill-being is causally connected to the injury. The parties further stipulate that Respondent is entitled to a credit for permanent partial disability paid in the amount of $1,500.00. The sole issue in dispute is the nature and extent of Petitioner's injuries.

TESTIMONY

Petitioner was 43 years old, married, with four dependent children at the time of accident. Petitioner was employed by Respondent as a Mental Health Technician II. On March 28, 2018, Petitioner was assisting a patient with grooming when he grabbed her by the crown of the head with both hands and yanked her around the room. A co-worker had to intervene to get the patient to release Petitioner. The patient ripped Petitioner's hair out and injured her neck.

Petitioner testified that following the incident she went to her prior surgeon Dr. Gornet who treated her for a work-related neck injury in 2016. She stated she had constant pain in her neck that radiated to her fingers and daily headaches following the 3/28/18 accident. She underwent physical therapy, injections, and two cervical surgeries recommended by Dr. Gornet. She testified that the initial surgery improved her symptoms; however, she continued to have pain a couple of inches below her neck and a second surgery was performed that resolved her constant pain. She was released to full duty work without restrictions, but she voluntarily changed jobs to a mail room office assistant with IDOC to avoid further patient contact. Petitioner stated her new job position was a reduction in pay, but she prefers the safer work environment.

Petitioner testified she still experiences symptoms depending on her level of activity. She stated if she looks down for too long reading a book or going through charts or mail, her symptoms increase. She has raised her work computer to compensate. Lifting heavy boxes and playing with her children increases her symptoms. She stated she can no longer swim laps at her local gym for exercise because her neck does not flex backward. She continues to take over-the-counter medication on a daily basis.

Petitioner testified that her cervical surgery in 2016 was a disc replacement at C5-6. She stated she had daily aches in her neck and morning stiffness following her 2016 surgery but was very pleased with the outcome. She agreed she was fatigued at the end of her work shifts prior to 3/28/18 and took Tylenol daily or every other day.

MEDICAL HISTORY

Petitioner was examined by Dr. Matthew Gornet the day after her accident. Dr. Gornet treated Petitioner for a prior work accident that resulted in a disc replacement at C5-6 on 11/11/16. On 11/13/17, Dr. Gornet released Petitioner to full duty and placed her at MMI for the 2016 work accident. On 3/29/18, Dr. Gornet noted Petitioner was doing well until the most recent assault. He took a history of injury and noted Petitioner had increasing neck pain with trapezial pain and tingling into her bilateral arms. X-rays showed increased forward flexion consistent with neck spasm and a whiplash type injury when compared to her previous films in November 2017. Dr. Gornet placed Petitioner off work until 4/15/18 and prescribed Prednisone and Famotidine.

On 4/30/18, Petitioner returned to Dr. Gornet with continuing headaches, bilateral trapezial pain, and tingling down her right arm. She was working full duty but had persistent symptoms. Dr. Gornet ordered an MRI and compared it to her previous scan of 11/2/16. The new MRI showed increasing pathology at C6-7. Dr. Gornet recommended continued full duty work and physical therapy, followed by an injection if her symptoms did not improve.

On 7/2/18, Petitioner reported persistent symptoms despite therapy and medication. Dr. Gornet referred Petitioner for injections with Dr. Blake at C6-7. He allowed Petitioner to continue working full duty. Injections were performed on 9/17/18 and 11/19/18 which provided only temporary relief. Dr. Gornet recommended a disc replacement at C6-7 which was performed on 12/5/18. Intraoperatively, Dr. Gornet found a central annular tear at C6-7 and herniation to the right.

Petitioner returned on 12/20/18 and reported doing well but still had some neck pain and headaches. Dr. Gornet reviewed the intraoperative video with Petitioner which showed the large herniation was removed. Dr. Gornet kept Petitioner off work. Follow up visits of 1/17/19 and 3/18/19 indicate Petitioner had some ongoing symptoms. Dr. Gornet believed the accident could have aggravated her previous disc injury at C5-6.

On 1/22/19, Petitioner was examined by Dr. Kevin Rutz pursuant to Section 12 of the Act. Dr. Rutz identified Petitioner's neck pain and status post disc arthroplasty for cervical disc

herniation. He felt Petitioner's complaints were consistent with the MRI findings and agreed that the surgery at C6-7 was appropriate. Dr. Rutz opined that Petitioner's condition was causally connection to her work accident on 3/28/18.

Dr. Gornet obtained a CT scan on 3/18/19 that revealed a disc replacement at C6-7 in satisfactory position, disc replacement at C5-6 with development of lucency adjacent to the inferior component at the C6 upper endplate, and stable C2-3 facet arthropathy. No CT Scan was performed prior to Petitioner's disc replacement surgery at C6-7 and pathology was not present at C5-6 on her prior CT scan of 11/13/17. Dr. Gornet placed Petitioner in a hard collar and continued her off work.

Due to Petitioner's ongoing symptoms and objective findings, Dr. Gornet performed a revision disc replacement at C5-6 on 8/7/19. Intraoperatively, Dr. Gornet noted that the inferior component of the disc replacement was completely loose and the superior component was completely solid to the bone. The disc replacement at C5-6 was removed and a fusion at C5-6 was performed with screws and plating.

Follow up visits after Petitioner's second surgery showed she improved slowly with some soreness. Dr. Gornet warned her there would be some micromotion present. He released Petitioner to return to full duty work without restrictions on 1/6/20. However, on 1/3/10, Petitioner contacted Dr. Gornet's office with continued neck pain. Topical Diclofenac was prescribed. On 2/20/20, Petitioner returned to Dr. Gornet and a CT scan showed Petitioner's fusion at C6-7 was healing. Petitioner was released to light duty work and was set to return to full duty on 4/6/20.

On 4/8/20, Petitioner presented to her primary physician Dr. Mark Korte complaining of increased neck pain and right shoulder pain after returning to full duty work due to lifting and looking down at records. Diazepam was prescribed and a cervical MRI was ordered. Petitioner was placed off work for three weeks or until she was reexamined by Dr. Gornet. The MRI was performed on 4/22/20 and revealed a prior fusion at C5-6 with no unexpected postsurgical findings and mild scattered degenerative changes with no significant herniations or stenosis.

On 4/27/20, Dr. Gornet examined Petitioner and noted she had not completely healed. He noted a history of Petitioner picking up heavy trays at work that caused a temporary aggravation of her condition. He ordered Petitioner of work until 5/11/20 at which time she returned to work with a 20-pound lifting restriction, no overhead work, and no patient contact. These restrictions continued until 6/29/20 at which time she was released to full duty work with no restrictions. In the interim, Dr. Gornet recommended a short course of physical therapy.

Petitioner was examined a second time by Dr. Rutz on 5/26/20 due to her continued complaints following the fusion. Dr. Rutz identified Petitioner's neck pain, right shoulder bursitis, and cervicalgia. He recommended a right shoulder subacromial injection for diagnostic and therapeutic purposes. He opined that Petitioner's fusion at C5-6 may not be solid, though the CT scan indicated it was progressing. Dr. Rutz gave potential recommendations of a spinal cord stimulator, new MRI, and C6 or C7 nerve root block.

Petitioner's last visit with Dr. Gornet was on 2/22/21 at which time she reported residual neck pain with certain activities, as well as tingling into her right arm, but she had adapted to this. Dr. Gornet's examination showed 5/5 strength with some mild numbness at the C6 level. He released her to full duty work with no restrictions and placed her at MMI.

CONCLUSIONS OF LAW

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment**: Neither party submitted an AMA rating. Therefore, the Arbitrator gives no weight to this factor.

(ii) **Occupation**: Petitioner voluntarily transferred from Choate Mental Health Center to Shawnee Correctional Center, both managed by the State of Illinois. Petitioner testified that her new position offers a safer environment which had been a concern for her years prior to her work accident. The voluntary transfer resulted in a decrease in pay. The Arbitrator places some weight on this factor.

(iii) **Age**: Petitioner was 43 years old at the time of her injury. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity**: There is no evidence of reduced earning capacity contained in the record that relates to Petitioner's injuries. Petitioner was released to full duty work with no restrictions. She elected not to continue work as a Mental Health Technician II and voluntarily transferred to a position within the State that provided a safer work environment. Although Petitioner testified the job transfer resulted in a reduction in pay, she was able to perform her job duties as a mental health technician upon reaching maximum medication improvement in February 2021 and her future earning capacity was not diminished due to her injuries, but rather as a result of her voluntary transfer. The Arbitrator places some weight on this factor.

(v) **Disability**: As a result of her work accident on 3/28/18, Petitioner underwent a disc replacement at C6-7 in 2018, followed by a fusion to revise a prior disc replacement at C5-6 in 2019. The initial surgery at C5-6 was a result of Petitioner's prior workers' compensation claim from 2016. The need for the revision at C5-6 became evident when Petitioner's symptoms persisted after her surgery at C6-7. The need for the revision surgery at C5-6 was not identified by Dr. Gornet until after the surgery at C6-7 because Dr. Gornet did not obtain a CT scan before operating in 2018. Petitioner returned to full duty work on 4/27/20 and was placed at MMI without restrictions on 2/22/21.

Petitioner testified that she still has some symptoms depending on her level of activity. Her symptoms increase when looking down for long periods of time. Lifting and playing with her children increases her symptoms. She testified she is no longer able to swim laps for exercise because of decreased motion in her neck. She takes over-the-counter medication on a daily basis. Petitioner admitted to having symptoms prior to her 3/28/18 accident, including daily aches in her neck, morning stiffness, and fatigue at the end of a work shift. She stated she was pleased with the outcome of her cervical surgery in 2017 and was working full duty prior to her 3/28/18 accident. Petitioner also took over-the-counter medication on a daily basis for her neck condition prior to the subject accident. The Arbitrator gives greater weight to this factor.

Based upon the aforementioned factors, the Arbitrator finds Petitioner sustained permanent partial disability to the extent of 25% loss of the person as a whole, as provided in Section 8(d)2 of the Act. Pursuant to the parties' stipulation, Respondent is entitled to a credit for permanent partial disability benefits advanced in the amount of $1,500.00.

Respondent shall pay Petitioner compensation that has accrued from 2/22/21, the date Dr. Gornet released Petitioner at MMI, through the date of arbitration on 9/16/21, and shall pay the remainder of the award, if any, in weekly payments.

Linda J. Cantrell, Arbitrator

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC019747
Case Name	John Harris IV v. City of Mascoutah
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0385
Number of Pages of Decision	17
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Matthew Kelly

DATE FILED: 10/7/2022

/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

John Harris, IV, Minor, by his Father John Harris, III,

Petitioner,

vs. NO: 21 WC 19747

City of Mascoutah,

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, 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 January 3, 2022, is hereby affirmed and adopted.

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

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

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

There is no bond for the removal of this cause to the Circuit Court by Respondent pursuant to §19(f)(2) of the Act. 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.

October 7, 2022

o9/28/22
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC019747
Case Name	HARRIS IV, JOHN (MINOR) BY HIS FATHER HARRIS III, JOHN v. CITY OF MASCOUTAH
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Matthew Kelly

DATE FILED: 1/3/2022

/s/Linda Cantrell,Arbitrator

Signature

INTEREST RATE WEEK OF DECEMBER 28, 2021 0.21%

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)

JOHN HARRIS, IV, MINOR, BY HIS FATHER JOHN HARRIS, III
Employee/Petitioner

v.

CITY OF MASCOUTAH
Employer/Respondent

Case # **21-WC-019747**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Collinsville** on **October 26, 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, **June 11, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**735.00**; the average weekly wage was $**367.50**.

On the date of accident, Petitioner was **17** years of age, ***single*** with **0** dependent children.

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

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

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

ORDER

Respondent shall pay the medical expenses outlined in Petitioner's Group Exhibit 1 as provided in Section 8(a) and Section 8.2 of the Act, directly to the medical providers and pursuant to the medical fee schedule. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits.

Respondent shall further authorize and pay for prospective medical care to cure and relieve Petitioner of the effects of his work-related injury, including, but not limited to, rehabilitation and therapy.

Respondent shall pay Petitioner temporary total disability benefits from **June 12, 2021** through the date of the hearing, **October 26, 2021**, representing **19-4/7ths** weeks, at the rate of $**293.33 (Min rate)**/week.

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.

Arbitrator Linda J. Cantrell **January 3, 2022**

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

JOHN HARRIS, IV, Minor, by his Father JOHN HARRIS, III,	)	
Employee/Petitioner,	)	
v.	)	Case. No. 21-WC-019747
CITY OF MASCOUTAH,	)	
Employer/Respondent.	)	

FINDINGS OF FACTS

This claim came before Arbitrator Linda J. Cantrell for trial in Collinsville on October 26, 2021 pursuant to Section 19(b) of the Act. The issues in dispute are accident, causal connection, medical bills, temporary total disability benefits, and prospective medical treatment. All other issues have been stipulated.

TESTIMONY

Petitioner was 17 years old at the time of the accident and 18 years of age at the time of arbitration. On June 11, 2021, Petitioner was employed by Respondent as a lifeguard at the public swimming pool. Petitioner was hired ten days prior to his accident. He testified that his job duties included observing patrons at the pool in order to keep them safe.

Petitioner applied for the lifeguard position in the Spring of 2021. He was not certified as a lifeguard prior to that time. Respondent arranged for the certification of its newly hired lifeguards prior to the start of the 2021 pool season on Memorial Day. Petitioner testified that he passed his tests roughly one week prior to starting his lifeguard duties and received his certification. He stated the certification class was in-person and remote and he completed both sections. The remote certification process consisted of 15 to 20 hours of online interactive training and the in-person certification consisted of 15 to 20 hours of water pool training, followed by lectures. He agreed that during the certification process he learned the importance of following and enforcing the rules of the pool and he was required to know the rules of the pool that were applicable to the area he was working. He agreed he was instructed to be responsible while on breaks because patrons could observe his conduct.

Petitioner submitted a video of the accident that was admitted into evidence as Petitioner's Exhibit 6. Petitioner identified the designated area of the pool where patrons were allowed to dive into the 7 to 11 feet of water. The video depicts a lifeguard sitting on a designated stand in the diving section of the pool. Petitioner identified a patron on the video performing a back dive into the pool. He patron was not an employee of Respondent. Petitioner next identified a lifeguard and employee of Respondent, Avery Dovvi, who performed a back dive into the pool. Petitioner testified that Avery worked for Respondent for a couple of years and was also on a work break at that time. Petitioner then identified himself in the video attempt to perform a back dive into the pool. Petitioner testified that Avery was still in the pool when he came to his rescue. The lifeguard on duty jumped into the pool to assist Petitioner and pulled him out of the water.

The Arbitrator viewed a portion of the video at trial and has had an opportunity to view the 18-minute video numerous times thereafter. The video depicts eight patrons in the water in the designated diving area of the pool prior to the subject back dives being performed. A male lifeguard is on duty and on the stand in that section of the pool. Six seconds into the video a patron walks into view and performs a back dive. Although the video does not have audio, it is clear the on-duty lifeguard did not blow his whistle on the patron. Twelve seconds into the video, off-duty lifeguard Avery Dovvi, performed a back dive into the pool. Once again, the on-duty lifeguard did not blow a whistle on Mr. Dovvi. Twenty seconds into the video, Petitioner attempted a back dive and struck his head on the edge of the pool. Avery immediately swam to Petitioner's aid and the on-duty lifeguard reacted to the situation at 25 seconds into the video. The on-duty lifeguard jumped into the water and pulled the upper half of Petitioner's body out of the pool at 50 seconds. Fourteen minutes into the video, Petitioner was loaded onto a gurney and removed from the premises.

Petitioner testified that he was on a 30-minute work break at the time of the accident. He stated that he typically stays on Respondent's premises during his work breaks and either gets in the pool to cool off or goes to the guard shack to eat or rest. He testified that most employees do the same on their work breaks.

Petitioner testified that the lifeguard on duty did not tell the patron that did a back dive into the pool to stop his conduct. He stated that neither he nor the other lifeguard on break, Avery Dovvi, told the patron not to perform a back dive. Petitioner testified that neither he nor the lifeguard on duty corrected Avery's behavior when he performed a back dive into the pool. Petitioner testified that when he was preparing to perform a back dive no one told him to stop his behavior. Petitioner testified that he was not aware back dives were prohibited. He does not recall ever performing a back dive into Respondent's pool prior to his accident. He stated he performed a back dive that day to see if he could physically do it and to have fun. He testified that he would not have attempted a back dive if he knew it was prohibited because he had a duty to enforce the rules of the pool. Petitioner testified he did not think the back dive was uncautious or risky. Petitioner stated he did not specifically perform a back dive as part of his job duties, and he was not performing his job duties while on break. He agreed that pool rules apply to both lifeguards and patrons.

Petitioner testified that he physically tests himself while in the pool, including how high or far he can dive or how long and far he can swim underwater. He testified that improving these

skills helps him to be a better lifeguard and save lives. Petitioner testified that some aspects of performing the back dive would improve his abilities as a lifeguard as it would make him more comfortable and skilled in the pool and have more control over his body.

Petitioner testified that EMS placed him on a backboard and transported him to St. Louis Children's Hospital. He underwent a fusion at C5-6 and 7. He recalled being in a lot of pain and he could not move most of his body prior to surgery. He was transferred to Shirley Ryan in Chicago for rehabilitation. Petitioner testified he has limited sensation in some areas of his body and is gaining some motor control below the level of injury in his fingers, chest, and abdomen. He is able to move a couple of fingers. He can feel his toes but is not able to move them. He is actively undergoing occupational and physical therapy.

Petitioner acknowledged that prior to starting his lifeguard duties for Respondent he was provided with materials that addressed his job responsibilities and safety rules. Petitioner was shown Respondent's Exhibit 1 which is the Mascoutah Pool Lifeguard's Rules and Regulations. He could not recall receiving a copy of the document or signing the employee acknowledgment form; however, he testified he was familiar with the document by reviewing it with his attorney. He agreed that any employee of the pool, such as lifeguards and managers, are responsible for enforcing the rules and regulations of the pool. Lifeguards are charged with correcting conduct that is in violation of the rules and regulations. He agreed that the rules prohibit running and climbing, sitting, or standing on the pillars. Petitioner testified that if he witnessed prohibited conduct, he would get the persons attention by blowing his whistle or using his voice to stop the activity. He stated that front and back flips into the pool were prohibited and he has personally stopped patrons from performing such activity and witnessed other lifeguards do the same. He agreed at trial that the rules and regulations prohibit back dives into the pool. Petitioner does not recall ever telling someone not to perform a back dive and he has never witnessed another lifeguard tell someone not to perform a back dive. On cross-examination, Petitioner testified he was not aware that back dives were prohibited at the time of his accident. He could not recall where he learned that front and back flips were prohibited or if the rules and regulations document looked familiar. He recalls seeing "a" document but could not state if it was the Rules and Regulations identified as Respondent's Exhibit 1 or 2 or if the document was posted in the Guard Shack.

Petitioner identified his signature on an employee handbook. He does not have an independent recollection of reviewing the 45-page document. He could not recall attending supervisor-employee meetings to discuss safety as provided on page 26 of the handbook. He recalls seeing posters on Respondent's premises that prohibited running and diving in undesignated areas but could not recall the other warnings. Petitioner testified that most days he met with the pool managers before his work shift. He does not recall if the managers reviewed the rules and regulations at those meetings. He stated that the meetings consisted of making sure the pool was clean and ready for patrons.

Petitioner recalled seeing a notice posted on the entrance of the pool by the Illinois Department of Public Health (Respondent's Exhibit 4) but could not recall what was on the notice. Petitioner was shown a two-page document titled "Meetings" and stated it did not look familiar.

Julia Biggs testified on behalf of Respondent. At the time of the incident, Ms. Biggs was the Executive Assistant for the pool and worked at City Hall. It was her responsibility to facilitate the opening and operations of the pool. Ms. Biggs was responsible for hiring lifeguards and assuring they were certified prior to the beginning of the pool season.

Ms. Biggs testified that, as the season started, all lifeguards attended a meeting with the pool managers at the beginning of each shift where the rules and regulations were reviewed to assure compliance. The rules and regulations were reduced to writing and identified as Respondent's Exhibit 1. Ms. Biggs testified that the document was an accurate copy of the rules and regulations in effect for the 2021 pool season. She stated the rules and regulations were provided to the employees which they were allowed to take home. She testified that the rules and regulations were posted in the Guard Shack on opening day and were there at the time of Petitioner's accident.

Ms. Biggs testified that the rules prohibit front and back flips and back diving, which applied to patrons and employees. She confirmed that a copy of Respondent's Exhibit 1 was provided to Petitioner and would have been covered daily with Petitioner by the pool managers. Ms. Biggs identified Respondent's Exhibit 3 titled "Meeting" and stated the meeting was held with lifeguards to review their job duties and responsibilities. She stated that the Meeting does not specifically address back flips or dives, but that employees are allowed to get into the pool on their breaks and no horseplay is allowed. She testified that the Meeting document was also posted in the Guard Shack.

Ms. Biggs testified that it is lifeguard etiquette to blow a whistle if inappropriate behavior is observed. She stated that lifeguards periodically get disciplined for not handling their role seriously or not whistling violations. Ms. Biggs testified that the city pool passed inspection by the state after Petitioner's accident. The pool was renovated in 2018 and there were no issues with the guttering or edging of the pool involved in Petitioner's accident that needed repair or did not pass state code.

Ms. Biggs testified that she is usually at the pool at some point every day to ensure enforcement of and compliance with pool rules and regulations. She addresses issues with employees that are not performing their duties properly if the pool manager is not able to do so. She testified that back dives are prohibited, and lifeguards are expected to blow their whistle and correct the conduct. She has personally witnessed lifeguards blow whistles for back dives. Ms. Biggs testified she was not on Respondent's premises when Petitioner's accident occurred.

On cross-examination, Ms. Biggs testified she relies on the pool managers to enforce the rules and regulations as she does not work full-time at the pool. She is involved if the pool manager has an issue with an employee. She agreed that pool managers rely on lifeguards to enforce the rules and regulations of the pool. She stated she did not know if lifeguards enforce the rules against other lifeguards. Ms. Biggs did not know if any of the lifeguards blew a whistle at a patron or other lifeguard for performing a back dive on the day of Petitioner's accident. She stated that the video surveillance does not have sound and she cannot confirm if a whistle was or was not blown when the patron or lifeguard Avery did a back dive into the pool.

Madelyn Groff also testified on behalf of Respondent. Ms. Groff was the head pool manager in June 2021. She had close contact with Julia Briggs at City Hall and engaged in regular communication with the lifeguards regarding their duties and responsibilities. When asked if she was at the pool every day, she stated "here and there". Ms. Groff testified she was not at the pool at the time of Petitioner's accident and was at home for her lunch break. She testified she has never supervised Petitioner.

Ms. Groff testified that the first week to two weeks the pool is open, her subordinate managers review the safety rules with the lifeguards before each shift. She confirmed that the rules and regulations are posted in the Guard Shack. She stated they use an application called GroupMe where the managers and lifeguards periodically communicate with each other, including reviewing pool rules and whistle violations. She could not recall if back diving was specifically addressed in the group communication. Ms. Groff testified she was a lifeguard in the past and was a stickler on the whistle. She stated she never worked with Petitioner as a lifeguard. Ms. Groff testified that all lifeguards were expected to enforce the rules at all times and were instructed to blow whistles on back dives. She has personally blown her whistle on back dives and witnessed other lifeguards do the same in her position as head manager. She stated it is possible that lifeguards have not blown whistles on back dives.

She testified she did not know why the on-duty lifeguard did not blow his whistle when the patron did a back dive into the pool just prior to Petitioner's accident. She testified she was a lifeguard with Avery in the past and believed him to be a good lifeguard. She does not know why the on-duty lifeguard did not blow the whistle when Avery did a back dive into the pool, but she wishes he had done so. She testified that the only testimony of Petitioner she disagreed with is that the first week or two of the season the managers reviewed the rules and regulations with the lifeguards, which Petitioner could not recall.

Vanessa Lorenzana testified on behalf of Respondent. Ms. Lorenzana was the Red Cross life saving instructor that provided the certification classes which Petitioner completed. Ms. Lorenzana had experience as both a lifeguard and in providing certification training to a number of individuals at different times. She testified that all individuals that take her certification training are advised as to the importance of enforcing the rules and to use caution while on breaks in that patrons would be watching them. She also testified that her classes are instructed to be aware of the local pool rules which must be followed, but she does not review the specific rules of each pool with her students.

Ms. Lorenzana was a lifeguard for four years through May 2021. She testified that there is nothing about a back dive which would be of assistance to a lifeguard because the lifeguard must maintain eye contact with the victim at all times. She stated she has never performed lifeguard duties for the City of Mascoutah and has never worked with Petitioner. She agreed that not all lifeguards enforce pool rules at all times. She is not aware of any rules not enforced at Respondent's facility because she has never been there.

MEDICAL HISTORY

Petitioner was conveyed to St. Louis Children's Hospital by ambulance where he was admitted to the PICU for a traumatic spinal cord injury. Petitioner suffered a C6 fracture, cervical spinal cord injury, and complex scalp laceration. He underwent a C5-C7 anterior cervical spinal fusion with C6 corpectomy and repair of the laceration. On 7/19/21, Petitioner was transferred to Shirley Ryan Ability Lab for inpatient therapy to regain motor control, movement, and sensation. Petitioner remained at the rehabilitation facility at the time of arbitration.

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arouse out of and in the course of his employment with employment. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193, 203 (2003). The phrase "in the course of employment" refers to the time, place and circumstances of the injury. If the injury occurs within the time period of employment, at a place where the employee can reasonably be expected to be in the performance of his duties and while he is performing those duties or doing something incidental thereto, the injury is deemed to have occurred in the course of employment. *Segler v. Industrial Com.* (1980), 81 Ill.2d 125, 128.

An injury "arises out of" employment when "the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id.* A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in order to fulfill his job duties. *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, ¶36.

Accordingly, an injury arises out of an employment-related risk (*i.e.*, a risk "distinctly associate with" and "incidental to" his employment) if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might "reasonably be expected to perform incidental to his assigned duties." *McAllister*, 2020 IL 124848, ¶36; see also *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989).

The Arbitrator finds the facts of this case present a combination of issues that are found in the "lunch hour" and "personal comfort" cases. In the lunch hour cases, the most critical factor in determining whether the accident arose out of and in the course of employment is the location of the occurrence. Thus, where the employee sustains an injury during the lunch break and is still on the employer's premises, the act of procuring lunch has been held to be reasonably incidental to the employment. *Mt. Olive & Staunton Coal Co. v. Industrial Com.* (1934), 355 Ill. 222; *Humphrey v. Industrial Com.* (1918), 285 Ill. 372. This rule remains true even where the injury was not actually caused by a hazard of the employment. The rule is also unchanged by the

fact that the employee receives no pay for the lunch break and is not under the employer's control, being free to leave the premises.

Since eating is deemed to be an act of personal comfort, the personal comfort doctrine has been applied to cases involving lunchtime injuries. Under the personal comfort doctrine, the course of employment is not considered broken by certain acts relating to the personal comfort of the employee. Other acts during a break time in the employment besides the act of eating have also been held to be acts of personal comfort. *Sparks Milling Co. v. Industrial Com.* (1920), 293 Ill. 350 (getting fresh air); *Union Starch v. Industrial Com.* (1974), 56 Ill.2d 272 (seeking relief from heat); *Scheffler Greenhouses, Inc. v. Industrial Com.* (1977), 66 Ill.2d 361 (seeking relief from heat and humidity); *Chicago Extruded Metals v. Industrial Com.* (1979), 77 Ill.2d 81 (showering in locker room provided by employer).

However, the courts have found that incidental, or nonessential acts of the employment, such as seeking personal comfort, may not be within the course of employment if done in an unusual, unreasonable, or unexpected manner. *White Star Coach Lines v. Industrial Com*. (1929), 336 Ill. 117, 123—124, 168 N.E. 113; *Vincennes Bridge Co. v. Industrial Com*. (1933), 351 Ill. 444, 450, 184 N.E. 603. In such cases, however, even if the conduct is unreasonable or unusual, yet if the employer has knowledge of or acquiesces in such conduct as a custom or practice, there is liability under the Act. *Sunnyside Coal Co. v. Industrial Com*. (1920), 291 Ill. 523, 526—527, 126 N.E. 196; *Payne v. Industrial Com*. (1920), 295 Ill. 388, 391, 394—395, 129 N.E. 122., *Union Starch, Div. of Miles Lab'ys, Inc. v. Indus. Comm'n*, 56 Ill. 2d 272, 277 (1974).

The Courts have found that when there is a violation of a rule of the employer that takes the employee entirely out of the sphere of his employment and he is injured while violating such rule, then the accident did not arise out of the employment, and the accident is not compensable. *Republic Iron v. Industrial Commission,* 302 Ill. 401, 406 (1922). In *David Moore v. Brookwood School District*, the Commission noted that two of the claimant's co-workers, and fellow custodians, testified that the custodian had been instructed not to move any heavy furniture such as cabinets or bookshelves. *David Moorev. Brookwood School District*, 11 IL. W.C. 39031 (Ill. Indus. Com'n Jan. 28, 2016). Yet, the Commission noted, a dolly was made available to the custodians for moving items. When questioned about the dolly, the claimant's supervisor, testified that it was used to move items that could not be carried. Considering, as previously noted, that the other two custodians both testified that they had been told not move anything heavy, providing custodians a dolly to move items was considered suspect. Additionally, the Commission found it compelling that both fellow custodians were working in the same classroom as the claimant and they did nothing to dissuade him from moving the cabinets. *Id*.

With respect to the "course of employment" prong, the evidence is clear that Petitioner was on Respondent's premises, in the middle of a scheduled work shift, and was required to take a break. It is undisputed that Petitioner was allowed to enter the pool during his break. The evidence demonstrates that the injury occurred in the time period in which Petitioner was at work and on his break, incidental to his employment with Respondent. For these reasons, the injury is deemed to have occurred in the course of employment.

With respect to the issue of "arising out of employment," the Arbitrator finds this case falls under the lunch hour and personal comfort doctrine analysis. Although there was no testimony in the instant case that Petitioner clocked out before his 30-minute break or that his break was paid or unpaid, the fact that Petitioner voluntarily remained on the premises or was on a paid or unpaid break will not serve to defeat an award under the Act.

Petitioner testified that he typically stayed on Respondent's premises during his work breaks and either got in the pool to cool off or went to the Guard Shack to eat or rest. He testified that most employees did the same on their work breaks. Respondent's witnesses agreed employees were allowed to get in the pool during their breaks. The Arbitrator finds that getting in the pool during a work break to cool off or have fun is an act of personal comfort.

The Arbitrator next considers whether doing a back dive into the pool was unusual, unreasonable, or unexpected. Petitioner attended the requisite lifeguard training courses and obtained his certification in 2021. He was 17 years of age at the time of certification and at the time he was hired by Respondent. Petitioner testified he was hired as a lifeguard ten days prior to his accident and had no lifeguard experience prior to becoming employed by Respondent. He agreed that during the certification process he learned the importance of following and enforcing the rules of the pool and he was required to know the rules of the pool that were applicable to the areas he was working. He agreed he was instructed to be responsible while on breaks because patrons could observe his conduct.

Vanessa Lorenzana testified that she advised Petitioner during the certification process as to the importance of enforcing the rules and to use caution in front of patrons. She also testified that her students are instructed to be aware of the local pool rules which must be followed. She did not review the City of Mascoutah's pool rules with Petitioner and has never visited Respondent's pool to know if all pool rules were enforced at all times.

Petitioner testified that he was aware front and back flips were prohibited in Respondent's pool, but not back dives on the day of his accident. He also knew that the rules prohibited running and climbing, sitting, or standing on the pillars. He stated that he has personally stopped patrons from performing front and back flips and witnessed other lifeguards do the same. He testified that he would not have attempted a back dive if he knew it was prohibited because he had a duty to enforce the rules of the pool. The Arbitrator notes that although Petitioner testified he does not recall ever telling someone not to perform a back dive into the pool and he has never witnessed another lifeguard tell someone not to perform a back dive, Petitioner was not asked whether he has ever *witnessed* a person perform a back dive prior to 6/11/21.

Petitioner acknowledged that prior to starting his lifeguard duties for Respondent he was provided with materials that addressed his job responsibilities and safety rules. Petitioner does not recall receiving a copy of the Mascoutah Pool Lifeguard's Rules and Regulations that specifically state back dives are prohibited and no copy was offered into evidence with Petitioner's signature acknowledging receipt or review of same. Petitioner testified he was familiar with the document by reviewing it with his attorney after his accident and could not recall seeing the particular document prior to his accident. He could not recall where he learned that specific acts were prohibited, such as front and back flips.

Ms. Groff testified that the first week to two weeks the pool is open, her subordinate managers review the safety rules with the lifeguards before each shift. She did not personally review the rules with the lifeguards or know if back diving was ever specifically addressed in their GroupMe communications. There is no evidence in the record that Petitioner was a member of the GroupMe communication app in the ten days of his employment with Respondent. Although Ms. Groff was the head manager on the date of Petitioner's accident, she testified that she was "here and there" when asked if she was present at the pool every day. She was not on Respondent's premises at the time of Petitioner's accident and stated she had never supervised Petitioner.

Petitioner admitted to attending the daily meetings prior to each shift but does not recall if the managers reviewed the rules and regulations of the pool at the meetings. He testified that the meetings consisted of making sure the pool was clean and ready for patrons. Although Ms. Groff testified that the rules and regulations were posted in the Guard Shack, there is no evidence that Petitioner reviewed the two-page document and/or was specifically told that back diving was prohibited at the pool. The Arbitrator notes that the Rules and Regulations posted in the Guard Shack (Respondent's Exhibit 2) is a two-page document that hung with the first page covering the second page. The first page that was visible covered pool hours, opening duties required to prepare the pool for patrons, closing duties, and lifeguard etiquette with regard to blowing whistles and rotation of guard stands. On page 2 of the document, which was not visible and covered by page 1, covered issues involving timesheets, weather, accidents, adult swim times, and "pool rules for guards to be aware of". Bullet point five reads, "No front flips, back flips or back dives".

Ms. Biggs confirmed that the rules and regulations were provided to Petitioner and would have been covered daily with Petitioner by the pool managers. However, Ms. Biggs testified she relies on the pool managers to enforce the rules and regulations as she does not work full-time at the pool but is a full-time employee at City Hall. There is no evidence that Ms. Biggs attended any of the daily meetings to know what was or was not discussed with the lifeguards. She testified that she did not receive a signed copy of the Rules and Regulations from Petitioner acknowledging he received the document.

Ms. Biggs identified Respondent's Exhibit 3 titled "Meeting" that she states was reviewed with the lifeguards to review their job duties and responsibilities. She agreed the Meeting does not specifically address back flips or dives. She testified that the two-page document was also posted in the Guard Shack and Petitioner does not recall seeing this document prior to his accident.

Petitioner identified his signature on an employee handbook. He does not have an independent recollection of reviewing the 45-page document. He could not recall attending supervisor-employee meetings to discuss safety as provided on page 26 of the handbook. He recalls seeing posters on Respondent's premises that prohibited running and diving in undesignated areas but could not recall the other warnings. Petitioner recalled seeing a notice posted on the entrance of the pool by the Illinois Department of Public Health (Respondent's Exhibit 4) but could not recall what was on the notice.

Based on the testimony of Petitioner and Respondent's witnesses, there is no evidence to infer that Petitioner was told or made specifically aware that back dives were prohibited acts. He testified he understood he had a duty to uphold the rules of the pool and did blow his whistle for front and back flip violations. There is no evidence that Petitioner ever witnessed a back dive in his ten days of employment to know whether he believed it to be inappropriate behavior. Ms. Biggs testified that it is possible lifeguards have not blown whistles on back dives.

Neither Ms. Biggs nor Ms. Groff were present at the pool at the time of Petitioner's accident. Neither can testify as to whether the lifeguard on duty blew a whistle violation for the patron or off-duty lifeguard that did back dives into the pool just prior to Petitioner. The lifeguard on duty did not testify at trial. Ms. Biggs testified she did not know if lifeguards enforce the rules against other lifeguards such that a whistle violation would have been blown against off-duty lifeguard Avery Dovvi. Ms. Biggs stated the video surveillance does not have sound and she cannot confirm if a whistle was or was not blown when the patron or lifeguard Avery did back dives into the pool. Lifeguard Avery also did not testify at trial. The only evidence as to whether a whistle violation was blown for back dives the day of Petitioner's accident is Petitioner's testimony that a whistle was not blown. Petitioner testified that if a whistle was blown, he would not have attempted the back dive. He testified that lifeguard Avery was older than him and had two years of experience as a lifeguard. Although Ms. Biggs testified that the rules applied to patrons and employees, lifeguard Avery proceeded to perform a back dive without a whistle violation from the on-duty lifeguard. Petitioner unfortunately followed the lead and sustained serious and permanent injuries.

Ms. Groff testified she did not know why the lifeguard did not blow the whistle when the patron did a back dive into the pool just prior to Petitioner's accident. She testified she was a lifeguard with Avery in the past and believed him to be a good lifeguard. She does not know why the on-duty lifeguard did not blow his whistle when Avery did a back dive into the pool, but she wishes he had done so.

Based on the above evidence, the Arbitrator finds that Petitioner's conduct of performing a back dive into the pool was not done in an unusual, unreasonable, or unexpected manner. Even if one could argue such act was unreasonable or unexpected, Respondent acquiesced in such conduct by allowing the acts to occur without correction. The video depicts a lifeguard on duty that did not blow a whistle when the patron, lifeguard Avery, or Petitioner dove into the pool. There were only eight patrons in the diving section of the pool when the subject back dives began. The area where the back dives occurred was to the left of and clearly visible from the lifeguard stand. Fourteen seconds elapsed from the time the patron dove into the pool to the time Petitioner attempted a back dive.

The head manager, Ms. Biggs, testified that it is lifeguard etiquette to blow a whistle if inappropriate behavior is observed. Respondent's witnesses clearly state that back dives are prohibited, and lifeguards are expected to blow their whistles if they witness a back dive. Although Ms. Biggs testified that lifeguards periodically get disciplined for not handling their role seriously or not whistling violations, there is no evidence that the on-duty lifeguard was disciplined for his performance the day of the accident and he did not testify at trial.

Based on the above evidence, the Arbitrator finds that Petitioner sustained an accidental injury that arose out of and in the course of his employment with Respondent, and that Petitioner's current condition of ill-being is causally connected to his injury.

Issue (J): Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for 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 finding as to accident and causal connection, the Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary and Petitioner is entitled to prospective medical care.

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

Petitioner testified and the records reflect that he is undergoing inpatient occupational and physical rehabilitation for his injuries with a discharge date to be determined. The Arbitrator finds that Petitioner is entitled to receive additional care recommended by his treating physicians.

Respondent shall therefore pay the medical expenses outlined in Petitioner's Group Exhibit 1 as provided in Section 8(a) and Section 8.2 of the Act, directly to the medical providers and pursuant to the medical fee schedule. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits.

Respondent shall further authorize and pay for prospective medical care to cure and relieve Petitioner of the effects of his work-related injury, including, but not limited to, rehabilitation and therapy.

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

The Arbitrator finds that Petitioner is entitled to temporary total disability benefits from June 12, 2021 through the date of the hearing, October 26, 2021, representing 19-4/7ths weeks, at the rate of $293.33/week.

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.

Arbitrator Linda J. Cantrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC010913
Case Name	Frank Tellez Jr. v. Grossinger Toyota North
Consolidated Cases	
Proceeding Type	Petition for Penalties
Decision Type	Commission Decision
Commission Decision Number	22IWCC0386
Number of Pages of Decision	4
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Mitchell Horwitz
Respondent Attorney	JASON ALLAIN

DATE FILED: 10/7/2022

/s/Maria Portela, Commissioner

Signature

22IWCC0386

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

FRANK TELLEZ, JR.,

Petitioner,

vs. NO: 16 WC 10913

GROSSINGER TOYOTA NORTH,

Respondent.

DECISION AND OPINION ON PETITION FOR PENALTIES AND ATTORNEY FEES PURSUANT TO §19(k) AND §16

This matter comes before the Commission on Petitioner's "Petition for Penalties and Attorney Fees Pursuant to §19(k) and §16," (hereafter "Petition for Penalties and Fees") filed on March 28, 2022. A hearing was held before Comm. Maria Portela on July 13, 2022, in Chicago, Illinois and a record was made.

On August 3, 2022, Petitioner filed a "Motion to Re-Open Proofs" requesting that the transcript and exhibits from the original arbitration hearing, held on July 23, 2019, be admitted into evidence for the current Petition. Although that transcript is already part of the Commission file, for the sake of completeness, we hereby grant Petitioner's motion and include the July 23, 2019 arbitration hearing transcript including exhibits as Petitioner's Exhibit 6, which will be made part of the July 13, 2022 hearing transcript on Petitioner's Petition for Penalties and Fees.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1) On July 23, 2019, an arbitration hearing was held in this matter.

2) The Arbitrator issued a decision on October 3, 2019, which awarded various benefits including a wage differential award under §8(d)1 of the Act commencing January 3, 2019. The Arbitrator also awarded penalties under §19(l) and §19(k) along with

attorney's fees under §16 of the Act. *7/13/22-Transcript, Px1*.

3) On November 1, 2019, Respondent filed a timely Petition for Review of the Arbitrator's decision.

4) On March 10, 2020, Respondent issued check #608948 to Petitioner's attorney in the amount of $33,577.44 for "PPD REDEMPTION SETTLEMENT - Back-wage Differential" for the period from July 24, 2019 through March 8, 2020. *7/13/22-Transcript, Px2*.

5) On June 2, 2020, Respondent issued check #612600 to Petitioner's attorney in the amount of $26,259.81 for "TTD REDEMPTION SETTLEMENT - Back-wage differential 1/3/19 - 7/23/19." *Id.*

6) Also on June 2, 2020, Respondent issued check #612601 to Petitioner's attorney in the amount of $12,584.04 for "TTD REDEMPTION SETTLEMENT" for the period from March 5, 2020 through May 27, 2020. *Id.*

7) On January 28, 2022, the Commission issued a Final, Corrected Commission Decision on Review, which, in relevant part, affirmed the Arbitrator's wage differential award but vacated the penalties under §19(l) and §19(k) along with attorney's fees under §16 of the Act. *7/13/22-Transcript, Px1*. The Commission found "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." *Id., Px1 at 3*.

8) Petitioner did not appeal the Commission's decision, which became final. *7/13/22-Transcript at 24.*

9) On March 8, 2022, Petitioner filed the current Petition for Penalties and Fees requesting §19(k) penalties and §16 attorney's fees for Respondent's delay in paying wage differential benefits after the date of the arbitration hearing. *7/13/22-Transcript, Px3*. Petitioner also filed other duplicate Petitions (Px4 and Px5), which were withdrawn at the hearing. *7/13/22-Transcript at 31-32.*

10) At the hearing on July 13, 2022, Petitioner's attorney agreed that Respondent "has been up to date" on the wage differential payments since Respondent made the payments discussed above on March 10, 2020 and June 1, 2020. *7/13/22-Transcript at 26-27.*

Based on a thorough review of the evidence and pleadings, the Commission finds that Respondent's delay in paying wage differential benefits was not unreasonable or vexatious. It had filed a timely Petition for Review of the Arbitrator's decision and the issue of permanency benefits was unresolved pending a decision by the Commission. We are mindful that

Respondent chose to pay retroactive wage differential benefits in early 2020 even though the Commission decision was not issued until January 2022. Under the circumstances present in this case, we find Respondent's actions were reasonable and not vexatious and we decline to award penalties and fees.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's "Motion to Re-Open Proofs" is granted as described above.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's "Petition for Penalties and Attorney Fees Pursuant to §19(k) and §16" is hereby denied.

No bond is required for the removal of this cause to the Circuit Court by Respondent because no award was made. 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.

October 7, 2022

/s/ *Maria E. Portela*

SE/

R: 7/13/22

/s/ *Thomas J. Tyrrell*

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/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC009172
Case Name	Wioletta Ardziejewski v. Fresh Express
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0387
Number of Pages of Decision	19
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Shauna Fleming
Respondent Attorney	Brian Raterman

DATE FILED: 10/7/2022

/s/Stephen Mathis, 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

Wioletta Ardziejewski,

Petitioner,

vs. No. 19 WC 09172

Fresh Express,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses 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.

This claim involves two conditions—an inguinal hernia and a right hip condition. At the outset of the arbitration hearing, Respondent did not dispute Petitioner's hernia is causally connected to the work accident. Regarding the right hip condition, the Commission agrees with Respondent that Petitioner was at maximum medical improvement as of December 13, 2017. The Commission relies on the testimony of Dr. Nho, who pointed to on a one-year gap in treatment after December 13, 2017, with no complaints reported to Dr. Siel during the visit on July 11, 2018.

Turning to the issue of medical expenses, the Commission notes the following. Respondent's counsel clarified at the outset of the arbitration hearing: "Respondent is not disputing that inguinal hernia surgery *** was caused by a work accident on the date described. ¶ It's paid all indemnity and medical benefits that have been presented to it, consistent with the Act." In the request for hearing form Respondent stipulated to "[l]iability for inguinal hernia

care to 9/11/2017 and for right hip to 12/13/2017, only, pursuant Section 8(a) and Section 8.2 of the Act." The parties further stipulated Respondent paid "$9,951.19 in medical benefits."

The Arbitrator awarded medical expenses "for outstanding medical services (pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act) for Petitioner's right hip care through June 5, 2020 and for her inguinal hernia care through September 11, 2017. Respondent shall be given a credit for medical benefits paid under Section 8(a) of the Act in the amount of $9,951.19." In accordance with our finding that Petitioner was at maximum medical improvement with respect to the right hip condition as of December 13, 2017, the Commission notes the issue of medical expenses is fully resolved by Respondent's stipulation to "[l]iability for inguinal hernia care to 9/11/2017 and for right hip to 12/13/2017, only, pursuant Section 8(a) and Section 8.2 of the Act," and the parties' stipulation that Respondent paid "$9,951.19 in medical benefits."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 5, 2022, is hereby modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $820.42 per week for a period of 2 1/7 weeks, from August 10, 2017 through August 24, 2017, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of medical expenses for the right hip condition after December 13, 2017, is vacated. The remainder of the award of medical expenses is affirmed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $729.38 per week for a total of 37.5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the permanent partial disability to the extent of 7.5 percent of the person as a whole, itemized as follows: 5 percent disability to the person as a whole for the hernia and further 2.5 percent disability to the person as a whole for the right hip condition.

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 $27,600.00. 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.

October 7, 2022
SJM/sk
o-09/14/2022
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC009172
Case Name	ARDZIEJEWSKI, WIOLETTA v. FRESH EXPRESS
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	Shauna Fleming
Respondent Attorney	Brian Raterman

DATE FILED: 1/5/2022

THE INTEREST RATE FOR THE WEEK OF JAUARY 4, 2022 0.22%

/s/ Rachael Sinnen, 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

WIOLETTA ARDZIEJEWSKI,
Employee/Petitioner

Case # **19 WC 09172**

v.

Consolidated cases:

FRESH EXPRESS,
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 **RACHAEL SINNEN**, Arbitrator of the Commission, in the city of **CHICAGO**, on **October 22, 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 **12/19/2016**, 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 $**63,212.73**; the average weekly wage was $**1,215.63**.

On the date of accident, Petitioner was **51** 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 **$1,560.84** for TTD, $0.00 for TPD, $0.00 for maintenance, and **$9,951.19** for other benefits, for a total credit of **$11,512.03.**

ORDER

Temporary Total Disability
Respondent shall pay Petitioner directly temporary total disability benefits of $**820.42**/week for **2 1/5** weeks (August 10, 2017 through August 24, 2017) as provided in Section 8(b) of the Act. Respondent shall be given a credit of $1,560.84 for TTD benefits paid.

Medical Benefits
The Arbitrator orders Respondent to pay for outstanding medical services (pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act) for Petitioner's right hip care through June 5, 2020 and for her inguinal hernia care through September 11, 2017. Respondent shall be given a credit for medical benefits paid under Section 8(a) of the Act in the amount of $9,951.19.

Permanent Partial Disability
For Petitioner's hernia, Respondent shall pay Petitioner permanent partial disability benefits of $**729.38**/week for **25** weeks, because the injuries sustained caused a **5% loss of the person as a whole**, as provided in Section 8(d)2 of the Act.

For Petitioner's right hip, Respondent shall pay Petitioner permanent partial disability benefits of $**729.38**/week for **12.5** weeks, because the injuries sustained caused a **2.5% loss of the person as a whole**, as provided in Section 8(d)2 of the Act.

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

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

Signature of Arbitrator

JANUARY 5, 2022

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Wioletta Ardziejewski	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 19WC9172
Fresh Express	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on October 22, 2021 in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing. Issues in dispute include causal connection, unpaid medical bills, temporary total disability "TTD" benefits, and the nature and extent of the alleged injury. (Arbitrator's Exhibit "AX" 1).

Petitioner began her employment with Respondent in December 2000. (Transcript "TX" 15). She worked as a production supervisor. (TX 18). As part of her job, she would supervise and manage the operations and production of salad products. (TX 18-19). Her duties included assigning workers and equipment to production lines as needed and assuring the production lines had proper supplies to produce salad product. (TX 18-19). Her job duties required her to be on her feet up to 11 to 12 hours a day, taking an average of 20,000 steps each day. (TX 20-21). Petitioner testified she tracked her steps by an application on her phone, but she did not have the application data from her phone that she used to track her steps in 2017. (TX 21, 73-74).

Petitioner reviewed a job description for production supervisor and testified that the job functions listed in the written job description accurately reflected her role as a production supervisor. (TX 69, 71; Respondent's Exhibit "RX" 3).

On December 19, 2016, the Petitioner was working for Respondent at its plant in Streamwood, Illinois. Her duties included supporting the production line that was making salad product for a fast-food customer. (TX 25). The production line required additional spring mix which was stored in large cardboard bins. (TX 25). As no forklift driver was available to transport the bins to the production line, Petitioner intended to use a manual hand pallet jack to lift and transport a bin of spring mix to the production line. (TX 25-26). After lifting the bin, she began to pull the hand pallet jack and immediately felt a sharp pain in the area of her stomach. (TX 26-27). Petitioner reported the occurrence to her supervisor, Fabricio Dahas. (TX 26).

Petitioner thereafter noticed a "strange thing" on her left side when she was in the restroom and felt unusual sensations in her abdomen. (TX 26-27). A bulge in her abdomen persisted and she sought medical care on February 6, 2017 at AMITA Health Medical Group where she reported pain within her left inguinal area after pulling on a pallet jack on December 19, 2016. (Petitioner's Exhibit "PX" 1, p.21). Petitioner was sent for ultrasound at St. Alexius Medical Center. She was returned to work with no restrictions. She returned to Alexian Brothers Medical Group on February 10, 2017 and was diagnosed with a left inguinal hernia. (PX1, p.26).

Petitioner saw Dr. Ermilo Barrera on February 22, 2017 where he offered her an elective repair of the inguinal hernia. (PX3, p.39).

On June 7, 2017 Petitioner was seen by Dr. Michael J. Mosier, MD, Respondent's IME physician. (PX6; RX5). Dr. Mosier confirmed the diagnosis of a reducible left inguinal hernia and opined that it was caused by the December 16, 2016 work related accident. (PX6; RX5). Dr. Mosier opined that Petitioner should be restricted to no heavy lifting expected Petitioner to have a full work release maximum medical improvement "MMI" six to eight weeks after surgical repair of the hernia. (PX6; RX5).

On August 10, 2017 Petitioner underwent surgery to repair the left inguinal hernia with a polypropylene plug and patch. (PX3). Petitioner was seen on August 23, 2017 and reported mild discomfort but was not taking medications. (PX3, p.47). Dr. Barrera returned Petitioner to work on August 24, 2017 and advised her not to lift over 20 pounds until four weeks postoperatively. Dr. Barrera advised her to return PRN.

Petitioner remained off work for two weeks following the surgery. (PX3; TX34). Petitioner received temporary total disability benefits for the two weeks she was off work from August 10th to August 24th and received a total amount of $1,560.84. (TX 77; RX7). Petitioner testified that at the time of her accident she was a salaried employee and she would defer to her wage records to identify whether she was paid her regular salary from August 10 to August 24, 2017. (TX75, 78). Petitioner's wage records from period end date of December 13, 2015 through a period end date of October 10, 2021 were entered as Respondent's Exhibit 6. In the pay period ending December 25, 2016, records reflect Petitioner had gross earnings of $2,458.75. (RX6, p.1). For the pay periods ending August 6, 2017 through September 3, 2017, Petitioner's gross earnings in each of these three pay periods were $2,501.49. (RX6, p.2). In the pay period ending October 10, 2021, Petitioner's gross earnings were $2,707.83. (RX6, p.5).

After returning to work two weeks after her August 10, 2017 hernia surgery, Petitioner resumed her regular duties as production supervisor which included walking the plant floor while supporting the production line. (TX31-33). Petitioner reports that she continued to have left sided pain and found herself dragging her left leg and favoring her right side as she walked the plant floor. (TX34-36). Petitioner reported to Respondent's safety manager, Ola Shekoni, that she was having pain and difficulty performing the duties of a production supervisor. (TX36). Ola Shekoni did not provide Petitioner any assistance indicating that Petitioner's "case was closed". (TX36-37).

On November 8, 2017 Petitioner presented to Dr. Alan Frydman with Northshore University Health System complaining of pain of the right groin and hip. (PX3). She obtained this appointment by calling and requesting one. (TX81-82). Petitioner was seen by Dr. Allen Frydman on November 8, 2017 where she reported three months of right upper thigh and groin pain alleging it originated from what she believed was shifting weight to the right when walking to relieve stress from a surgical wound. (PX3, p.48). She was not taking analgesics or NSAIDs. The surgical site was noted to be well-healed and an examination found Petitioner's abdomen was soft and nontender with a well healed surgical scar at the left inguinal. (PX3, p. 48, 49). Dr. Frydman further found minimal pain with flexion and abduction of the right hip on exam. He assessed right groin pain and ordered hip x-rays. (PX3, p. 50).

A bilateral hip x-ray was performed on November 8, 2017 at North Shore Hospital. Dr. Gary Turkel reviewed the image to show no acute fracture, dislocation, or significant degenerative changes within either hip. (PX3, p. 31).

Petitioner began physical therapy for her right hip at North Shore University Health System on December 6, 2017. (PX3, p. 51). Petitioner reported her pain 0 out of 10 at best, 7 out of 10 at worst, and 1 out of 10 at the time of the exam. Left groin pain was noted to be 2 out of 10 at worst and 0 out of 10 at best. She was not doing heavy lifting, cooking, or things around the house because of back pain. (PX3, p. 52). Petitioner performed a second session of physical therapy on December 13, 2017. (PX3, p. 60). She reported her inguinal surgery incisions site bothered her randomly, but not as much of her hip. The therapist noted that Petitioner would benefit from continued physical therapy for hip and glute strength. (PX3, p. 61).

On April 5, 2018 Petitioner submitted an incident report to Respondent's safety manager, Fabricio Dahas, advising that she was continuing to have trouble walking and sleeping, that her right hip was painful, and that her condition was related to the December 19, 2016 accident. (PX7, TX 26, 39-40). The report was not signed. (TX93). She testified she submitted this report to her employer by email but did not have a copy of the email sending it. (TX 94). Petitioner requested to be seen by a doctor. (PX7). Respondent did not authorize a medical referral. (TX 41).

Petitioner was seen by her primary doctor, Dr. Janet Siel, for a routine general wellness exam on July 11, 2018. She reported she felt well with no complaints. A review of systems was negative across all areas. Dr. Siel found on exam that Petitioner's abdomen was soft and non-tender. Her gait was normal. Muscle strength was documented 5 over 5. (PX3, p. 68-74).

Petitioner testified on cross examination that a wellness exam would be an opportunity to discuss how she was doing overall. (TX 87). Petitioner also testified that the visit with Dr. Siel on July 11, 2018 was the type where she could have reported right hip pain. (TX 88). Petitioner testified she would provide full and truthful answers when asked how she was feeling at the wellness exam with Dr. Siel on July 11, 2018. (TX 89). Petitioner further confirmed that she could schedule appointments with Dr. Siel by calling into a call center and scheduling based on availability. (TX 91). Petitioner confirmed that she could go to whomever was available if there was an emergency. (TX 92). Petitioner also confirmed on cross examination that she had access to doctors in the year 2018. (TX 92).

On August 6, 2018 Petitioner again submitted a second incident report to Dahas advising that she was having trouble walking and sleeping, that her right hip was painful, and that her condition was related to the December 19, 2016 accident. (PX8, TX 26, 41-42). She again requested to be seen by a doctor. (Id). Petitioner testified she sent the second report via email to Fresh Express, but she did not have a copy of that email with her. (TX 96). Petitioner testified she printed both reports on August 6, 2018. (TX 97). Respondent did not authorize a medical referral.

On October 5, 2018 Petitioner sent an email to Jon Cooke II and Joseph Dominick, Respondent's safety managers, and again advised that she had right sided hip pain while walking and standing; that the condition persisted; that despite being prescribed physical therapy Respondent had failed to authorize the prescribed care; and that she wanted her case to be reopened so she can be referred for medical care. (PX9). On the same day, Dominick replied to the email indicating he would investigate what course of action could be taken. (PX9). Respondent did not authorize a medical referral.

On January 9, 2019 Petitioner presented to her PCP, Dr. Janet Siel and related the history of the accident, hernia surgery, the subsequent right hip pain and difficulty walking. She described her pain as mild to moderate, intermittent, dull. She was not taking medications. Physical examinations found her abdomen was soft and nontender with no point tenderness of her legs and the area of pain was not tender either. There was no swelling and Petitioner had full range of motion of the bilateral hips and knees with no tenderness in her groin. Her gait was normal, and she had no pain with straight leg raise bilaterally. A bilateral hip x-ray and lumbar spine x-ray was performed showed severe narrowing of the L5 - S1 disc space with multi-level facet degenerative joint disease and minimal bilateral hip degenerative joint disease. Dr. Siel referred Petitioner to Dr. Adam Bennett, an orthopedic specialist. (PX3, p. 77).

Petitioner was evaluated by Dr. Adam Bennett on January 28, 2019 where she reported approximately year and a half long history of intermittent sharp right groin pain that bothered her with walking and standing. Dr. Bennett noted that hip x-rays were unremarkable. She described pain in the crease in her hip with clicking, catching, and locking. She was not taking any medication for pain. An examination showed positive impingement findings with no tenderness of the greater trochanter and manual muscle testing was unremarkable. Dr. Bennett assessed right groin pain from likely a labral tear. He ordered an MRI. (PX3, p. 81).

A right hip MRI was performed on January 30, 2019 at North Shore Hospital Department of Radiology. Dr. Martin Lewis Lazarus and Dr. Ammar Abbas Al-Saraf interpreted the images to show a small non-detached tear of the anterior-superior acetabular labrum. The doctors also interpreted the images to show gluteus medius and minimus tendinosis with low - grade insertional tearing of the gluteus medias. (PX3, p. 33).

Petitioner began physical therapy on March 28, 2019 at the referral of Dr. Adam Bennett. (PX3, p.83-90). Petitioner reported right groin and proximal thigh pain anteriorly and anterolaterally leg with occasional radiation down the middle of her thigh with intermittent pain on the left where her hernia surgery was. Pain was 0 out of 10 at rest but 1.5 out of 10 with movement. It was 5 out of 10 at worst and 2 out of 10 at the time of exam. Aggravating factors included stairclimbing, initial walking, prolonged sitting, single leg weight-bearing on the right, and repetitive up-and-

down with gardening. Relieving factors were changing position and waiting for the pain to subside. (PX 3, p. 83). Examination found passive range of motion of the right hip to be within full limits except pain at the end range on internal rotation and during movement with external rotation that was slight. (PX3, p. 85).

The pain persisted and ultimately Petitioner was physically unable to continue to perform the duties as a production supervisor because she could not tolerate the walking. (TX 22-23). In May 2019 Petitioner resigned from her position as a production supervisor because the right hip pain persisted, and she could perform all the walking required. (TX 18,22-23).

Soon thereafter Petitioner was rehired as a scheduler / procurement specialist. (TX 23). The position of a scheduler / procurement specialist is sedentary, wherein Petitioner sits at a desk most of her 9.5-hour day. (TX 66). The change in position did not affect Petitioner's rate of pay. Petitioner testified her scheduler role is also called a procurement specialist for Fresh Express. (TX 60). Petitioner reviewed a procurement specialist job description and confirmed that the only thing she carries are a few pieces of paper. (TX 61, 67; RX 4).

Petitioner return to Dr. Bennett on March 13, 2020 with ongoing right hip pain. A repeat MRI was ordered and done on June 2, 2020 showing no significant changes. Petitioner returned to Dr. Bennett on June 5, 2020 and was recommended a home exercise program. (See RX1, deposition exhibit "DX" 3).

Dr. Shane Nho, Respondent's Section 12 Examiner

Dr. Shane Nho testified by evidence deposition on June 21, 2021. (RX1; PX5). He is a board-certified orthopedic surgeon with added qualification in sports medicine and specializes in hip arthroscopy and hip preservation surgery. (RX1, P6, LN 22 – 24 to P7 LN 1- 3). He testified that he performed an independent medical evaluation of Petitioner on September 8, 2020. (RX1, P. 7, LN 13 – 17). Dr. Nho testified that he prepared a report dated September 8, 2020 following his evaluation of Petitioner. (RX1, P9, LN 2 - 11 and DX 2). Dr. Nho testified that Petitioner reported right hip pain developing after her inguinal hernia surgery because she was doing a lot of walking to compensate by leaning on her right. (RX1, P. 10, LN 21 - 24 to P. 11, LN 10). Petitioner reported 1 to 2 out of 10 dull, achy, and sharp anterior hip pain on the date of the exam. (RX1, P. 12, LN 1 – 8). Dr. Nho performed a physical examination of Petitioner's right hip. (RX1, P. 13; LN 11 - 24 to P. 14 LN 1-8). He described that the Petitioner had near normal range of motion of the right hip with no pain on hyperflexion and but pain with flexion at approximately 45 to 60°. (RX1, P. 13, LN 12 – 22). She had full strength. (RX1, P.17, LN 2-4). He testified he personally reviewed Petitioner's right hip MRI of January 30, 2019 and interpreted it to show a tear in the anterosuperior labrum, gluteus medius and minimus tendinosis with low-grade interstitial tearing on the right gluteus medius. (RX1, P. 20, LN 24 to P. 21 LN 1-6). X-rays taken on the date of examination showed preserve joint space and normal acetabular coverage. (RX, P. 21 LN 11 – 14).

Dr. Nho diagnosed Petitioner with a right hip acetabular labral tear. (RX1 P.22 LN1-8). He thought Petitioner's right hip pain developed with prolonged walking after surgery. (RX1 P 22, LN15 – 24). Dr. Nho testified that the labral tear likely did not occur on December 19, 2016

because symptoms did not appear until after inguinal hernia surgery. (RX1, P. 36, LN 1 – 13). He therefore felt it more likely than not that the labral tear was pre-existing but could have been rendered symptomatic by compensating for left groin pain. (RX1. P. 23, LN 1-3). He specified it was the combination of walking at work while compensating for left groin pain that was the causative factor in Petitioner's development of right hip pain. (RX1, P. 23, LN4 – 16). He elaborated that if Petitioner was walking a lot, but doing so normally, it was less likely her labrum would have become symptomatic. (RX1 P. 23, LN 21 – 24 to P. 24, LN 1-5).

In his initial report, Dr. Nho concluded that Petitioner was at MMI as of September 8, 2020 (the date of the exam) and opined that the "…treatment to date, including MRI imaging and physical therapy has been reasonable and necessary as it relates to the compensatory work injury." (RX1, DX 2). Dr. Nho prepared an addendum report dated December 22, 2020. (RX 1 P 25, LN7 - 21; DX 3). Dr. Nho did not review any additional records. (RX1, DX3). Dr. Nho changed his opinion and opined that Petitioner reached MMI for the causally connected right hip condition on December 13, 2017. (RX1 P. 26, LN 22 – 24 to P 27, LN 1-7; DX 3).

Dr. Nho opined that treatment received after December 13, 2017 was not causally related to the work injury. (RX1 P. 27 LN 8 – 12). Dr. Nho testified that Petitioner's gap without reported symptoms between December 13, 2017 until January 9, 2019 was consistent with a temporary exacerbation due to the temporal relationship between compensating following inguinal hernia surgery and the onset of right hip pain. (RX1 P. 27, LN15 – 24 and P. 28, LN1-4). Given there was no complaints of pain at a wellness exam he considered the temporary exacerbation relieved in the right hip as it related to the work injury. (RX1 P 28, LN 5- 10). Dr. Nho testified that symptoms from the labral tear can wax and wane but that a waning period limited to a few months would be necessary to relate the symptoms back to an incident. (RX1 P. 46, LN15 – 24). A waning period of approximately 12 months would not be a reasonable period to relate causation to an event. (RX1 P 47, LN 1-4).

Testimony of Logan Ynigues

Logan Yniguez testified for Respondent. He testified he had been employed by Fresh Express since December 2019 when he was hired as a safety technician. (TX 105). He provided training on OSHA safety standards to Fresh Express employees. (TX 105, 106). His position as a safety technician caused him to have interactions with Fresh Expresses' workplace accident program. (TX 106). If there was an incident on his shift, he had to make sure that the incident was reported, first aid was provided, and the employee retrained if necessary. (TX 107). At the time of hearing, he was employed as a safety manager for Fresh Express since July 2021. (TX 107). In this role, he maintains all safety policies and procedures, provides training, performs audits and inspections, and makes sure Fresh Express is OSHA, EPA, and other agency compliant. (TX 107).

Mr. Yniguez is involved with investigating workplace accidents and completing first report of injury as a safety manager. (TX 108). He keeps a file containing incident reports and statements for any employee that has suffered a workplace accident. (TX 108). A file for any employee suffering a workplace incident is maintained in paper. (TX 109, 110). Files are maintained for

all incidents. (TX 109). Petitioner's accident of December 19, 2016 has a file which is stored in the office of Mr. Yniguez. (TX 109, 110).

Mr. Yniguez testified he looked at Petitioner's incident file on Tuesday, October 12, 2021. (TX 110). He did not bring the file to the hearing. (TX 128). Mr. Yniguez review Petitioner's Exhibit 7 and identified it as a supervisor incident report for Fresh Express. (TX 110; PX 7). Mr. Yniguez testified that the supervisor of the injured employee completes the form, but if the injured employee is a supervisor, he or she completes it on his or her own. (TX 111). Mr. Yniguez testified that there is a supervisor's report for Petitioner's accident on December 19, 2016 in her incident file. (TX 111). Petitioner's Exhibit 7 was not in Petitioner's incident file. (TX 112). Mr. Yniguez testified this could mean the form was not sent to Fresh Express. (TX 112-113). Supervisor's Reports received by Fresh Express are filed away in the employee's file. (TX 112, 113).

Mr. Yniguez identified Petitioner's Exhibit 8 as a supervisor incident report. (TX 113). Petitioner's Exhibit 7 and 8 are the same type of report as the one detailing Petitioner's incident of December 19, 2016 that was in her file. (TX 113, 114). Petitioner's Exhibit 8 was not in her incident file. (TX 114). He testified there was no reason for the document not to be in there if it was sent to the safety manager. (TX 114). Mr. Yniguez testified he had never seen either Petitioner's Exhibits 7 or 8 before being handed them at hearing. (TX 114). He did not know whether Petitioner's Exhibit 8 was ever presented to Mr. Dahas. (TX 127).

Mr. Yniguez testified that the email purported to be from Petitioner to Joseph Dominic marked as Petitioner's Exhibit 9 was also not in Petitioner's incident file. (TX 129 – 130). Mr. Ynigues acknowledged that Dominick acknowledged receipt of the October 5, 2018 email by writing a response email to Petitioner. (PX9, TX 129-130). Mr. Ynigues did not know why Petitioner's Exhibits 7, 8, and 9 were not in his file (TX 112-113, 130), but agreed that they should have been in the file. (TX 130). Mr. Ynigues further testified that Fabricio Dahas, Joseph Dominick and Jon Cooke were appropriate persons for Petitioner to report her ongoing health and safety issues related to her employment and work injury. (TX 124, 129).

Mr. Yniguez testified he did not know one way or another whether Petitioner had problems with her hip in 2018. (TX 132). He had no personal knowledge of the testimony Petitioner gave about her right hip before he was hired. (TX 134). He testified that he has been able to observe Petitioner in her employment as a scheduler / procurement specialist. (TX 121-122). He believes Petitioner to be a valued employee at Fresh Express. (TX 132-133). He believes her to be truthful. (TX 133). He could not say one way or another whether Petitioner's testimony was truthful or untruthful on the subject. (TX 134). He can't say whether her testimony about the left hip was accurate or inaccurate. (TX 134).

Petitioner's Current Condition

The Petitioner is 56 years old. (TX 14). Regarding the left abdomen, the site of the hernia surgery, Petitioner still has pain. (TX 84). Petitioner describes the pain as a pinching pain which is present all the time. (TX 84). The pain is more prominent when she exerts herself or during changes in

temperature. (TX 84-85). While the level of pain has dropped significantly since the surgery, pain does persist. (TX 84-85).

Regarding the right hip, Petitioner is in pain "all the time". (TX 54). She does not walk or hike as she used to, and she does not sleep well. (TX 54). Standing for a significant period of time, for example while cooking or preparing food, aggravates the hip and causes pain. After walking a few blocks, she feels right hip pain at the rate of 2-3/10. She is unable to walk the 20,000 steps a day as she had in her prior position as a production supervisor. (TX 56).

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her be a credible witness. The Arbitrator does take into consideration the fact that Dr. Siel did not document any hip complaints from Petitioner at her July 2018 wellness exam. The Arbitrator acknowledges that Petitioner's unremarkable wellness exam opposes Petitioner's allegations that she reported hip pain to her safety managers both in the months before and after her wellness visit. In addition, Respondent denies receiving any reports and presented Mr. Yniguez who was initially employed by Respondent as a safety technician in December 2019 and became a safety manager in July 2021.

Although the Arbitrator finds Mr. Yniguez credible, his testimony contributes little to the issues at hand. He was not an employee for Respondent in April 2018 when Petitioner submitted an incident report to Respondent's then safety manager, Mr. Dahas; in August 2018 when Petitioner submitted a second incident report to Mr. Dahas; nor in October 2018 when Petitioner emailed Respondent's then safety managers, Mr. Cooke and Mr. Dominick (an email that Mr. Dominick responded to). Mr. Yniguez's testimony is essentially reduced to the facts that Petitioner's Exhibits 7, 8 and 9 were documents that should have been in Petitioner's file but were not and

that Mr. Dahas, Mr. Dominick and Mr. Cooke were the appropriate persons for Petitioner to report her complaints to.

It is significant that Mr. Dominick responded to Petitioner's October 2018 email as it not only acknowledges receipt of her email but strongly implies that Mr. Yniguez's predecessors did not properly file Petitioner's other reports. According to Mr. Yniguez, Petitioner's safety managers at the time should have retained Petitioner's October 2018 email in her file but failed to do so. As a result, little weight can be given to the absence of Petitioner's reports in her file.

Overall, when comparing Petitioner's testimony with the totality of the evidence submitted, the Arbitrator does not find any material contradictions that would deem Petitioner so unreliable as to defeat her claim.

Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

To obtain compensation under the Illinois Workers Compensation Act (hereinafter "Act"), a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

Respondent does not dispute causation for Petitioner's inguinal hernia care through September 11, 2017. (See AX1). Respondent's Section 12 examiner Dr. Mosier confirmed the diagnosis of a reducible left inguinal hernia and opined that it was caused by the December 16, 2016 work related accident. (See PX6; RX5).

Respondent acknowledges liability for Petitioner's right hip care only through December 13, 2017 relying on the opinions of Dr. Nho, it's Section 12 examiner. (See AX1). Dr. Nho diagnosed Petitioner with a right hip acetabular labral tear and opined that, while likely preexisting, the tear became symptomatic by the combination of walking at work while compensating for left groin pain (which was the result of her left hernia).

A key issue of this case is when Petitioner reached MMI for her right hip. Dr. Nho initially opined that she reached MMI on September 8, 2020 (the date of his IME exam) and then amended his opinion to December 13, 2017 (which reflects the last date of Petitioner's physical therapy as ordered by Dr. Frydman).

Dr. Nho's opinion that Petitioner reached MMI on December 13, 2017 is based, in part, on a gap of reported symptoms between December 13, 2017 until January 9, 2019. Dr. Nho explains that this gap in time is consistent with a temporary exacerbation. (See RX1 P. 27-28). Dr. Nho conceded that symptoms from a labral tear can wax and wane but testified that a waning period of approximately 12 months would not be a reasonable period to relate causation to an event. (See RX1 P. 47). The Arbitrator does not find Dr. Nho's amended opinion on MMI to be credible primarily because Dr. Nho was not aware of Petitioner's reports to her employer. Although Petitioner did not seek medical treatment for her right hip from December 13, 2017 until January 9, 2019, she did document ongoing right hip pain to her employer on April 4, 2018 (PX7), August 6, 2018 (PX8) and October 5, 2018 (PX 9). Further, the Arbitrator takes into consideration that Dr. Nho changed his opinion, not based on new information, but upon "re-review" of the records which he stated was "per your request" (presumably Respondent's request). (RX1, DX3, p. 3).

It should be noted that per Dr. Nho's summary of medical records, Petitioner's treater, Dr. Bennett, recommended Petitioner undergo a home exercise program on June 5, 2020. (See RX1, DX3). There is no evidence of any additional treatment after that date. As such, the Arbitrator finds that Petitioner reached MMI on June 5, 2020.

As discussed above, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the work injury of December 19, 2016.

Issue J, whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

Having found Petitioner's current condition of ill-being casually related to her work accident, the Arbitrator also finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. The Arbitrator orders Respondent to pay for outstanding medical services (pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act) for Petitioner's right hip care through June 5, 2020 and for her inguinal hernia care through September 11, 2017. The parties agree that Respondent shall be given a credit for $9,951.19 in medical benefits already paid under Section 8(j) of the Act. (See AX1).

Issue K, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

Petitioner claims that Petitioner is entitled to TTD benefits from August 10 to August 24, 2017. Respondent disputes Petitioner is entitled to TTD *because* Petitioner's regular wages were paid for that time period. (See AX1). It is undisputed that Petitioner was a salaried employee. Petitioner's wage records do not show a disruption in her normal scheduled pay. (See RX6). Respondent did not claim a credit for Petitioner's regular wages paid from August 10 to August 24, 2017 but rather a credit for TTD benefits paid in the amount of $1,560.94 (for which Petitioner agrees). (See AX1).

The fact that Petitioner received her regular scheduled pay is not a barrier to her eligibility for TTD benefits under the Act. See also Freeman United Coal Mining Co. v. Industrial Comm'n, 318

Ill. App. 3d 170 (5th Dist. 2000). It is uncontested that Petitioner remained off work from August 10, 2017 to August 24, 2017 per her doctor following her work-related hernia surgery. As a result, the Arbitrator finds that Petitioner is entitled to TTD benefits for 2 1/7 weeks (August 10, 2017 through August 24, 2017) at a weekly rate of $810.42.

Even if Respondent had claimed a credit for the regular wages paid, it did not meet its burden under Section 8(j) of the Act. See Tee-Pak, Inc. v. Industrial Com. of Illinois, 141 Ill. App. 3d 520 (4th Dist. 1986). However, Respondent does receive a credit for TTD benefits paid in the amount of $1,560.94 as stipulated by the parties. (See AX1).

Issue L, the nature and extent of the injury, the Arbitrator finds as follows:

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n, 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b).

Under Section 8.1b(b)(i), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. See Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n, 2015 IL App (5th) 140445WC, ¶ 17, 43 N.E.3d 556. Therefore, the Arbitrator gives no weight to this factor.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner worked as a production supervisor at the time of her accident and returned to her job approximately two weeks after her hernia surgery in August 2017. Petitioner reported that her job duties required her to be on her feet up to 11 to 12 hours a day, taking an average of 20,000 steps each day. (See TX 20-21). Petitioner testified that upon her return to work she placed more pressure on her right leg when walking in order to compensate for the pain from her hernia surgery. As a result of her right hip pain, Petitioner resigned from her position as a production manager and she was rehired as a scheduler / procurement specialist, which is a sedentary position. The Arbitrator therefore gives moderate weight to this factor.

Under Section 8.1b(b)(iii), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 51 years old at the time of the accident. Petitioner likely has several years left in her remaining work life and she will have to live with the effects of her injuries while working for quite some time. See Flexible Staffing Services v. Illinois Workers' Compensation Commission, 2016 IL App (1st) 151300WC (1st Dist. 2016) (holding that the Commission can make reasonable inferences as to how the claimant's age affects disability). The Arbitrator gives moderate weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes that no evidence suggests a diminishment in Petitioner's future earning capacity as a result of her injury. The Arbitrator gives moderate weight to this factor.

Under Section 8.1b(b)(iv), evidence of disability corroborated by the treating medical records, the Arbitrator gives significant weight to this factor. Petitioner underwent surgery to repair the left inguinal hernia with a polypropylene plug and patch. She was released to work two weeks later. Petitioner reports that she still has pain that is more prominent when she exerts herself. Regarding the right hip, MRIs confirmed an acetabular labral tear and her known treatment has been limited to minimal physical therapy. Petitioner testified that her pain is made worse by walking or prolonged standing. Petitioner testified that after walking a few blocks, she feels right hip pain at the rate of 2-3/10.

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 the person as a whole on account of the hernia and 2.5% loss of use of the person as a whole on account of the right hip pursuant to §8(d)2 of the Act which corresponds to a total of 37.5 weeks of permanent partial disability benefits at a weekly rate of $729.38.

It is so ordered:

Arbitrator Rachael Sinnen

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC017427
Case Name	Anastacio Rivera v. Alsip Towing and Recovery Service DBA Ray's Towing Company and Alex & Jason Salhia & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0388
Number of Pages of Decision	16
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Mark Tompkins
Respondent Attorney	Joseph Blewitt

DATE FILED: 10/11/2022

/s/Maria Portela, Commissioner

Signature

22IWCC0388

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

ANASTACIO RIVERA,

Petitioner,

vs. NO: 14 WC 17427

RAY'S TOWING COMPANY AND RECOVERY SERVICE
AND THE ILLINOIS STATE TREASURER AS *EX OFFICIO*
CUSTODIAN OF THE INJURED WORKERS' BENEFIT FUND,

Respondents.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent, Illinois State Treasurer as Ex Officio Custodian of the Injured Workers' Benefit Fund, herein and notice given to all parties, the Commission, after considering the issues of jurisdiction, average weekly wage 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.

The Commission affirms the Arbitrator's Decision regarding average weekly wage, however, modifies the decision regarding jurisdiction and permanency. The Commission reverses the Arbitrator's Decision allowing proofs to be reopened to amend the Application for Adjustment of Claim to add Respondents Alex and Jason Salhia. Additionally, the Commission modifies the award of permanency from 12% MAW to 7.5% MAW.

Neither the Act nor the Commission's rules address under what circumstances an Application for Adjustment of Claim may be amended. While section 9020.20(e) does provide for amendment, it does not detail under what circumstances amendment may be had. 50 Ill. Admin. Code § 9020.20(e). It simply states that an application may be amended any time *before a hearing on the merits of the claim*. *Emphasis added*. Nonetheless, the policy considerations

underlying the Act -- providing for summary and informal proceedings under which the legislature intended to avoid technical and cumbersome pleading rules to expedite matters (7 A. Larson & L. Larson, Larson's Workers' Compensation Law § 77A.10, at 15-1 to 15-3 (1999)) – is muddled by applying the misnomer and relation back provisions to the instant case. The Commission finds, that in this case, the Petitioner's error was not a technicality, but rather an attempt to add additional parties rather than correct a "misnomer" or "relation back" to previously named parties. Additionally, there was a hearing on the merits prior to the proposed amendment. As such, the Commission finds that proofs should not have been reopened to allow Petitioner to amend the Application adding Alex and Jason Salhia.

As to nature and extent, Petitioner credibly testified that on January 25, 2014, he was thrown around the cab of his truck when his truck was struck by a car. Petitioner was taken by ambulance to the hospital where he was treated for back and neck pain and generalized body aches and released. Petitioner was seen by a chiropractor at H&M Medical 4 days later. On February 10, 2014 he was seen by the Physician's Assistant at H&M Medical and diagnosed with lumbar strain, lumbar radiculitis, cervical strain and cervical radiculitis. (PxF) He was sent for MRI imaging of his cervical and lumbar spines, both of which showed pathology. (PxE) Petitioner attended some physical therapy at H&M and also had injections to his lumbar and cervical spines. (PxF) He was released to full duty on June 4, 2014, but never returned to either his previous place of employment or even to the same type of employment, but instead moved out of state. Petitioner testified that he can no longer bowl, but can still fish. Additionally, he takes no prescription medications, but will take over the counter medications or have his wife give him a massage with BenGay. Petitioner is not receiving ongoing treatment for his back or neck and did not receive treatment beyond conservative care. In light of those facts, the Commission finds the Arbitrator's award of 12% loss of person as a whole to be excessive and reduces the award to 7.5% loss of person as a whole. The Commission does, however, affirm the Section 8.1b(b) analysis contained in the Arbitrator's Decision.

The Commission also modifies and corrects the Arbitrator's Decision as follows:

On page 4 of the Arbitrator's Decision under Issue "A", the Commission strikes the first sentence of the paragraph in its entirety. In that same paragraph, in the sentence beginning with "As a result…", the Commission strikes "Alex Salhia, Jason Salhia and Alsip Towing and Recovery Service d/b/a".

Under Issue "B" on page 5 of the Arbitrator's Decision, the Commission strikes "Alex Salhia, Jason Salhia and Alsip Towing and Recovery Service d/b/a" from the paragraph beginning with "As a result…".

Finally, in the Caption of the Arbitration Decision, the Commission strikes "ALSIP TOWING AND RECOVERY d/b/a" and "ALEX and JASON SALHIA".

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $266.67 per week for a period of 18 4/7 weeks, between January 26, 2014

and June 4, 2014, 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 $260.00 per week for a period of 37.5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 7.5% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $64,721.40 for medical expenses under §8(a) of the Act, subject to the fee schedule in §8.2 of the Act.

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

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

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

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

October 11, 2022

/s/ *Maria E. Portela*

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

MEP/dmm
O: 081622
49

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC017427
Case Name	RIVERA, ANASTACIO v. Alsip Towing and Recovery Service dba Ray's Towing Company and Alex and Jason Salhia
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	Mark Tompkins
Respondent Attorney	Joseph Blewitt

DATE FILED: 8/23/2021

/s/Rachael Sinnen,Arbitrator

Signature

INTEREST RATE WEEK OF AUGUST 17, 2021 0.05%

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

Anastacio Rivera
Employee/Petitioner

v.

Case # **14** WC **017427**

Consolidated cases:

Alsip Towing & Recovery Service d/b/a Rays Towing & Recovery Service, Jason Salhia, Alex Salhia, and the IL State Treasurer As Ex Officio Custodian of the IWBF.
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 **Rachael Sinnen**, Arbitrator of the Commission, in the city of **Chicago**, on **3/23/21**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **1/25/14**, 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 $**20,800.00**; the average weekly wage was $**400.00**.

On the date of accident, Petitioner was **59** years of age, ***married*** with **0** dependent children.

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

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

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

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

ORDER

Medical benefits
Respondent shall pay reasonable and necessary medical services of $64,271.40, per fee schedule as provided in Section 8(a) of the Act.

Temporary Total Disability
Respondent shall pay Petitioner temporary total disability benefits of $266.67/week for 18 4/7 weeks, commencing 1/26/14 through 6/4/14, as provided in Section 8(b) of the Act.

Permanent Partial Disability
Respondent shall pay Petitioner permanent partial disability benefits of $253.00/week for 60 weeks, because the injuries sustained caused the 12% loss of use of the person as a whole, as provided in Section 8(d)2 of the Act.

Injured Workers' Benefit Fund
The Illinois State Treasurer, ex-officio custodian of the Injured Workers' Benefit Fund, was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under Section 4(d) of this Act.

In the event the Respondent/Employer/Owner/Officer fails to pay the benefits, the Injured Workers' Benefit Fund has the right to recover the benefits paid due and owing the Petitioner pursuant to Section 5(b) and 4(d) of this Act.

Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

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

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

August 23, 2021

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

ANASTACIO RIVERA Petitioner,	)	
v.	)	
	)	Case No. 14 WC 017427
ALEX SALHIA, JASON SALHIA, ALSIP TOWING & RECOVERY SERVICE D/B/A RAYS TOWING & RECOVERY SERVICE, AND THE ILLINOIS STATE TREASURER AS EX OFFICIO CUSTODIAN OF THE ILLINOIS WORKERS' BENEFIT FUND, Respondents.	)	

FINDINGS OF FACT

This matter proceeded to hearing on March 23, 2021 on Petitioner's Request for Hearing. Issues in dispute include employer employee relationship, accident, notice, causal connection, average weekly wage ("AWW"), Petitioner's age, his marital status, number of dependent children, past medical bills, temporary total disability ("TTD") and the nature and extent of the alleged injury. (Arbitrator's Exhibit "Ax" 1).

Petitioner testified that he was born on February 10, 1954. (Transcript "Tr" p. 9). Petitioner was married with no child dependents. (Tr. p. 54). Petitioner had been working for Rays Towing and Recovery Service ("Rays Towing") [1] for approximately six months before his injury on January 25, 2014. (Tr. p. 10). Prior to January 25, 2014, Petitioner stated that he was in good health with no active medical treatment. (Tr. pp. 41-42).

Petitioner explained that Rays Towing was in Alsip, Illinois and operated as a towing business that towed cars for recovery for AAA. (Tr. p. 10). Petitioner picked up cars for customers and took them to their destination with the customer. (Tr. p. 10). Petitioner testified that he was hired by Alex Salhia who owned the business with this father, Jason Salhia (Tr. p. 11). Petitioner worked five to six days a week and typically worked the first shift from 9am to 5pm. (Tr. p. 13; 18). He was paid about $400.00 a week every Friday. Alex Salhia would give Petitioner a check that Mr. Salhia had him sign on site. Once signing the check, Alex Salhia would give Petitioner cash. (Tr. pp. 11-12). Petitioner worked in roadside assistance and testified that Alex Salhia would, "tell me go get the car wherever the car was. He will type it in the phone, and we go pick up the vehicle and we take the vehicle to where the destination where it's going." (Tr. p. 13).

[1] Rays Towing and Recovery Service was the assumed name for Alsip Towing and Recovery Service owned by Alex and Jason Salhia and hereinafter collectively referred to as Rays Towing. (See Px A, Px B, Px F, Px H-J).

Prior to his shift, Petitioner would go to Rays Towing and Alex Salhia would assign him a tow truck. (Tr. pp. 14-15). The type of tow truck varied as there are different types such as flatbeds, wheel lifts and wreckers. (Tr. p. 15). Petitioner would get calls on his cell phone from a dispatcher, which would either be Alex Salhia or a woman. (Tr. p. 15). Dispatch would tell Petitioner where to pick up the vehicle and where to take it to. (Tr. p. 16). At the end of the shift, Petitioner returned the truck back and went home. (Tr. p. 16).

January 25, 2014 Accident:

On January 25, 2014, Petitioner was in Flossmoor, Illinois while working the second shift. (Tr. p. 18). Petitioner testified that the weather was "a blizzard of snow" (Tr. p. 18) and it was difficult to see. (Tr. p. 19). Petitioner was operating a flatbed truck from Rays Towing and was dispatched to help a customer whose vehicle was stuck in a snow ditch. (Tr. p. 19). As Petitioner prepared to tow the vehicle, the flatbed was sitting idle. Petitioner went into the cab of the truck to operate the release when there was an impact from another car on the truck's rear driver side. (Tr. pp. 21-23). Petitioner testified that his body twisted and struck the steering wheel. He ended up on the floor of the truck. (Tr. p. 23). Petitioner noticed pain in his neck, shoulders, pelvic area and low back. (Tr. pp. 24-25). Petitioner was taken to South Suburban Hospital via ambulance. (Tr. p. 26). Petitioner called Alex Salhia to tell him about the accident and Alex Salhia visited him in the hospital. (Tr. pp. 32-33).

The Illinois Motorist Report does not identify the owner of the tow truck Petitioner was using. (Px G, p. 30). Proof of auto insurance lists Alsip Towing & Recovery Service ("Alsip Towing") as the insured. (Px F). Neither Rays Towing, Alsip Towing, Alex Salhia nor Jason Salhia had workers compensation insurance per the National Council on Compensation Insurance ("NCCI"). (Px B, Px J).

According to Petitioner, Alex Salhia called him into the office after receiving the Adjustment for Claims and told Petitioner to leave. (Tr. p. 44). Petitioner's case was filed on May 22, 2014. (Petitioner's Exhibit "Px" B). Petitioner never returned to work for Rays Towing. (Tr. p. 44). He was never paid for his time off work nor were any medical bills paid. (Tr. p. 46). Petitioner testified that he never returned to work anywhere else since 2014 and has not looked for a job anywhere else. (Tr. p. 56).

Petitioner's Medical Treatment:

Petitioner was transported to the emergency department at Advocate South Suburban Hospital via ambulance on January 25, 2014. (Px G, p. 11). Records show Petitioner's date of birth as February 10, 1954 and identifies Rays Towing as his employer. (Px G, p. 27). Petitioner's marital status is listed as single. (Px G, p. 12). CT of the brain was normal. (Px G, p. 38). CT of the cervical spine showed multilevel degenerative changes at C4-5, C5-6 and C6-7 without acute fracture or acute subluxation. (Px G, p. 39). CT of the pelvis was unremarkable. (Px G, p. 40). CT of the lumbar spine showed degenerative changes at L4-L5 and L5-S1 with diffuse disc bulge and neuroforaminal narrowing. (Px G, p. 41). Records indicate that Petitioner called his "boss to pick him up." (Px G, p. 10). Petitioner was discharged with pain medication. (Px G, p. 17).

Petitioner started physical therapy ("PT") at H and M Medical on January 29, 2014. (Px F).

On February 10, 2014, Petitioner presented to H and M Medical (aka as Pain Care Specialist) and was seen by Leah Brown, P.A.-C. Petitioner reported that the impact "propelled him forward and he hit his left shoulder against the dashboard and his back against the gearshift before falling to the floor." Petitioner complained of low back pain radiating up to the left scapula and left sided neck pain. It was noted that while Petitioner had an underlying degenerative condition, it was asymptomatic and was rendered symptomatic and in need of treatment as a result of the injury. An MRI for the cervical and lumbar spine was recommended. Petitioner was also instructed to continue PT. No work status note was given. (Px F).

On February 13, 2014, Petitioner underwent a lumbar MRI at Advantage MRI -South Holland. Impression included "posterior central disc bulge and endplate spurring at L4-L5 with associated posterior central canal narrowing and mild right foraminal narrowing." (Px E and F).

On February 21, 2014, Petitioner underwent a cervical MRI at Advantage MRI – South Holland. Final impression was "diffuse cervical spondylosis with multilevel posterior disk / osteophyte complexes contributing to neural foraminal narrowing most prominent from C4-C7." (Px E and F).

On February 24, 2014, Petitioner returned to Ms. Brown who noted that the MRIs showed disc herniations at L4-L5 and from C2-C3 through C6-C7. Epidural steroid injections were recommended. Diagnosis included lumbar discogenic pain, lumbar radiculopathy, cervical discogenic pain, cervical radiculopathy, and lumbar and cervical facet syndrome. The treatment note was silent as to Petitioner's work status. (Px F).

On March 21, 2014, Petitioner returned to H and M Medical but was seen by Dr. Christopher Morgan. Petitioner had not yet undergone the injections "as they have not yet been approved." Dr. Morgan continued to recommend the injections and continued PT. No work status note was given. (Px F).

On April 18, 2014, Petitioner returned to H and M Medical and was seen by Dr. Neeraj Jain. Dr. Jain noted that Petitioner was "working as a dispatcher because it was a sedentary job." The recommendations for the injections and continued PT was repeated. A work status note was not included. (Px F).

On May 7, 2014, Petitioner underwent a left L4-L5, L5-S1 epidural steroid injection and nerve root block with Dr. Jain. (Px F). A work status note is included in surgical records but is left blank. (Px D). Records from Oak Brook Surgical Center also indicate that Petitioner was discharged with his wife. (Px D).

On May 21, 2014, Petitioner underwent a cervical epidural steroid injection with Dr. Jain. (Px F). A blank work status note is included in the surgical records. (Px D).

Petitioner's last PT visit was on June 4, 2018. (Px F). A work status note dated June 4, 2014 returned Petitioner back to work full duty. (Px F). No additional treatment notes were submitted into evidence.

Petitioner's Current Condition:

At trial, Petitioner testified that he has neck pain about two to three times a week. (Tr. p. 47). Petitioner takes over the counter pain medication. (Tr. p. 48). For his low back pain, Petitioner uses Bengay, his wife gives him back massages, and he lays down to relieve his back pain. (Tr. pp. 48-49). Petitioner testified that he was able to lift 50 pounds prior to his accident and that he would go bowling every week. (Tr. p. 50). He no longer can bowl and is only able to lift 20 pounds. (Tr. p. 50). Petitioner testified that he is still able to fish although he now casts the fishing rod in a different manner to avoid pain. (Tr. p. 53).

CONCLUSIONS OF LAW

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

Issue A, whether Respondent was operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act, the Arbitrator finds as follows:

Rays Towing also operates under the corporate name Alsip Towing (See Px A; Px H-J; see also Px F which includes the accident report and auto insurance card naming Alsip Towing). Petitioner testified that Rays Towing is in the business of providing towing services and gets customers from AAA. Petitioner further testified that Rays Towing is owed by Alex and Jason Salhia which was not contested. The Arbitrator finds that Petitioner is a reliable witness and deems his testimony credible. As a result, the Arbitrator finds that Alex Salhia, Jason Salhia and Alsip Towing and Recovery Service d/b/a Rays Towing and Recovery Service is subject to the Illinois Workers Compensation Act (the "Act") under Sections 3(3) and/or 3(15). See 820 ILCS 305/3.

Issue B, whether there was an employee-employer relationship, the Arbitrator finds as follows:

To determine whether a claimant is an employee or an independent contractor, several factors are considered. "The single most important factor is whether the purported employer has a right to control the actions of the employee. Also, of great significance is the nature of the work performed by the alleged employee in relation to the general business of the employer. Additional factors to consider are the method of payment, the right to discharge, the skill the work requires, which party provides the needed instrumentalities, and whether income tax has been withheld. Finally, a factor of lesser weight is the label the parties place upon their relationship. The term "employee," for purposes of the Act, should be broadly construed." Ware v. Indus. Comm'n, 318 Ill. App. 3d 1117, 1122 (2000); see Roberson v. Indus. Comm'n (P.I. & I. Motor Express, Inc.), 225 Ill. 2d 159, 174-176 (2007).

Rays Towing was in the business of towing vehicles, which is what Petitioner's job was (driving the tow truck out to a customer's vehicles, connecting the vehicle to the tow truck, and

transporting the customer's car to the desired location). Rays Towing provided Petitioner with the tow trucks necessary to perform his job. Petitioner would get calls from dispatch (which would be either Alex Salhia or a woman) and would be told where the vehicle was that needed to be towed and where it needed to be dropped off. While Petitioner was paid with checks that were cashed by Alex Salhia, this does not outweigh the control Rays Towing held and how essential Petitioner's job to the general business of Rays Towing.

As a result, the Arbitrator finds that an employee-employer relationship existed between Petitioner and Alex Salhia, Jason Salhia and Alsip Towing and Recovery Service d/b/a Rays Towing and Recovery Service.

Issue C, whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. McAllister v. Illinois Workers' Compensation Comm'n, 2020 IL 124848, ¶ 34. A compensable injury occurs 'in the course of' employment when it is sustained while he performs reasonable activities in conjunction with his employment. Id.

Petitioner was injured in a snowstorm while towing a customer's car out of a snow ditch on the side of a road. Towing a car is squarely within Petitioner's job duties. Thus, the injury occurred 'in the course of' his employment.

"The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." Id. at ¶ 36. To determine whether a claimant's injury arose out of his employment, the risks to which the claimant was exposed must be categorized. Id. The three categories of risks are "(1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." Id. at ¶ 38. "A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." Id. at ¶ 46.

Petitioner was not only instructed to tow a customer's car out of a snow ditch, but it is the essence of his job. Petitioner was required to drive the tow truck in a snowstorm and be on the side of the road to assist the car stuck in the snow ditch. For another vehicle to slide into the tow truck while Petitioner was inside towing a car is a risk distinctly associated with his employment. As a result, the injury 'arises out of' his employment.

The Arbitrator finds that Petitioner has met his burden in proving that he sustained an accident that arose out of and in the course of his employment with Respondent, Rays Towing.

Issue D, the date of the accident, the Arbitrator finds as follows:

Petitioner testified that his accident occurred on January 26, 2014. His testimony is credible, undisputed and is consistent with the medical records. The Arbitrator finds that the date of accident is January 25, 2014.

Issue E, whether there was timely notice of the accident given to Respondent, the Arbitrator finds as follows:

Pursuant to Section 6(c) of the Act, a claimant is required to give notice to his or her employer within 45 days of a work-related accident. 820 ILCS 305/6(c). The Arbitrator finds Petitioner's testimony regarding notice to be credible. Petitioner's testimony (that he called Alex Salhia who later visited him in the hospital) is undisputed. As such, the Arbitrator finds that Petitioner has met his burden in proving that he gave timely notice of the accident to Respondent, Rays Towing.

Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner has met his burden in proving that his current condition of ill-being is causally related to his work injury manifesting on March 28, 2019.

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

Petitioner testified that prior to his work accident he was in good health. There was no evidence of prior medical treatment to his neck and low back to dispute Petitioner's testimony. The medical records establish an injury to his low back and neck following his work accident. As such, Petitioner has met his burden. The Arbitrator finds that Petitioner's current condition of ill being is causally related to his work injury of March 28, 2019.

Issue G, Petitioner's earnings, the Arbitrator finds as follows:

Petitioner testified that he earned $400.00 a week and the Arbitrator finds Petitioner to be a reliable witness. Petitioner's undisputed testimony is sufficient to meet his burden. As such, the Arbitrator finds that Petitioner's average weekly wage "AWW" is $400.00.

Issue H, Petitioner's age at the time of the accident, the Arbitrator finds as follows:

Petitioner testified that he was born on February 10, 1954 and the medical records reflect the same. As a result, the Arbitrator finds that Petitioner was 59 years old at the time of the accident.

Issue I, Petitioner's marital status at the time of the accident, the Arbitrator finds as follows:

Petitioner testified that he was married at the time of his accident with no child dependents. His testimony is corroborated by the medical records. As a result, the Arbitrator finds that Petitioner was married at the time of the accident.

Issue J, whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

Having found that Petitioner's condition of ill being is causally related to his accident, the Arbitrator also finds Petitioner's past medical treatment to be reasonable and necessary. Further, the Arbitrator finds that Respondents have not paid for said treatment. As such, the Arbitrator orders Respondents to pay the following medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act:

- Village of Flossmoor (Px C) - $1,125.00
- Oakbrook Surgical Center (Px D) - $35,147.00
- Advantage MRI (Px E) - $3,500.00
- Pain Care Specialists (Px F) - $12,781.40
- Advocate South Suburban Hospital (Px G) - $11,718.00

Issue K, the temporary benefits in dispute, the Arbitrator finds as follows:

Having found that Petitioner's condition of ill being is causally related to his accident and that Petitioner's past medical treatment is reasonable and necessary, the Arbitrator further finds that Petitioner is entitled to TTD benefits from January 26, 2014 through June 4, 2014. While Petitioner's medical records are largely silent as to his work status, there is a return to work full duty note dated June 4, 2014. (Px F). Further, Petitioner testified that he was off work per his doctors and did not return to work. (See Tr. pp. 44-46).

As a result, the Arbitrator finds Respondents liable for 18 4/7 weeks (January 26, 2014 through June 4, 2014) of TTD benefits at a weekly rate of $266.67 to be paid directly to Petitioner.

Issue L, the nature and extent of the injury, the Arbitrator finds as follows:

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n, 2016 IL App

(1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b).

Under Section 8.1b(b)(i), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. See Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n, 2015 IL App (5th) 140445WC, ¶ 17, 43 N.E.3d 556. Therefore, the Arbitrator gives no weight to this factor.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner was employed as a tow truck operator at the time of the accident and that he was released to return to work full duty per his doctor. Petitioner did not return to work and moved to Florida instead. The Arbitrator therefore gives little weight to this factor.

Under Section 8.1b(b)(iii), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 59 years old at the time of the accident. Because of his advance work age, the Arbitrator therefore gives moderate weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes Petitioner did not return to work and moved out-of-state. Because of no evidence of diminished earning capacity, the Arbitrator therefore gives little weight to this factor.

Under Section 8.1b(b)(iv), evidence of disability corroborated by the treating medical records, the Arbitrator gives this factor significant weight. According to Petitioner's treater, MRIs showed disc herniations at L4-L5 and from C2-C3 through C6-C7. Petitioner was recommended for physical therapy and underwent an epidural steroid injection with nerve root block for the lumbar spine as well as a cervical epidural steroid injection. Petitioner was released to return to work full duty. Petitioner testified that he has occasional neck and low back pain for which he treats with over the counter pain medication, Bengay and massages.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 12% loss of use of the person as a whole, pursuant to §8(d)2 of the Act which corresponds to 60 weeks of permanent partial disability benefits at a minimum weekly PPD rate of $253.00.

Injured Workers' Benefit Fund:

The Illinois State Treasurer, ex-officio custodian of the Injured Workers' Benefit Fund, was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under Section 4(d) of this Act. In the event the Respondent/Employer/Owner/Officer fails to pay the benefits, the Injured Workers' Benefit Fund has the right to recover the benefits paid due and owing the Petitioner pursuant to Section 5(b) and 4(d) of this Act. Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any

compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

It is so ordered:

Arbitrator Rachael Sinnen

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC037748
Case Name	Terri Bantista v. State of Illinois - Lasalle Veterans' Home
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0389
Number of Pages of Decision	19
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Alexis Ferracuti
Respondent Attorney	Thomas Owen

DATE FILED: 10/12/2022

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LA SALLE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Terri Bantista,

Petitioner,

vs. NO: 17 WC 37748

LaSalle County Veterans' Home,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of coverage under the Occupational Diseases Act, occupational disease exposure, permanent partial disability, causal connection, medical expenses, and prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 28, 2022, is hereby affirmed and adopted.

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

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

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

October 12, 2022
MP:yl
o 10/6/22
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	17WC037748
Case Name	BANTISTA, TERRI v. LASALLE VETERANS' HOME
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	Alexis Ferracuti
Respondent Attorney	Thomas Owen

DATE FILED: 2/28/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 23, 2022 0.71%

/s/ Roma Dalal, Arbitrator
Signature

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

February 28, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF LASALLE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Terri Bantista Case # **17 WC 37748**
Employee/Petitioner

v.

LaSalle Veterans' Home
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Roma Dalal**, Arbitrator of the Commission, in the City of **Ottawa**, County of **LaSalle**, on **December 16, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS:

On **11/20/2017**, 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 this date, Petitioner ***did*** sustain an exposure that arose out of, and in the course of, her employment.

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

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

In the year preceding the injury, Petitioner earned $**36,400.00**; the average weekly wage was $**700.00.**

On the date of the accident, Petitioner was **60** years of age, and ***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 is entitled to a credit of for all reasonably related group medical under Section 8(j).

ORDER:

The Arbitrator finds Petitioner has shown, by the preponderance of the evidence, she was exposed to an occupational disease, and last exposed to the hazards of an occupational disease which arose out of and in the course of her employment on November 20, 2017.

The Arbitrator finds Petitioner's condition of bilateral conjunctivitis and resulting dry eye syndrome are causally related to the November 20, 2017 exposure.

Respondent shall pay reasonable and necessary medical services, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for amounts paid.

Respondent shall pay Petitioner permanent partial disability benefits of $420.00 per week for 24.3 weeks, because the injuries sustained caused the loss of use of 10% of the right eye and 5% of the left eye, 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

FEBRUARY 28, 2022

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Terri Bantista,	)	
	)	**Case No. 17 WC 37748**
Petitioner,	)	
	)	
	)	**Arbitrator Dalal**
v.	)	
	)	**Ottawa, Illinois**
LaSalle Veterans' Home,	)	
	)	
Respondent.	)	

The Parties proceeded to trial before Arbitrator Roma Dalal on December 16, 2021, in Ottawa, Illinois. The issues in dispute were exposure/accident, causation, unpaid medical bills, nature and extent of the alleged injury, and coverage under the Illinois Occupational Diseases Act.

Terri Bantista, (hereinafter referred to as the "Petitioner") was 64 years old, single and had two children aged 36 and 32 at the time of hearing. She testified she works at the LaSalle Veterans Home (hereinafter referred to the "Respondent") and has worked there as a veteran's nursing assistant certified (VNAC) for approximately nine years. (Tr. 6-7). Petitioner provided care for the veterans to include feeding, bathing, dressing and toileting. (Tr. 7). She testified she often used hand to hand contact with these residents, especially in the dementia unit where she works. (Tr. 7-8).

Petitioner testified that on the date of accident November 20, 2017, pink eye or conjunctivitis was spreading through the nursing home. (Tr. 10-11). Petitioner testified that many residents and employees had this virus who were in her own dementia unity such as Linda Wallace, Kim Haig, and Tracey Keful. (Tr. 11). Petitioner testified she was not the first VNAC to obtain the infection and believed Regin Glynn was the first and had to interact with residents who were diagnosed with the same infection during her shift. (Tr. 12). Petitioner testified on November 15 or 16, she was trying to get a resident who was on the floor back into bed, when he hit her and almost knocked her glasses off her face. (Tr. 12-13). After she assisted him, she placed her glasses back on her face. (Tr. 13, RX 1). Petitioner testified she subsequently reported the injury. (Tr. 13). Petitioner noted that on November 17, 2017, she began experiencing symptoms and went to the doctor on November 20, 2017. She was off for a long weekend. (Tr. 19 and 76).

Petitioner noted that during the outbreak, residents were not isolated in any way. They sat together at dinner and to watch TV. (Tr. 15). They were constantly wandering and touching things and never wore gloves. (Tr. 15-16). Petitioner testified that VNACs were allowed to wear gloves when they were in the resident's rooms or when they took residents to the bathroom. They were not allowed to wear gloves while in the hallways or in the common rooms. (Tr. 16). Petitioner testified even though she had training to help stop the spread of infections and disease she did not make any decisions on who sat together at the dinner table or TV room and had no control over whether people isolated. (Tr. 17-18).

Petitioner testified she began noticing symptoms on November 17, 2017. (Tr. 19). She subsequently went to the St. Margaret's Health on November 20, 2017. Petitioner testified she reported her symptoms by filling out an incident stemming from November 16, 2017. (RX 1).

On November 20, 2017, Petitioner presented to St. Margaret's Health System and was seen by Dr. Angeles Dexter with complaints of left eye redness, irritation, and swelling with drainage for 3 days. (PX 2). Petitioner was

diagnosed with bacterial conjunctivitis of the left eye and prescribed Tobradex. (PX 2). Petitioner followed up on November 27, 2017, with complaints of excessive tearing and watery eyes. (PX 2).

Petitioner first presented to Finkelstein Eye Associates on December 1, 2017 for an initial evaluation. Petitioner was a worker at the VA home and caught pink eye and presented for an evaluation. Petitioner had light sensitivity, watery eyes, and blurred vision. Petitioner was diagnosed with epidemic keratoconjunctivitis ("EKC") and superficial punctate keratitis of both eyes. Both corneas were found to have sub epithelial infiltrates. Petitioner was given artificial tear drops and was excused from work for ten days due to the eye infection. (PX 3, p. 93, 116-118, T. 21). Petitioner testified Dr. Pode was treating other people that worked at the VA home, residents, and employees. (Tr. 22).

On December 11, 2017, Petitioner reported her vision was blurry, she could barely drive, and saw halos around headlights. (PX 3, p.113-114, T. 23). Petitioner also reported redness and a burning sensation. Petitioner was unable to work. (PX 3, p.92). On December 15, 2017, Petitioner was released to full duty work effective Monday, December 18, 2017. (PX 3, p. 84).

On December 21, 2017, Petitioner reported her eyes were feeling and looking better. Petitioner still experienced scratchiness, burning, and blurriness in her vision at a distance, but her condition was improving. (PX 3, p. 110-111, T.23-24). On December 29, 2017, Petitioner was instructed to continue using artificial tears and FML liquifilm eye drops. (PX 3, p. 107-108, T. 25). Petitioner returned on January 8, 2018, with complaints of redness, but indicated that her eyes were feeling better with no more burning. (PX 3, p. 104-105, T.28).

On February 5, 2018, Petitioner followed up with Dr. Pode. Petitioner was still having irritation but felt good. Petitioner was provided artificial tears and was to return. (PX 3, p. 101-102, T.28). On March 5, 2018, Petitioner stated her eyes were feeling dry and her vision was somewhat blurry, left eye more so than right. The sub epithelial infiltrates had resolved in the left eye, but there were a few infiltrates found in the right eye. (PX 3, p. 98-99, T. 29). Petitioner testified there was never a point in treatment where she did not take the artificial tears. (T. 29).

On April 16, 2018, Petitioner reported being off the steroid drops for approximately one month and her vision was blurring again. She was also seeing halos around lights. (PX 3, p. 95-96, T. 30).

On May 22, 2018, Petitioner first presented to Gailey Eye Clinic for an evaluation. Petitioner was a 61-year-old female who came in for a second opinion. Petitioner reported dryness and fluctuating vision in the right and left eyes. Petitioner denied pain and discomfort and reported she underwent several rounds of steroid drops, which helped with symptoms, but after stopping, she experienced dryness, halos, and fluctuating vision. Petitioner was advised that conjunctivitis would not last this long. The Doctor noted he could see the sub epithelial infiltrates but opined they should have gone away with steroid treatment. Petitioner was to start on Prednisone. (PX 6, T. 31-33).

On May 29, 2018, Petitioner returned to Gailey Eye Clinic and was seen by Dr. Halperin, a corneal specialist. Petitioner reported her eyes were feeling more comfortable since the last examination. Petitioner was assessed with punctate keratitis, mechanical ptosis of both eyelids, and chronic, dry eye syndrome of the right and left lacrimal glands. The sub epithelial infiltrates were found to be gone. Dr. Halperin opined the prior FML drops may not have been strong enough and that it needed to be tapered very slowly. Petitioner was prescribed prednisone. (PX 6, T.33).

On June 13, 2018, Petitioner reported the irritation was lessoning in both eyes. Petitioner's condition was noted as improving and Petitioner was instructed to continue using prednisone for one more week. (PX 6, T. 34).

On June 22, 2018, Petitioner returned to Finklestein Eye Associates and reported her eyes had improved, and the halos had resolved. Petitioner was diagnosed with EKC, and the infiltrates were noted to have resolved. (PX 3, p. 143-144).

On July 9, 2018, Petitioner returned to Gailey Eye Clinic and reported the dryness in her eyes had lessoned since the last examination. Petitioner was instructed to reduce the use of prednisone to one time daily for three weeks. (PX 6, T. 35). On July 23, 2018, Petitioner reported her condition was improving, especially with new prescribed glasses. Her corneas were found to be clear, and the dryness seemed to be improving. Petitioner was to continue to use prednisone one time daily for one more week and then every other day until the bottle was gone. (PX 6).

Petitioner returned on August 29, 2018, for her Keratitis and dry eye follow up. Petitioner reported improvement since her last exam. The Doctor noted Petitioner was to continue lubricating her eyes. He also noted the pink eye patient could have aggravated her eyes and current issues. (PX 6, T. 38).

On October 24, 2018, Petitioner returned noting halos around lights in her bilateral eyes. Sub epithelial infiltrates were found on the eye and steroid treatment was resumed. (PX 6, T, 38-40). Petitioner returned on November 5, 2018 and was improved. Petitioner was to continue with her medications and return. (PX 6, T.40).

On November 28, 2018, the Doctor noted Petitioner's eyes were looking good. Dr. Halperin opined Petitioner's current condition was not causally related to Petitioner's work accident nor was it limiting her daily job activities. Dr. Halperin opined Petitioner initially had a highly communicable virus much like a cold. Dr. Halperin noted Petitioner could have picked this up by touching linens or anything that could have been infected with this virus that others had contracted it. This is very commonly seen in institutional places like schools, colleges, and nursing homes. Dr. Halperin agreed the virus likely did come from the workplace, but the trauma did not cause it. (PX 6, T.42).

On February 18, 2019, Petitioner returned to Finkelstein Eye Associates. Petitioner reported she had stopped using prednisone two months ago. (PX 3, T.42).

On March 2, 2019, Dr. Pode wrote a narrative report (PX 3, p. 120, PX 4). Dr. Pode opined the impression was EKC secondary to adenovirus. Dr. Pode opined with a reasonable degree of medical certainty that the infection was contracted in the workplace based upon Petitioner's report that other employees were suffering from similar symptoms. Dr. Pode also opined that EKC can leave a patient with irritated eyes due to dryness. In addition, Petitioner had sub epithelial infiltrates on each cornea, which can cause blurred vision at night. Dr. Pode stated the infiltrates would hopefully resolve over time, but EKC could permanently cause a dry eye that necessitates the use of lubrication to keep the patient comfortable. Dr. Pode opined Petitioner would experience permanent disability due to remnants from her infection, which was contracted at her workplace. (PX 4)

On April 29, 2019, Petitioner followed up with Dr. Pode and reported her eyes were irritated and dry and her vision blurred near the end of the day. Petitioner was having trouble with distance. Petitioner was found to have several sub epithelial infiltrates in both left and right eye. Petitioner was instructed to apply artificial tears and FML drops daily. (PX 3, p. 138-140, T.43).

Petitioner followed up on June 4, 2019. Petitioner noted some days were worse than others. Petitioner noted she was using the FML drops daily and was advised to continue with artificial tears and return. (PX 3, p. 136-137).

She followed up with Finkelstein Eye Associates on July 22, 2019, at which point her vision had improved due to the steroid drop usage. On examination, the Doctor again found several sub-epithelial infiltrates in both eyes and additionally diagnosed her with adenoviral keratoconjunctivitis in both eyes as she was originally diagnosed in 2017. (PX 3, T. 45).

On November 4, 2019, Petitioner underwent an independent medical examination with Dr. Golden-Brenner. (RX 3). Petitioner went over her history of an outbreak of eye infection on the unit. She reported she was helping a resident up from the floor when the resident hit her on her face. She reported her eyes became irritated two days later. Dr. Golden-Brenner went over Petitioner's medical history. At that time, Petitioner had no sub epithelial infiltrates in her eyes. Dr. Golden-Brenner diagnosed Petitioner with status post EKC with a history of corneal

infiltrates, which likely occurred secondary to exposure at work. Dr. Golden-Brenner also diagnosed Petitioner with non-work-related Dry Eye Syndrome, Blepharitis, and mild age-related cataracts. Dr. Golden-Brenner found Petitioner reached MMI the last time the corneal infiltrates had resolved, which should have been around June 2019. Dr. Golden-Brenner opined Petitioner should be able to perform any work she was able to perform prior to the declared incident. Petitioner has no residual disability, disfigurement, or loss of vision secondary to the declared incident. (RX 3).

Petitioner followed up again on January 20, 2020, at which time she reported dryness with otherwise stable vision and was found to have infiltrates still in the eye which were a recurring part of the infection. (PX 3, p. 6-7, T. 46). In a May 15, 2020 follow up, Petitioner still complained of blurry vision. She advised her burning symptoms were worse due to wearing a mask. The Doctor recommended Petitioner discontinue the steroid drops. (PX 3, T. 46).

Petitioner followed upon July 6, 2020, and at that time the dryness was unchanged, and her vision was the same. She was found to have a mild recurrence of subepithelial infiltrates in both eyes. Petitioner was to continue with Refresh tears. (PX 3, T. 49). Petitioner followed up with her physician on October 12, 2020, at which time she was found to have significant dryness described as burning and sandy in the eyes that was bothersome on a constant basis. Petitioner weas provided refresh liquigel and refresh tears. (PX 3, T. 50).

Petitioner again followed up on May 10, 2021, at which time Petitioner complained of decreased vision in both eyes. Petitioner was to continue with her medications (Refrsh Liquigel, Refresh Tears, and restasis). (PX 3, T. 51).

Petitioner was last seen on August 16, 2021. Petitioner reported her blurry vision at night was rapidly improving, describing it as only a minor nuisance, and that Restasis drops had helped her dryness quite a bit. Petitioner's symptoms were in part due to dry eye syndrome. She was to continue with artificial tears eye drops and lubricant eye ointment. (PX 3). Examination of Petitioner's right eye was found to be normal, and Petitioner's left eye was found to have only a few sub epithelial infiltrates. (PX 3, T. 53-54).

Deposition of Dr. Golden-Brenner

On January 6, 2021, the parties proceeded with the testimony of Dr. Golden-Brenner, Respondent's Section 12 Examiner. (RX 4). Dr. Golden-Brenner testified she is a medical doctor who graduated from University of Chicago, Pritzker School of Medicine in 1983 after which she completed a residency at the UCLA Jules Stein Eye institute from 1984 until 1987. (RX 4, p. 7). Dr. Golden-Brenner testified she has been employed at Vision Surgeons and Consultants for the last 32 years wherein she is the Physician and President of the company. Her specialty is with the cornea. (RX 4, p. 8). Dr. Golden-Brenner testified she performs 10-20 medical examinations throughout the year and 5% of her work includes these examinations. (RX 4, p. 10). She testified she examined Petitioner on November 4, 2019 and reviewed corresponding medical records. (RX 4, p. 13-14). Petitioner complained of burning, dryness and redness in both eyes, worse later in the day. Petitioner advised the Doctor that when she stops the steroid drop, FML, within one to two weeks she is bothered by lights and starts having blurred vision and halos in her vision. (RX 4, p. 15). Petitioner told the Doctor she continued to use the FML once a day since her last appointment with Dr. Pode in July and her symptoms were more in the right than the left eye. (RX 4, p. 16). Dr. Golden-Brenner testified she had no way to independently verify the burning or when that burning began as a part of the examination she performed on Petitioner.

The Doctor diagnosed Petitioner with status post epidemic keratoconjunctivitis or viral conjunction and noted Petitioner had a history of corneal infiltrates secondary to EKC, keratoconjunctivitis sicca or dry eye syndrome, blepharitis, and mild age-related cataracts. (RX 4, p. 19). Petitioner was found to have a type of pink eye which was common but extremely contagious. Dr. Golden-Brenner testified Petitioner could have become infected with EKC if she touched something that an infected patient had touched, if an infected patient touched their eyes and touched a countertop, pen, or other surface, the Petitioner could obtain EKC from touching that same object. (RX 4, p. 20). Petitioner's viral conjunctivitis, as a rule, is not curable with eye drops but there were treatments which

make it more comfortable and help it go away faster. The Doctor testified it is extremely variable how long it takes to heal. (RX 4, p. 21).

Dr. Golden-Brenner testified corneal infiltrates are things that start to develop as the infection clears up and there are mild opacities within the cornea which appear as spots, almost like a zebra, on the cornea which can be mild or quite severe. (RX 4, p. 21). Dr. Golden-Brenner noted if you wean off the steroids too quickly, the infiltrates could return. (RX 4, p. 23). At the time of her examination, Petitioner did not have any infiltrates. (RX 4, p. 23). Dr. Golden-Brenner also diagnosed petitioner with dry eye syndrome meaning the tear film was not properly producing or lubricating the eye. (RX 4, p. 24). She went on to testify this was an incidental finding not related to her EKC. The Doctor also diagnosed Petitioner with blepharitis or an abnormal production of oil from the oil glands of the eyelids which was not related to the work injury. She also noted the cataracts was not related to her work injury. (RX 4, p. 24-25). She recommended Petitioner continue to follow up with her ophthalmologist and wean slowly off the steroid drops. (RX 4, p. 25).

At the time of examination, the Doctor found Petitioner to have no disability, disfigurement, or loss of vision. She believed Petitioner had reached maximum medical improvement, as she did not have any work or visual limitations and was able to work without restrictions. (RX 4, p. 26).

On Cross-Examination, Dr. Golden-Brenner testified most of her employment is as a CEO of an AI software company. She testified that she spends minimal amount of time engaging in any kind of medical practice as a medical doctor, including IME examinations. (RX 4, p. 28-29). The Doctor noted Petitioner advised her there was an outbreak of eye infection on the unit of five residents. (RX 4, p. 36). Dr. Golden-Brenner opined it was more likely than not that Petitioner received her infection from work. (RX 4, p. 37). She noted Petitioner's infection was due to work but not likely due to just having her glasses knocked off her face. (RX 4, p. 38). She further noted that it would not be unreasonable if Petitioner had corneal infiltrates 15 months out from exposure. (RX 4, p. 41). Dr. Golden-Brenner noted that in severe cases of EKC with scarring, a patient can be left with dry eye. She stated this was not the case in Petitioner's case. (RX 4, p. 42). On re-direct, the Doctor confirmed she does not practice as a doctor now, though she continues to stay up to date with ophthalmology and is still licensed. She additionally testified she could not agree or disagree with Dr. Pode's findings in his reports or causal relationship letter as she had not had the opportunity to review that report or his full records in that respect. (RX 4, p. 44).

Deposition of Dr. Pode

On May 11, 2021, the parties proceeded with Dr. Robert Pode's deposition. (PX 5). Dr. Pode testified he is licensed to practice medicine in the State of Illinois and is a board-certified comprehensive ophthalmologist. (PX 5, p. 5-6). Dr. Pode is affiliated with all the local area hospitals in his community and treats between four to five thousand patients per year, performing between two and three thousand surgeries per year. (PX 5, p. 8).

Dr. Pode testified he first began treating Petitioner on December 1, 2017. (PX 5, p. 10). Petitioner came in with redness of the eyes and reported she had caught pink eye with symptoms beginning on November 20, 2017, for which she had been treated with various drops including tobradex and moxifloxacin. (PX 5, p. 10). Dr. Pode testified he performed a visual acuity test, eye movement tests and a slit lamp exam of the anterior segment of her eyes finding Petitioner had epidemic keratoconjunctivitis in each eye and had a chalazion, or stye, on the left lower lid. (PX 5, p. 11-12). He indicated given the contagious nature of her condition, he recommended she shouldn't work for approximately two to three weeks after the onset of symptoms and gave her artificial teardrops for each eye for comfort which she was to administer four times per day which the Doctor believed was reasonably related to the exposure to EKC Petitioner incurred while working for the Respondent. (PX 5, p. 12-13).

Dr. Pode testified to each medical visit with Petitioner and to the causal letter he authored indicating treatment administered and the diagnoses given arose as a result of her exposure to the EKC virus while working for the Respondent. (PX 5, p. 33). Dr. Pode testified Petitioner reported other employees were suffering from similar symptoms, so he felt with a reasonable degree of medical certainty that the infection was contracted in the

workplace of the Respondent. (PX 5, p. 33). Dr. Pode went on to testify EKC could leave a patient with an irritated eye due to dryness. EKC can also permanently cause dry eye. Petitioner would experience permanent disability due to remnants from her infection. (PX 5, p. 34-35).

Dr. Pode testified he believed Petitioner's eyes would be more irritated due to residual dryness because she continued to have subepithelial infiltrates three to four years following infection which caused a decrease in night vision and glare. (PX 5, p. 36). Dr. Pode opined he felt Petitioner contracted the virus at work. (PX 5, p. 36). He further noted Petitioner's treatment to date had been the result of her November 20, 2017 work accident. (PX 5, p. 37).

On Cross-Examination, Dr. Pode testified the only other environments that could cause contraction of the virus would be at home with other family members. (PX 5, p. 44). Dr. Pode stated that it is common that patients would come in and not know where they contracted the EKC condition. (PX 5, p.45). Dr. Pode confirmed Petitioner continued to show signs of EKC. Dr. Pode testified he would have thought this condition would have improved for Petitioner significantly already, but this was a long duration of symptoms following the disease process. In fact, Dr. Pode testified most patients do not have signs or symptoms as long as Petitioner. (PX 5, p. 47). Dr. Pode testified Petitioner did not exhibit signs of symptoms magnification. (PX 5, p. 47).

Dr. Pode noted the infiltrates themselves would resolve and reoccur as Petitioner takes or weans off the steroid medication. (PX 5, p. 48). He testified infiltrates are an immune reaction on the cornea due to virus particles. He stated that one to two infiltrates in the peripheral cornea would not cause symptoms, but the more infiltrates that occur towards the center of the cornea, the more symptoms Petitioner would experience. (PX 5, 48). Petitioner was recommended to use steroid drops to increase the likelihood these infiltrates would resolve. (PX 5, 49). Dr. Pode testified if infiltrates are treated too soon and the steroid use is stopped too soon, it may lengthen the duration of the infiltrates. In the case of the Petitioner in question, the discontinuation of the steroid drops caused her infiltrates to reoccur after they resolved. (PX 5, p. 49). Dr. Pode testified he found Petitioner was consistently compliant as far as he knew because they would reoccur only when the steroid drops were stopped, and she otherwise had successful results. (PX 5, p. 50). Dr. Pode testified the infiltrates had not resolved as of his last examination, and though he usually would answer that the infiltrates would resolve in the future, in this case, he did not know that he could testify to that fact. (PX 5, p. 50). Dr. Pode testified Petitioner will continue to have glare, halos around lights and decreased vision because of the EKC infection and subepithelial infiltrates in her eyes. (PX 5, p. 50). Dr. Pode noted Petitioner contracted EKC from her workplace based on her reporting that other employees were suffering from similar symptoms and the fact he treated numerous other patients from that facility that had the same disease. (PX 5, p. 52). Dr. Pode did note he did not have an opinion on whether Petitioner could work full duty. (PX 5, p. 53).

On redirect, Dr. Pode again confirmed Petitioner contracted the virus more than likely in her employment with the Respondent and that there was nothing in the Petitioner's records or otherwise to indicate she was exposed at any place other than in her work for the Respondent. (PX 5, p. 54).

Testimony

At trial, Petitioner advised her next follow up for medical care is scheduled with Dr. Pode on May 9, 2022, unless she had trouble with her vision again. (T. 54). She noted she follows up approximately twice a year. Petitioner testified she continues to utilize the same eye drops and everything else prescribed by Dr. Pode. (T.54). Petitioner testified her group insurance paid for the medical care rendered. (T. 55).

Regarding her vision, she did not have trouble with her glasses. Prior to the incident, Petitioner could see, drive, read and watch TV with no difficulty. (T. 58). Now she has difficulty with these tasks. In addition, her eyes burn if she watches TV too much or if she is on the computer too much. (T. 58). She noted her normal daily life has changed as she cannot utilize the computer or watch TV that much. (T. 58).

Petitioner testified she does not carry her medications with her because she utilizes them twice a day. (T. 59). She noted her eyes continue to burn, noting a pain of a 5 out of 10. (T. 59). Regarding the blurriness, she notices it when her eyes are tired and at night. (T. 60). Petitioner further testified her eyes do not water any more but itch, which was constant. (T. 60-61). In addition, her vision slightly increased. (T. 62).

On Cross-Examination, Petitioner testified she never had been diagnosed with bacterial conjunctivitis and had no previous injuries to her eyes. (T. 66). Petitioner testified approximately in 2016 she was diagnosed with floppy eyelid syndrome which occurs when she sleeps, and her eyelids can be turned upwards. (T. 67). She further testified she began wearing glasses about 15 years ago. (T. 68).

Petitioner testified she had one grandchild at the time of the accident but did not get to see her often as her dad worked opposite shifts as she did. (T. 71).

During the time frame of the accident, Petitioner testified she would only go to a gas station that would pump her gas for her. (T.73). In addition, she would occasionally go to the grocery store, once every two weeks. (T. 73). She further stated she was not eating out at any restaurants or going to a gym/fitness center. (T. 73).

Petitioner noted that after her work accident, she had a few vacation days. (T. 75). She testified this was a long weekend and she had planned to bake cookies and wrap Christmas presents. (T. 76).

Petitioner testified when she returned to work, she returned in a full duty capacity. Since returning to work, she has been able to perform all her job duties. (T. 78). Petitioner testified her symptoms regarding her dry eye would vary and some days she had no symptoms. (T. 81).

Petitioner further testified she believed that the protocol for containing the infection was less than what it should have been. She opined that the first person who had it should have been isolated. (T. 83). She testified that when somebody had the infection, they were not instructed to handle that person differently in any way. (T. 84). They had to continue to touch them with regular hands in the hallway. (T. 84). They also had the staff feeding two people at a time during the infection. (T. 84-85).

Petitioner testified there are days her eyes do not bother her as much. She stated her eyes do itch and burn and while there are days where it does not burn as bad, it still does burn. (T. 87).

CONCLUSIONS OF LAW

The Arbitrator adopts the Statement of Facts in support of the Conclusions 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 her claim (O'Dette v. Industrial Commission, 79 Ill.2d 249, 253 (1980) including that the accidental injury both arose out of and occurred in the course of his employment (Horvath v. Industrial Commission, 96 Ill.2d. 349 (1983)) and that there is some causal relationship between the employment and her injury. Caterpillar Tractor Co. v. Industrial Commission, I29 Ill. 2d 52, 63 (1998). Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e).

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

her testimony. Where a claimant's testimony is inconsistent with her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972). While it is true that an employee's uncorroborated testimony will not bar a recovery under the Act, it does not mean that the employee's testimony will always support an award of benefits when considering all the testimony and circumstances shown by the totality of the evidence. Caterpillar Tractor Co. v. Industrial Commission, 83 Ill. 2d 213 (1980). The mere existence of testimony does not require its acceptance. Smith v. Industrial Commission, 98 Ill.2d 20, 455 N.E.2d 86 (1983). To argue to the contrary would require that an award be entered or affirmed whenever a claimant testified to an injury no matter how much her testimony might be contradicted by the evidence, or how evidence it might be that her story is a fabricated afterthought. U.S. Steel v. Industrial Commission, 44 Ill2d 207, 214, 254 N.E.2d 522 (1969); see also Hansel & Gretel Day Care Center v. Industrial Commission, 215 Ill. App. 3d 284, 574 N.E.2d 1244 (1991).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her to be a credible witness. Petitioner testified in open hearing before the Arbitrator who viewed her demeanor under direct examination and under cross-examination. Petitioner's manner of speech, body language, and flow of answers to questions, when added together, showed sincerity. Petitioner was well-mannered, composed, spoke clearly, and made normal eye contact with the Arbitrator. She testified to her accident and medical care consistently with the medical records. The Arbitrator notes that any inconsistencies in her testimony are not attributed to an attempt to deceive the finder fact. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions.

In regards to Issue (A), whether Respondent was operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act, and in regards to Issue (O) was Petitioner's condition subject to the Illinois Occupational Diseases Act, the Arbitrator finds the following:

The Act is clear that the coverage for an employer under the Illinois Occupational Disease Act extends to any person, State of Illinois employee, firm, public or private corporation, including hospitals, public service, religious or charitable corporations, or associations who has any person in service or under any contract for hire, express or implied, oral or written. Certainly, no defense was raised by the Respondent at trial that Petitioner was not its employee at the time of the exposure to the injury in question, and in fact submitted, as part of its exhibits, an employee's notice of injury form showing Petitioner was employed by Respondent the date in question. The Arbitrator therefore finds that the Employer was covered under the purview of the Occupational Diseases Act or 820 ILCS 310/1(a).

The Act states that coverage extends to any person in the service of another under any contract of hire, express or implied, oral or written, who contracts an occupational disease while working in the State of Illinois but where the contract of hire is made within the State of Employee and any person whose employment is principally localized within the State of Illinois regardless of the place where the disease was contracted or the place where the contract of hire was made. There is no question based upon the credible testimony of the Petitioner at hearing that she was considered an Employee under the definitions contained within 820 ILCS 310/1(b).

Based on the same the Arbitrator finds Respondent was operating under and subject to the Illinois Occupational Diseases Act and Petitioner's condition is subject to the same.

In regards to Issue (C) was Petitioner exposed to an Occupational Disease on November 20, 2017 which arose out of and in the course of on her employment, the Arbitrator finds as follows:

It is evident that Petitioner contracted the EKC infection around November 20, 2017. Petitioner alleged November 20, 2017, her first date of medical treatment, as the date of accident or manifestation date. The November 20, 2017, date is consistent with the ODA, as amended, and Durand v. Industrial Comm'n 224 Ill. 2nd 53 (2007). The date of accident is not pivotal to the outcome of this case.

The fact Petitioner contracted EKC is not in dispute and clearly corroborated by the medical evidence. Whether Petitioner contracted EKC virus from an exposure arising out of and in the course of her employment with Respondent is in dispute.

It is well-established that a Petitioner is required to prove by a preponderance of the evidence all elements of her claim, including whether she had an accidental exposure arising out of and in the course of her employment on or before November 20, 2017. The ODA provides benefits for employees who establish that they have contracted an occupational disease while working. An "occupational disease" is a disease arising out of and the course of employment which has become aggravated and rendered disabling because of the exposure at employment. Such aggravation must arise out of a risk "peculiar to or increased by employment and not common to the general public."

In this claim, Petitioner testified at trial that she was employed with Respondent as a veteran's certified nursing assistant. Petitioner testified, which was corroborated by Dr. Pode, that several residents and workers were exposed to and contracted EKC infection as a result of the spread of the infection through the LaSalle County Veteran's Home.

Petitioner presented at hearing and alleged she was exposed to a variation of epidemic keratoconjunctivitis because of her employment with the LaSalle County Veterans Home. She testified at hearing that her job as a nursing assistant required her to use hand to hand care to bathe, clean, feed, and otherwise care for all the residents of the Respondent at any given time. Petitioner provided details of being in constant physical contact with the residents, as well as is in constant physical contact with wheelchairs, transportation devices, tables, chairs, and other inanimate objects that these residents frequently and interchangeably touch and move. Petitioner further testified regardless of which infection the residents had, it was her job to provide care to each resident.

Petitioner testified she was aware there were several residents attending appointments for treatment as the result of their contraction of the infection EKC and that she had been struck by one resident, with an active infection, on November 16, 2017.

The Arbitrator notes Dr. Pode testified Petitioner contracted EKC from her workplace based on her reporting that other employees were suffering from similar symptoms and the fact he treated numerous other patients from that facility that had the same disease. (PX 5, p. 52). In addition, Respondent's Section 12 examiner, Dr. Golden-Brenner, opined it was more likely than not that Petitioner received her infection from work. (RX 4, p. 37).

Based on Petitioner's testimony, the corroborating medical records, the testimony of Dr. Robert Pode, and the testimony of the Respondent's independent medical examiner Dr. Golden-Brenner, the Arbitrator finds Petitioner was exposed to this infection that arose out of and in the course of her employment with Respondent.

With respect to issue (F), is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator find as follows:

The Arbitrator hereby adopts the findings of fact and opinions of law contained above herein.

To establish causation a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injury. It is not necessary to prove that the employment was the sole causative factor or even that it was the principal causative factor, but only that it was a causative factor. Tolbert v. Ill. Workers' Comp. Comm'n, 2014 IL App (4th) 130523WC, ¶ 1, 11 N.E.3d 453. An injury arises out of a claimant's employment where it "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, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 203 (2003).

The Act defines an occupational disease as a disease which arises out of and in the course of the employment of the Petitioner or which has been aggravated and rendered disabling as a result of the exposure of the employment. Only an aggravation of a pre-existing disease must arise out of a risk peculiar to or increased by the employment and not common to the public. The disease shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease. The disease itself does not have to have been foreseen or expected, but after its contraction it must appear to have had its origin or aggravation in a risk connected with the employment and flowed from that source as a natural consequence as is clearly stated within the act at 820 ILCS 310/1(c).

Under well-established workers' compensation law, Petitioner's burden of proof is to establish a work-related condition was a causative factor and needs not prove that the work environment was the sole causative factor or the primary causative factor. In this claim, the Petitioner presented at hearing and credibly testified as to her employment for the Respondent as a veteran's certified nursing assistant.

The Arbitrator finds that Petitioner established a causal relationship between the November 20, 2017 work exposure and her current condition. In so finding, the Arbitrator relies on the following: 1) No medical documentation supporting pre-existing medical care, 2) no records showing Petitioner was exposed to the disease elsewhere, 3) the testimony of Petitioner regarding her bilateral eye care, and 4) the opinions of Dr. Pode.

As noted about, the Arbitrator finds Petitioner's contraction of EKC arose out of the course and scope of her employment. The Arbitrator finds it very persuasive that both physicians, Dr. Pode and Dr. Golden-Brenner opined it was more likely than not that Petitioner received her infection from work (PX 5, p. 52 and RX 4, p. 37).

It is clear from both the testimony of Respondent's independent medical examiner and Petitioner's treating physician that Petitioner and her strain of EKC was caused because of her exposure to the same at the LaSalle County Veterans Home. As stated above, Petitioner was exposed to EKC as presented at hearing through her work as a VNAC for the Respondent. The Arbitrator notes that this strain was passing through Respondent's place of business based on Petitioner's testimony as well as that of Dr. Pode.

The Arbitrator finds that no medical records were submitted into evidence to show any pre-existing medical care. In addition, there are no records to show Petitioner was exposed to the disease outside of work. In fact, Petitioner further testified that she does not see her grandchild on a regular basis, and no one lived with her in her own home. In addition, Petitioner only went out to get groceries and would not even pump her own gas.

In evaluating if Petitioner's current condition is causally related to the work accident, the Arbitrator reviews the testimony of the treating physician, Dr. Pode and the Section 12 examiner, Dr. Golden-Brenner. In reviewing the same, the Arbitrator adopts the opinions of Dr. Pode.

The Arbitrator notes Dr. Golden-Brenner is a board physician who has a cornea specialty. (TX 4, p. 8). She testified most of her employment is as a CEO of an AI software company and noted she spends minimal amount of time engaging in any kind of medical practice as a medical doctor, including IME examinations. (RX 4, p. 28-29).

Dr. Golden-Brenner diagnosed Petitioner with status post epidemic keratoconjunctivitis or viral conjunction and noted Petitioner had a history of corneal infiltrates secondary to EKC, keratoconjunctivitis sicca or dry eye syndrome, blepharitis, and mild age-related cataracts. (RX 4, p. 19). Dr. Golden-Brenner noted Petitioner's infection was due to work but not likely due to just having her glasses knocked off her face. (RX 4, p. 38). She further noted that it would not be unreasonable if Petitioner had corneal infiltrates 15 months out from exposure. (RX 4, p. 41). Dr. Golden-Brenner noted in severe cases of EKC with scarring, a patient can be left with dry eye. She stated this was not the case in Petitioner's case. (RX 4, p. 42). The Doctor found Petitioner to have no disability, disfigurement, or loss of vision. She believed Petitioner had reached maximum medical improvement, as she did not have any work or visual limitations and was able to work without restrictions. (RX 4, p. 26).

Dr. Pode is a practicing physician who began treating Petitioner in December of 2017. He further noted he treats between four to five thousand patients per year, performing between two and three thousand surgeries per year. (PX 5, p. 8). Dr. Pode eventually diagnosed Petitioner with epidemic keratoconjunctivitis in each eye. (PX 5, p. 11-12). He further noted the diagnoses given arose as a result of her exposure to the EKC virus while working for the Respondent. (PX 5, p. 33). Dr. Pode testified Petitioner reported other employees were suffering from similar symptoms, so he felt with a reasonable degree of medical certainty that the infection was contracted in the workplace of the Respondent. (PX 5, p. 33). Dr. Pode went on to testify EKC could leave a patient with an irritated eye due to dryness. EKC can also permanently cause dry eye. Petitioner would experience permanent disability due to remnants from her infection. (PX 5, p. 34-35).

Dr. Pode testified he believed Petitioner's eyes would be more irritated due to residual dryness because she continued to have subepithelial infiltrates three to four years following infection which caused decrease in night vision and glare. (PX 5, p. 36). Dr. Pode opined he felt Petitioner contracted the virus at work. (PX 5, p. 36). He further noted Petitioner's treatment to date had been the result of her November 20, 2017 work accident. (PX 5, p. 37).

In this case the Arbitrator adopts the opinions of the treating physician, Dr. Pode. The Arbitrator notes Dr. Pode is still a practicing physician and has followed Petitioner's care for over three years. Although Dr. Golden-Brenner keeps up with the literature in ophthalmology she acknowledged that she does not see patients on a regular basis. In addition, both physicians did not note any signs of symptoms magnification. While Dr. Pode noted other environments could cause contraction of the virus, both Drs Golden-Brenner and Pode noted the virus likely came from Petitioner's employment. In addition, Dr. Pode treated several other members at the facility during that time frame. The Arbitrator thus adopts the opinions of Dr. Pode in that Petitioner's current condition is causally related to her contraction of the EKC virus while working for Respondent.

With respect to issue (J), whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein. The medical records entered evidence demonstrate Petitioner sustained EKC reaching maximum medical improvement as of August 16, 2021. Regarding Petitioner's EKC claim, based on the record in its entirety, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. Given the Arbitrator's finding of causation between Petitioner's November 20, 2017 work accident and her condition of ill-being regards her EKC eye condition, Respondent is liable for reasonable and necessary medical treatment of the causally related condition.

As such, the Arbitrator orders Respondent to pay Petitioner the reasonable and necessary medical expenses incurred in connection with the care and treatment of her causally related condition pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid.

With respect to issue (L), what is the Nature and Extent of the Injury, the Arbitrator finds as follows?

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein. Consistent with the Illinois Workers' Compensation Act, the Arbitrator is to base the permanency determination on the following factors:

i. The reported level of impairment pursuant to subsection (a) (e.g., the AMA rating)
ii. The occupation of the injured employee
iii. The age of the employee at the time of the injury
iv. The employee's future earning capacity
v. Evidence of disability corroborated by the treating medical records.

With regard to subsection (i) of § 8.1b(b), the Arbitrator notes no party introduced an impairment rating at trial and as such, no weight is given to this factor.

With regard to subsection (ii) of § 8.1b(b), the Arbitrator notes Petitioner was employed as a Veteran's Certified Nursing Assistant. The Arbitrator notes Petitioner was released with no restrictions affecting the demands of her job. As such, the Arbitrator gives great weight to this factor.

With regard to subsection (iii) of § 8.1b(b), the age of the employee at the time of the injury, the Arbitrator notes Petitioner was 60 years old at the time of the accident. Petitioner's condition seems to have become stable with possible irritations to become a permanent part of her life. The Arbitrator further notes Petitioner's work life expectancy is limited. Given the length of her estimated remaining work life, the Arbitrator gives great weight to this factor.

With regard to subsection (iv) of § 8.1b(b), the Arbitrator concludes Petitioner is capable of working with no restrictions and as such, is capable of making the same amount in wages as she was previous to her injury. As Petitioner's injury did not affect her earning capacity, the Arbitrator assigns significant weight to the lack of effect Petitioner's injury had on Petitioner's wages.

With regard to subsection (v) of § 8.1b(b), the Arbitrator notes Petitioner's medical records submitted at trial show ongoing dryness. Petitioner also complained of blurry vision at night, redness and burning within the eyes. By the last visit on August 16, 2021 Petitioner's right eye was found to be normal, and her left eye only had a few sub epithelial infiltrate. Based on the same, the Arbitrator assigns significant weight to the medical records.

At trial, Petitioner testified she continues to see Dr. Pode approximately twice a year. In regards to her vision, she did not have trouble with her glasses. Petitioner testified her eyes burn if she watches TV too much or if she is on the computer too much. (T. 58). Petitioner testified she utilizes her eye medication twice a day. (T. 59). She noted that her eyes continue to burn. (T. 59). In regards to the blurriness she notices it when her eyes are really tired and at night. (T. 60). Petitioner further testified that her eyes did not water any more but did itch, which was constant. (T. 60-61). In addition, her vision slightly increased. (T. 62). Petitioner testified when she returned to work, she returned in a full duty capacity. Since that date she has been able to perform all her job duties since returning to work. (T. 78). Petitioner testified her symptoms regarding her dry eye would vary and some days she had no symptoms. (T. 81). She stated her eyes do itch and burn and while there are days where it does not burn as bad, it still does burn. (T. 87).

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 10% loss of the right eye and 5% loss of use of the left eye pursuant to §8(d)2 of the Act for the injury sustained to her bilateral eyes. Respondent shall pay Petitioner permanent partial disability benefits of $420.00 for 24.3 weeks in total for her ongoing disabilities.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC032474
Case Name	Mark Smith v. Titan Wheel
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0390
Number of Pages of Decision	15
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Thomas Lichten
Respondent Attorney	John Campbell

DATE FILED: 10/13/2022

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF ADAMS)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mark Smith,

Petitioner,

vs. NO: 15WC 32474

Titan Wheel,

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 19, 2022, is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $60,000.00. 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.

October 13, 2022
MP:yl
o 10/6/22
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	15WC032474
Case Name	SMITH, MARK v. TITAN WHEEL
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Thomas Lichten
Respondent Attorney	John Campbell

DATE FILED: 1/19/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 19, 2022 0.37%

/s/Edward Lee, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

MARK SMITH
Employee/Petitioner

v.

TITAN WHEEL
Employer/Respondent

Case # **15** WC **032474**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Quincy**, on **11/03/2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **07/30/2015**, 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 $**34,261.60**; the average weekly wage was $**660.80**.

On the date of accident, Petitioner was **24** years of age, ***single*** 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 $ **8,752.84** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $ **8,752.84**.

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

ORDER

Temporary Partial Disability

Respondent shall pay Petitioner temporary partial disability benefits for the amounts and periods stated below, as provided in Sec. 8(a) of the Act.

10/18/16 -04/17/17:	26 weeks at $330.53 per week
04/18/17 – 10/17/17:	26 weeks at $313.86 per week
10/18/17 – 05/07/19:	81 weeks at $ 93.87 per week
05/08/19 – 05/07/20	52 weeks at $67.20 per week
05/08/20 – 01/04/21	34 weeks at $40.53 per week
01/05/21 – 05/07/21:	17 weeks at $110.13 per week
05/08/21 – 11/03/21:	26 weeks at $72.80 per week

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $440.53/week for 59 5/7 weeks, commencing 08/25/2015 through 10/17/2016, as provided in Section 8(b) of the Act.

Medical Benefits

Respondent shall pay reasonable and necessary medical services of $521.18, as provided in Section 8(a) of the Act to reimburse Petitioner for his mileage from Quincy to Springfield for treatment by Dr. Greatting, Respondent's hand specialist.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $252.00, to Springfield Clinic.

Prospective Medical Benefits

The Arbitrator awards the Petitioner a second EMG test as had been ordered and now recommended by Dr. Greatting.

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.

_Edward Lee
Signature of Arbitrator

JANUARY 19, 2022

ICArbDec19(b)

Summary of Evidence

On July 30, 2015, Petitioner sustained a work-related injury to his left upper extremity. He is right handed and had been employed by Respondent for about 5 ½ years in a class II job. He was pushing a cart loaded with about 50 hook hangers with rims on them that each weighed 20 to 50 pounds, so the cart weighed 500 to 1,000 pounds, *(R. 7-9)*. The floor was rough. As he was pushing this heavy cart he extended his arms to push it into the proper spot, he felt a sharp pain go through his left arm below his elbow, and his arm went numb, and he dropped to the ground. He felt a sharp shooting pain go down from his left elbow into his left pinky and ring fingers. *(R. 10)* The Petitioner had not had any injury to his left arm before or since.

The Petitioner reported the injury to his supervisor immediately and was sent to the employer's industrial medical clinic, the Blessing Physician Services Employer and Sports Clinic, where he was seen initially by a physician's assistant, Erica Miller, who placed Petitioner on light duty of no lift/push/pull over 20 pounds. The next day the Petitioner was seen in that clinic by Dr. Muller, who reduced the restrictions to 10 pounds, with an impression of left forearm strain with left ulnar nerve irritation causing numbness, tingling and pain in the ulnar nerve distribution. He was given a forearm sleeve and various pain medications. An ultrasound on 08-08-2015 showed the ulnar nerve appeared enlarged and may be subluxing slightly during flexion extension motion.

On 08-24-2015, Dr. James Daniels, the head doctor at the clinic, diagnosed possible cubital tunnel syndrome and referred Petitioner to Dr. Mark Greatting, a hand and arm specialist in Springfield. *(Pet. Ex. 4 and 5)*

Dr. Greatting saw Petitioner initially on 09-23-2015 and thought he had left cubital tunnel syndrome and that he may have subluxed his ulnar nerve when the injury occurred with possibly a partial injury to his left distal biceps tendon. Dr. Greatting continued the 10-pound restrictions that the Quincy doctor had imposed. An EMG and MRI of the left elbow were normal. On 10-15-2015, Dr. Greatting prescribed a Medrol dose-pak, a steroid, and continued the light duty restrictions. On 11-23-2015, the steroid had not helped, and Dr. Greatting discussed the possibility of surgery for the left cubital tunnel syndrome. Mr. Smith wished to proceed with the surgery. The same 10-pound restrictions were continued.

The Respondent then sent Petitioner to Dr. Sudekum in St. Louis, who did not agree with Dr. Greatting's surgical recommendation and claimed that the Petitioner's condition, which he called ulnar neuritis, was work related. According to the Respondent's nurse case manager at Triune, Angela Sexton, Dr. Sudekum recommended a 20-pound restriction until after an MRI of the left forearm could be done, then full duty if the MRI was negative.

On 01-26-2016, Dr. Sudekum issued his report, at which point the Respondent cut off Petitioner's TTD benefits and terminated him via a phone call.

The Petitioner then went on unemployment and began trying to find a new job. On 10-18-2016, the Petitioner began working at Five Below at a part-time job of no more

than 20 hours per week at $8.25 per hour. This was increased to $9.50 per hour, still part-time, six months later and then to a full-time job at $13.00 per hour on 10-18-2017, which continued until 05-08-2019, when he began a new job, full-time, at $14.00 per hour at Farm and Home , as a forklift driver. On 05-08-2020, his pay was increased to $15.00 per hour. On 05-08-2021, his pay was increased to $16.40 per hour.

On 01-04-2021, Titan Wheel sent notice of increased hourly pay amounts to all employees. For a class II employee, which Petitioner had been, the new pay rate for those employed for over 14 months was $19.13 per hour. *(Pet. Ex. 8)*

On 10-02-2019, the Petitioner saw Dr. Greatting again, who reconfirmed his clinical diagnosis of left cubital tunnel syndrome with subluxation of the ulnar nerve over the medial epicondyle. Dr. Greatting wanted to get another EMG nerve conduction study, after which he would make further recommendations, including possibly cubital tunnel surgery *(Pet. Ex. 1 and 2).*

CONCLUSIONS OF LAW ON DISPUTED ISSUES

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

The Arbitrator finds that the Petitioner's current condition of ill-being is causally related to his work injury of 07-30-2015.

The Petitioner's condition of ill-being, as diagnosed by Respondent's multiple treating physicians, either directly or through referral, is left cubital tunnel syndrome and ulnar neuropathy/inflammation/irritation. These physicians include PA Erica Miller, Dr.

Merle Muller, Dr. James Daniels, who are all at Blessing Physicians Services, and Dr. Mark Greatting of Springfield Clinic.

Dr. Greatting stated in his 08-28-2019 letter to Petitioner's attorney and in his deposition *(Pet. Ex. 1)* that the Petitioner's left arm condition was directly related to his work injury of 07-30-2015.

The physicians at Blessing Physicians Services, Employer and Sports Clinic, to whom the Respondent sent the Petitioner for treatment, all appear to have assumed that the Petitioner's condition was work related. Dr. Daniels, the head physician at the clinic, referred the Petitioner to Dr. Greatting, a hand and upper extremity specialist at Springfield Clinic.

The Arbitrator is not persuaded by the opinion of Dr. Sudekum, who examined the Petitioner at Respondent's request, that the Petitioner's condition was not work related. Dr. Sudekum had similar abnormal findings on his physical exam to those of the treating physicians but claimed that it was unlikely that the mechanism of injury could have caused the condition, despite the unrebutted testimony of the Petitioner that he first experienced his left upper extremity symptoms suddenly as he was pushing a heavy cart at work. Dr. Sudekum's diagnosis was ulnar neuritis based on his several positive findings on his physical exam. He did not accept the positive ultrasound findings of PA Miller of the Blessing Employer and Sports Clinic. Dr. Sudekum admitted that 75 percent of his IME work is for Respondents, and that he charged $4,500.00 for the IME, $785.00 for the x-rays he took and $386.00 for reading an MRI scan of the left upper extremity that he ordered. The Arbitrator does not find Dr. Sudekum's causal connection

opinion credible in the face of the explicit and implicit opinions of the treating physicians to the contrary, all of them chosen by the Respondent.

G. What were Petitioner's earnings?

The Arbitrator finds that the Petitioner's average weekly wage was $660.80. This finding is based on the fact that the Respondent, in its proposed decision, stated that it agreed with Petitioner's claim of an average weekly wage of $660.80.

Thus, the Respondent has withdrawn its dispute on this issue and now stipulates to the Petitioner's average weekly wage figure of $660.80

J. Past medical services

The Arbitrator finds that Respondent is responsible for the Springfield Clinic bill of $252.00, under the fee schedule, for Petitioner's office visit with Dr. Greatting on 10-02-2019, for reasonable and necessary treatment.

The Arbitrator also orders Respondent to pay to the Petitioner $521.18 to reimburse his mileage for his four trips to Springfield to be treated by Dr. Greatting, the upper extremity specialist to whom Dr. Daniels, Respondent's head doctor in Quincy, had referred Petitioner, pursuant to Sec. 8(a). The mileage rate was $.575 per mile, with the mileage being a round trip of 226.6 miles. All treatment was reasonable and necessary.

K. Prospective Medical

The Arbitrator adopts the opinions of Dr. Mark Greatting and his recommendation that the Petitioner undergo a second EMG test, as had been ordered by Dr. Greatting.

L. What temporary benefits are in dispute: TTD and TPD

TTD

The Arbitrator finds that the Petitioner is entitled to 59 5/7 weeks of TTD benefits at $440.53 per week for the period of 08-25-2015 through 10-17-2016.

The Arbitrator notes that, following his injury, the Respondent's treating physicians placed Petitioner on a 15-pound, then 10-pound, light duty restriction, and wearing a left arm brace, with Petitioner working with that restriction until 08-25-2015, when Respondent started paying TTD benefits. Respondent paid benefits to 01-25-2016. Dr. Sudekum issued his report on 01-26-2016, at which point the Respondent cut off Petitioner's benefits and terminated his employment.

At that time Respondent had denied payment for the cubital tunnel surgery recommended by Dr. Greatting. At that time the Petitioner had not reached MMI and still has not reached MMI, because he needs another EMG and likely cubital tunnel surgery, as recommended by Respondent's treating upper extremity specialist, Dr. Greatting. The Petitioner had seen Dr. Greatting on 11-23-2015, at which time the Respondent's nurse case manager, Angela Sexton was present. According to Ms. Sexton *(Pet. Ex. 9)*, Dr. Greatting, "stated in the presence of the client that he is to continue with light duty and is recommending surgery." At that time the Petitioner was under a 10-pound lifting restriction per Dr. Greatting, the same restriction that had been imposed by Respondent's industrial clinic doctors in Quincy.

The Petitioner testified that the Respondent terminated his employment over the phone, with no reason given. As stated above, the Petitioner was not at MMI, as Dr. Greatting had recommended left cubital tunnel surgery, which Respondent had denied. Petitioner still needs that surgery, per Dr. Greatting at his last visit on 10-02-19.

Pursuant to *Interstate Scaffolding v. Illinois Workers' Compensation Commission,* filed January 22, 2010, 236 Ill 2d 132, 923 NE 2d 266, 337 Ill Dec 707 (2010), "…when an employee who is entitled to receive workers' compensation benefits as a result of a work-related injury is later terminated for conduct unrelated to the injury, the employer's obligation to pay TTD workers' compensation benefits continues until the employee's medical condition has stabilized and he has reached maximum medical improvement."

The Petitioner's condition was not at maximum medical improvement when he was terminated. He had not been able to undergo the recommended cubital tunnel surgery as of 01-26-2016, and still has not been able to undergo the surgery because of Respondent's denial of payment and its termination of Petitioner's employment. Even though the employer's termination of Petitioner was without explanation, it appears to have been related to Petitioner's injury. The employer's obligation to pay TTD benefits, and by extension TPD benefits, continues.

With regard to TTD, the Petitioner testified that he began seeking other employment, applying for countless jobs, five to ten jobs every two weeks, until he found a part-time job with Five Below that began on 10-18-2016. Thus, Petitioner is entitled to receive TTD benefits through 10-17-2016.

TPD

Petitioner's entitlement to TPD benefits began on 10-18-2016. As he testified, he has been employed since then through the present, but all of his jobs have paid less than he earned when he was working for Titan Wheel and less than what he would be making had he remained in his same Class II job at Titan Wheel.

With regard to his Titan Wheel earnings, his average weekly wage was $660.80. The only other evidence of his subsequent Titan Wheel earnings is Petitioner's Exhibit 8, the Titan Wheel wage levels effective 01-04-2021, showing that a class II employee's wage, assuming employment of at least 14 months, was $19.13 per hour, or $765.20 per 40-hour week.

Petitioner's actual earnings beginning as of 10-18-2016 were at Five Below from 10-18-2016 to 04-17-2017 at $8.25 per hour and a 20-hour week, or $165.00 per week; from 04-18-2017 to 10-17-2017, $9.50 per hour for a 20-hour week or $190.00 per week; 10-18-2017 to 05-07-2019 at $13.00 per hour for a 40-hour week, or $520.00 per week.

The Petitioner began working at Farm & Home, also as a forklift driver, on about 05-08-2019, where he is still employed. From 05-08-2019 to 05-07-2020, he earned $14.00 per hour or $560.00 per week for a 40-hour week; from 05-08-2020 to 05-07-2021 he earned $15.00 per hour for a 40-hour week or $600.00 per week. From 05-08-2021 through the present he earned $16.40 per hour for a 40-hour week, or $656.00 per week.

To calculate the Petitioner's TPD benefit for each period, the calculation is to subtract his actual earnings at Five Below and Farm & Home from what his earnings at Titan Wheel would have been, utilizing the average weekly wage and then the wage increase as of 01-04-2021, and multiplying by two-thirds to obtain the temporary partial disability entitlement per week for each period.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC033411
Case Name	Jayme Bauer v. State of Illinois - Chester Mental Health Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0391
Number of Pages of Decision	18
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Jason Coffey
Respondent Attorney	Nicole Werner

DATE FILED: 10/13/2022

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
JEFFERSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JAYME BAUER,

Petitioner,

vs. NO: 19 WC 33411

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 and Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability (TTD) benefits, 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 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, 2022 is hereby affirmed and adopted.

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

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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.

October 13, 2022

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

CAH/tdm
O: 10/6/22
052

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC033411
Case Name	BAUER, JAYME v. CHESTER MENTAL HEALTH CENTER
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Jason Coffey
Respondent Attorney	Nicole Werner

DATE FILED: 2/25/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 23, 2022 0.71%

/s/ Jeanne AuBuchon, Arbitrator
Signature

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

February 25, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Jayme Bauer
Employee/Petitioner

v.

Chester Mental Health Center
Employer/Respondent

Case # **19** WC **033411**

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 **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **September 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, **September 27, 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 $**44,537.48**; the average weekly wage was $**856.49**.

On the date of accident, Petitioner was **41** years of age, ***single*** with **1** dependent children.

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

Respondent shall be given a credit for all TTD paid to Petitioner up to July 31, 2021.

Respondent is entitled to a credit for any medical bill paid through Petitioner's group health insurance under Section 8(j) of the Act.

ORDER

Respondent shall pay medical expenses as listed in Petitioner's Group Exhibit #8, pursuant to Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $565.28/week for 5 4/7 weeks, commencing July 31, 2021 through September 8, 2021, as provided in Section 8(b) of the Act.

Respondent shall authorize and pay for the treatment recommended by Dr. Matthew Gornet, except for MRI spectroscopy.

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.

Jeanne L. AuBuchon

Signature of Arbitrator

FEBRUARY 25, 2022

PROCEDURAL HISTORY

This matter proceeded to trial on September 8, 2021, pursuant to Sections 19(b) and 8(a) if the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) the causal connection between the accident and the Petitioner's low back injuries; 2) payment of medical bills; 3) entitlement to TTD benefits from July 31, 2021, through September 8, 2021; and 4) entitlement to prospective medical care for the Petitioner's low back. Because the Petitioner's treating doctor found that the Petitioner's cervical symptoms were only a temporary aggravation of a prior injury, this decision will focus mainly on the Petitioner's low back.

FINDINGS OF FACT

The Petitioner is employed by the Respondent as a security aide and provides for the security, safety and therapeutic benefits of maximum-security forensic patients, which involves physically restraining patients. (T. 11-12) On September 27, 2019, when the Petitioner was 41 years old, she was attempting to restrain a patient's legs while another staff member was restraining his arms. (T. 12-13) The patient repeatedly knee'd her in the left side and flank, and she was jarred off her feet several times. (T. 13)

The Petitioner said she had fusion surgery on her thoracic spine in 2008 and on her cervical spine in 2018, neither of which were work related. (T. 17-19) She also had treatment for low back pain in January 2019 and had a history of sciatica pain before that had come and gone over the years. (T. 19, 24) Records from Chester Clinic show that on January 15, 2019, the Petitioner complained of burning in her left buttock that went into her thigh. (PX1) An MRI showed no disc bulge or anything to suggest an acute injury of the lumbar spine. (Id.) She was diagnosed with lumbosacral radiculitis and received an epidural steroid injection on February 5, 2019, at L5-S1. (Id.) On March 5, 2019, the Petitioner reported that her low back pain was markedly improved.

(Id.) She testified that she did not miss any work due to low back pain and was working full duty from January 2019 until her low back pain resolved in March 2019 and after. (T. 20)

The day after the September 27, 2019, accident, the Petitioner went to the emergency department at Memorial Hospital complaining of rib/trunk pain and swelling and back pain. (PX2) Lumbar X-rays showed no definite lumbar spine fracture or suspicious lumbar malalignment. (Id.) She was diagnosed with multiple contusions of the trunk, prescribed medication and was instructed to follow up with her primary care provider or return to the emergency department if her symptoms worsened. (Id.)

In Workers' Compensation Employee's Notice of Injury completed on September 30, 2019, the Petitioner reported the altercation and indicated injuries to her left side and middle back. (RX1) A Supervisor's Report of Injury or Illinois completed on October 2, 2019, described the injury being to the left side (ribs). (RX2)

The Petitioner underwent physical therapy at the Memorial Hospital Rehab Center from December 2, 2019, through December 30, 2019, for a total of eight visits. (PX3) She was given therapeutic exercises to perform for her cervical, thoracic and lumbar regions as well as manual therapy and massage. (Id.) Her symptoms appeared to wax and wane throughout treatment.

On December 16, 2019, the Petitioner saw Dr. Matthew Gornet, an orthopedic spine surgeon at The Orthopedic Center of St. Louis, and complained of pain at the base of her neck to both trapezius and down her left arm to her elbow with frequent headaches and dizziness. (PX6) She also had central low back pain to both sides, left worse than right, and particularly into her right buttock. (Id.) Her low back symptoms were constant and worsened with bending, lifting, prolonged sitting or standing. (Id.) Dr. Gornet took X-rays, ordered an MRI, prescribed physical

therapy and asked to see the Petitioner's prior doctors' notes and imaging studies. (Id.) Dr. Gornet ordered the Petitioner off work until March 23, 2020. (PX5, Deposition Exhibit 2)

The Petitioner had a telemedicine visit with Dr. Gornet on March 23, 2020. (PX6) A new off-work slip for that date was not submitted at arbitration. On June 17, 2020, the Petitioner spoke with Physician Assistant Allyson Joggerst at Dr. Gornet's office about medications. (PX6) Dr. Gornet issued an off-work slip that day effective until July 18, 2020. (PX5, Deposition Exhibit 2)

The Petitioner returned to Dr. Gornet on July 18, 2020, and had MRIs of her lumbar, cervical and thoracic spine. (PX6) The lumbar spine MRI from MRI Partners of Chesterfield showed a central protrusion at L5-S1with a probable central annular tear, resulting in epidural fat effacement but no dural displacement, central canal stenosis or foraminal stenosis. (PX4) Dr. Gornet reviewed the Petitioner's prior medical records and new MRIs and stated that it appeared that the Petitioner had an ongoing problem with her neck leading up to the work accident, which he said may have aggravated her neck problems temporarily. (Id.) He found the initial treatment for the Petitioner's neck was reasonable, but further treatment of the cervical spine would not be necessary as a direct result of the work accident. (Id.) He believed the Petitioner may have had a symptomatic non-union of the cervical fusion. (Id.) Regarding the Petitioner's low back, Dr. Gornet acknowledged the prior treatment but did not find her condition to be unrelated to the work accident. (Id.) He recommended an epidural steroid injection at L5-S1. (Id.) Dr. Gornet ordered the Petitioner off work until a date in November 2020 that was illegible on the work slip. (PX5, Deposition Exhibit 2)

Pain management physician Dr. Helen Blake performed an interlaminar epidural steroid injection at L5-S1 on July 29, 2020, at Timberlake Surgery Center. (PX7) The Petitioner testified that the injections provided "very temporary" relief. (T. 15)

On January 10, 2021, the Petitioner underwent a Section 12 examination by Dr. Robert Bernardi, a neurosurgeon at Olive Surgical Group. (RX3) The Petitioner informed Dr. Bernardi of her medical history and the work accident. (Id.) Dr. Bernardi reviewed medical records dating back to 2006. (Id.) Upon physical examination, Dr. Bernardi noted: no positive Waddell's signs; no parathoracic or paralumbar spasms or trigger points; normal flexion but decreased extension of the lumbar spine; no tenderness over the greater trochanters, along the iliotibial bands or around the sciatic notches; complaints of buttock pain on both sides with straight leg raising tests; complaints of worsening low back pain with range of motion of the hips; low normal ankle pulse; no lower extremity edema; normal motor power and muscle tone in the lower extremities; diminished deep tendon reflexes at the knees and normal deep tendon reflexes at the ankles; and downgoing plantar response. (Id.) Dr. Bernardi reviewed the lumbar MRI from July 18, 2020, and found minor degenerative disc disease at L5-S1 manifested by subtle loss of hydration but no acute findings or central, lateral recess or foraminal stenosis. (Id.)

Dr Bernardi reported that he was unable to conclude that the Petitioner's lower back symptoms were causally connected to the work accident for the following reasons: 1) there were no objective findings on the general physical examination that correlated with her symptoms; 2) there were no objective or subjective abnormalities on the neurological examination, let alone an abnormality that correlated with her symptoms; 3) there were no acute or post-traumatic findings on the imaging studies but mild degenerative changes that were to be expected in a woman over 40; 4) the Petitioner had a prior history of low back issues; and 5) there was a considerable delay between the accident and any consistent mention of symptoms involving the lumbar spine. (Id.) Dr. Bernardi acknowledged that at the Petitioner's emergency room visit, the Petitioner was tender over her lumbosacral spine and that she had X-rays for low back pain. (Id.) He reported that there

was no mention of the Petitioner having low back pain when she saw her nurse practitioner in October 2019. (Id.) These records were not submitted at arbitration. Dr. Bernardi stated that it was not until the Petitioner's first visit to Dr. Gornet on December 16, 2019, that there was mention of lower lumbar symptoms, and pinpointed this as the onset of consistent lumbosacral symptoms. (Id.)

Although he did not find a causal connection between the work accident and the Petitioner's lower back complaints, Dr. Bernardi did think it was reasonable to conclude that the Petitioner's lower thoracic symptoms were causally related to the work accident and recommended further testing. (Id.) He pointed to the description of the mechanism of injury, the consistency of the Petitioner's complaints and a lack of treatment or testing for mid-back issues as reasons for this conclusion. (Id.) Dr. Bernardi also found the treatment and testing the Petitioner received to date was reasonable and necessary with the exception of the epidural steroid injection, the lumbar MRI and more than six weeks of physical therapy. (Id.) Dr. Bernardi had stated in his report that the Petitioner was seen on 34 occasions for physical therapy from November 26, 2019, through March 12, 2020. (Id.) The only physical therapy records submitted at arbitration were those from the eight visits in December 2019.

Dr Bernardi was confident that it was in the Petitioner's best interest to return to work and recommended restrictions of no patient contact, being allowed to change positions as needed, avoiding repetitive waist-level bending and twisting and not lifting more than 15-20 pounds. (Id.) He added that the need for these restrictions were independent of the Petitioner's cervical and lower lumbar symptoms. (Id.) He did not believe the Petitioner was at maximum medical improvement, pending further thoracic testing. (Id.)

The Petitioner returned to Dr. Gornet at a visit on March 1, 2021, who wrote in his report that he related the Petitioner's low back pain to the work accident. (PX6) The Petitioner was fairly adamant that the work accident was life-changing to her and severely impacted her. (Id.) She said her symptoms did not go away and affected all aspects of her life and her quality of life. (Id.) Dr. Gornet had reviewed Dr. Bernardi's report and agreed with his work restrictions. (Id.) He diagnosed discogenic pain at L5-S1 being caused by aggravation of the Petitioner's underlying problem. (Id.) He recommended a CT discogram and MRI spectroscopy. (Id.)

At a deposition on March 18, 2021, Dr. Gornet testified consistently with his reports. (PX5) He said he did not feel that there was a causal connection between the Petitioner's current cervical and thoracic complaints and the work injury. (Id.) He believed the Petitioner's current lumbar spine was an aggravation of a prior condition caused by the work injury because there was no indication that she was getting ongoing regular treatment up to the time of her injury, was working full duty and was not exhibiting significant back symptoms leading up to the injury. (Id.)

Regarding the need for further testing, Dr. Gornet theorized that the Petitioner may have injured her L5-S1 disc structurally in a way not well visualized on an MRI. (Id.) He said a CT discogram was a way to determine whether the annulus had avulsed or torn and to look for a subjective pain response at L5-S1 with a negative response at L4-5 to help determine if L5-S1 was indeed the source of the Petitioner's pain and problem. (Id.) He said the MRI spectroscopy was a new test that evaluates chemicals associated with low back pain. (Id.) He said peer-review literature would suggest that if there is a correlation between the CT discogram results and the MRI spectroscopy results, the statistical chance that a patient can be helped is 95-97 percent. (Id.) He said the recommended testing would be necessary to be more specific with a diagnosis. (Id.)

Dr. Gornet testified that despite commentary to the contrary that he attributed to Dr. Bernardi, the MRI spectroscopy had been approved by the FDA for diagnostic testing of low back pain. (Id.)

On cross-examination, Dr. Gornet was confronted with reports from January 2015 that the Petitioner had been diagnosed with a disc protrusion and lumbosacral radiculitis with pain radiating down her right leg and had received an epidural steroid injection. (Id.) He said those reports did not affect his opinion because he already assumed that the Petitioner had preexisting problems from reviewing the early 2019 records. (Id.) He said it did not seem like there was an active ongoing problem at the time of the accident, so he felt that met the bar of aggravation. (Id.)

On July 2, 2021, Dr. Bernardi testified consistently with his reports at a deposition. (RX4) He said he found the Petitioner to be credible. (Id.) Regarding findings of annular tear, Dr. Bernardi preferred the term "fissure" and considered it to be degenerative condition and not an acute or post-traumatic abnormality, although he acknowledged that other doctors would disagree. (Id.) Dr. Bernardi believed the Petitioner was at maximum medical improvement and could work full duty with no restrictions with regard to her lumbar spine. (Id.)

He explained his objection to the discography testing that Dr. Gornet recommended, stating that he did not think it was a reliable test that often provided misleading information and that it was a dangerous test. (Id.) He also said the test is one done in contemplation of surgery and said there was no point in putting through such an invasive test intended to produce pain if a doctor is not going to perform an operation based on the results. (Id.) On cross-examination, Dr. Bernardi testified that a discogram could rule out the need for surgery. (Id.)

Regarding the MRI spectroscopy, Dr. Bernardi said he was unaware of any information other than Dr. Gornet's own study that shows it to be a useful test. (Id.) He said he was not aware that it was FDA approved for management of low-back pain and he could find no insurance that

had approved it for use in managing lower-back pain. (Id.) He also said he was unaware of any spine surgeons other than Dr. Gornet who use the test. (Id.)

The Petitioner testified that the Respondent stopped providing light duty on July 29, 2021, because the Respondent only allowed the accommodation for 180 days. (T. 16)

CONCLUSIONS OF LAW

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, specifically his neck injury, causally related to the accident?

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n,* 371 ILL. App. 3d 882, 888 (2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill. 2d 30, 36 (1982).

The Petitioner had degenerative changes in her lumbar spine and had previously undergone treatment for low back pain. Dr. Bernardi credited the Petitioner's current condition to this degeneration, while Dr. Gornet believed the accident aggravated the Petitioner's lumbar condition.

The medical records support Dr. Gornet's opinion. On the day after the accident, the emergency room performed lumbar X-rays, indicating an issue with the Petitioner's lumbar spine. The physical therapy the Petitioner underwent included lumbar treatment. The Chester Clinic lumbar MRI from January 2019 showed no disc bulge or abnormalities, while the July 2020 lumbar

MRI showed a central protrusion at L5-S1with a probable central annular tear. There was no evidence of any intervening causes for these changes.

The circumstantial evidence also backs up Dr. Gornet's opinion. The Petitioner worked full duty prior to the work accident but was unable to do so afterwards. She had ceased treatment for her lumbar spine in early March 2019 after a successful epidural injection. However, the injection in July 2020 only provided temporary relief, leading to the possibility that the Petitioner's condition had become more severe.

Therefore, the Arbitrator finds that the Petitioner has met her burden of proof establishing causal connection between the accident and the Petitioner's lumbar spine condition.

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).

Aside from his causation opinion, Dr. Bernardi believed the treatment the Petitioner received was reasonable and necessary – except for the epidural steroid injection, the lumbar MRI and excessive physical therapy. All of the procedures to which Dr. Bernardi objected are generally accepted procedures for diagnosis and treatment of lumbar spine conditions. Based on the causation finding above, the medical records and Dr. Gornet's testimony, the Arbitrator finds the treatment the Petitioner has received to be reasonable and necessary.

The Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 8. 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): 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 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (2001).

The Arbitrator agrees with Dr. Gornet that further treatment is necessary to diagnose, relieve or cure the effects of the Petitioner's injury. This includes the CT discogram, which is a commonly accepted diagnostic tool. Even Dr. Bernardi stated that the test can be used to rule out surgical intervention. The MRI spectroscopy is different. Dr. Bernardi said the test had not been approved by the FDA for use in low back treatment, while Dr. Gornet said it had. Nothing was produced at arbitration that would show the procedure has been approved. An internet search that included the FDA's website showed no such approval. The only literature found was Dr. Gornet's study.

Recently, the Appellate Court of Illinois Fifth District affirmed a Commission decision finding the use of MRI spectroscopy was not reasonable and necessary as a diagnostic tool for lower back pain. See *Lewis v. The Illinois Workers' Compensation Commission*, 2021 IL App (5th) 200302, filed September 24, 2021. There are other Commission decisions with similar findings. See *Cruse v. Choate Mental Health Center*, 19IWCC0419; *Streater v. Bi-State Development Agency*, 20IWCC0034; and *Burwell v. Walgreens*, 21IWCC0505.

The Arbitrator finds that the Petitioner is entitled to prospective medical care as recommended by Dr. Gornet, with the exception of MRI spectroscopy, and the Respondent shall authorize and pay for such care.

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

The parties dispute temporary total disability benefits for the period of July 31, 2021, through the date of trial on September 8, 2021. An employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Id.* at 121.

On December 16, 2019, Dr. Gornet ordered the Petitioner off work until March 23, 2020. (PX5, Deposition Exhibit 2) On June 17, 2020, he ordered her off work until July 18, 2020. (Id.) On July 18, 2020, he ordered her off work until a date in November 2020 that was illegible. (Id.) On January 10, 2021, Dr. Bernardi recommended restrictions of no patient contact, being allowed to change positions as needed, avoiding repetitive waist-level bending and twisting and not lifting more than 15-20 pounds. Dr. Gornet agreed with these restrictions at his deposition on March 18, 2021. The Petitioner testified that her restrictions were no longer accommodated after July 31, 2021.

Whether there was a work slip issued for light duty, the Respondent did have the Petitioner on light duty until long after Dr. Bernardi's recommendation and Dr. Gornet's agreement thereto. The only explanation for taking the Petitioner off that light duty was provided by the Petitioner.

Therefore, the Petitioner is entitled to temporary total disability benefits pursuant to Section 8(b) of the Act for 5 5/7 weeks, from July 31, 2021, through September 8, 2021.

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	20WC027653
Case Name	Mary Watson v. Kraft Heinz
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0392
Number of Pages of Decision	20
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	James Clune

DATE FILED: 10/13/2022

/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	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARY WATSON,

Petitioner,

vs. NO: 20 WC 27653

KRAFT HEINZ,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability (TTD) benefits and permanent partial disability (PPD) benefits, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 21, 2022 is hereby affirmed and adopted.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

October 13, 2022

CAH/pm
O: 10/6/22
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC027653
Case Name	WATSON, MARY v. KRAFT HEINZ
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	James Clune

DATE FILED: 1/21/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 19, 2022 0.37%

/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

Mary Watson
Employee/Petitioner

v.

Kraft Heinz
Employer/Respondent

Case # **20** WC **27653**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Collinsville**, on **October 26, 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 **October 20, 2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**49,920.00**; the average weekly wage was $**960.00**.

On the date of accident, Petitioner was **52** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**0.00** 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 $**any paid** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical expenses contained in Petitioner's Group Exhibit 1, pursuant to the fee schedule and directly to the medical providers, as provided in Section 8(a) and Section 8.2 of the Act. 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. Pursuant to the stipulation of the parties, Respondent shall receive a credit for all medical bills paid through its group medical plan, if any, under Section 8(j) of the Act. Respondent shall further hold Petitioner harmless from all claims or liabilities made by the group medical plan to the extent of such 8(j) credit.

Respondent shall pay Petitioner temporary total disability benefits of $**640.00**/week for the period **1/22/21 through 6/3/21**, representing **19** weeks, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the sum of $**576.00**/week for a period of **62.5** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused permanent partial disability to the extent of **12.5% loss of use of Petitioner's body as a whole** related to Petitioner's left shoulder injury. The Arbitrator further finds Petitioner is not entitled to permanent partial disability benefits for injuries sustained to her right knee or right elbow as she has no lingering issues or permanent disability and testified at trial she is not seeking benefits related to these body parts.

Respondent shall pay Petitioner compensation that has accrued from **6/3/21 through 10/26/21**, and shall pay the remainder of the award, if any, in weekly payments.

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

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

JANUARY 21, 2022

Arbitrator Linda J. Cantrell

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MARY WATSON,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 20-WC-027653
	)	
KRAFT HEINZ,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Collinsville on October 26, 2021 on all issues. On November 9, 2020, Petitioner filed an Application for Adjustment of Claim alleging injuries to her right cheek, right knee, right elbow, left shoulder, and body as a whole as a result of stepping on a spring and falling on October 20, 2020 while working for Respondent. The issues in dispute are accident, causal connection, medical bills, temporary total disability benefits, and the nature and extent of Petitioner's injuries. All other issues have been stipulated.

TESTIMONY

Petitioner was 52 years old, married, with no dependent children at the time of accident. Petitioner testified she worked for Respondent for almost 20 years as a machine operator. She testified that on 10/20/20 she sustained injuries when she stepped on a spring and fell. Petitioner testified that on that date she was working a light duty assignment as a result of a nonwork-related left hand condition. Her light duties involved placing boxes on a conveyor belt going from one room to another. When Petitioner arrived for her shift the line had malfunctioned due to a jam and was being addressed by maintenance. Petitioner attempted to clear the jam by using a metal extension pole as the conveyor belt was far above her head. When she walked around the conveyor belt, with the pole in her hands, she felt something under the ball of her right foot. Her foot rolled and she fell forward onto the concrete ground. She stated that the fall happened suddenly and the impact with the concrete floor dazed her. She laid there for a second, got up, and sat on a half pallet of boxes about one and a half feet off the ground. She looked around to see what would have caused her to fall and noticed a spring on the floor not far from her right foot. Petitioner picked up the spring and called for assistance. She immediately reported the accident to her supervisor.

Petitioner testified she bruised her right knee, scraped her left cheek, and had pain in her right elbow. She stated she hit the ground hard and had pain in her left shoulder. She testified she thought she would be fine and was directed to rest in the cafeteria for the remainder of her shift.

Video surveillance of the accident was viewed at arbitration. Petitioner identified herself and the conveyor belt in the video. She identified the area as System 5 where packs of Capri-Sun come out of a conveyor and go up into a spiral belt. The jam Petitioner attempted to dislodge was located far above her head that required a pole to reach. The video depicts Petitioner walking around the conveyor belt and falling forward onto the floor. Petitioner also reviewed still photographs taken from the video surveillance and she identified herself and the pole she was carrying. Petitioner was not able to identify whether her left foot was depicted in the photographs (RX1, Exhibit B, Page 5, photo D). Petitioner testified it was not her right foot depicted in the dashed circle on photograph E, Page 5. She viewed the video footage again and stated she saw her left foot but could not see her right foot because an object was blocking the view. Petitioner testified her right foot stepped on something that caused her to lose her balance and fall. She did not know it was a spring until she was sitting close to the ground on the pallets and saw the spring. Petitioner testified the spring should not have been in the department.

Petitioner testified she went to a scheduled follow up at Gateway Regional Medical Center (GRMC) on 10/22/20 for her nonwork-related left hand condition. She stated she informed the doctor of the injuries she sustained on 10/20/20. Petitioner continued to work and stated her body was sore. She testified that her right elbow and knee improved, but certain motions with her left arm were painful. Petitioner stated she did not stretch out her arms when she fell because she was carrying a pole and the fall was sudden. Petitioner underwent a left rotator cuff repair in December 2019 by Dr. Miller. She was released to full duty work following that surgery.

Petitioner testified she went to Dr. Sophie at GRMC on 11/2/20 for injuries related to the 10/20/20 accident. She was referred to Dr. Matthew Bradley who examined her on 11/23/20 for chief complaints of right elbow, right knee, and left shoulder pain. Dr. Bradley ordered a left shoulder MRI and physical therapy. She underwent surgery on 1/22/21 and was taken off work at that time. Petitioner stated she did not return to work for Respondent because she was terminated on 2/2/21 for “no call, no show”. Dr. Bradley released her at MMI on 6/3/21.

Petitioner stated Dr. Bradley did not recommend treatment for her right knee or elbow and her symptoms improved with time. She testified she is not seeking benefits related to those injuries. Petitioner testified her left shoulder improved following surgery, but she still has occasional aches and pains and is apprehensive about her level of activities or how she performs certain activities out of fear of reinjury. Her left shoulder does not restrict her from her current job activities, but she is careful to lift in the proper manner and protects her shoulder. Petitioner testified her shoulder injury has impacted her hobbies. She cannot ride a bike or hold her grandchildren for long periods of time. She cannot swing her grandchildren around. She takes Tylenol and Ibuprofen daily to manage her continued symptoms. She has difficulty sleeping at night, particularly because she cannot sleep on her left side.

Petitioner testified she has a history of "blacking out" where she remains coherent, but her ears ring and she breaks out in a sweat. She can tell when an episode is coming on and it improves after laying down and drinking water. She stated she has suffered this condition since seventh grade and has not had an episode in years. Petitioner testified she did not black out or faint on 10/20/20 and she did not intentionally fall.

On cross-examination, Petitioner admitted to undergoing left knee surgery in April 2017. Dr. Miller's medical records indicate Petitioner fainted at home and fell causing her to tear her left ACL.

Petitioner testified she gave the spring she found on the ground to her supervisor, Shannon Bouck. Petitioner stated she did not know what the spring went to or where it came from. She testified she initially viewed the surveillance video in the HR Office and Jim Striler was present. She stated she was not sure if the video that was observed at arbitration was the same video she viewed with Mr. Striler two days after the accident. However, she has viewed the video that was played at arbitration approximately 15 times.

Petitioner testified that when she stepped on the spring her foot rolled forward and then backward onto the ball of her foot, causing her to fall forward. She testified that as she sat on the boxes after she fell, she noticed the spring by her right foot. Petitioner testified she was not initially aware she stepped on a spring until she saw it after she fell.

Robbie Robertson testified on behalf of Respondent. Mr. Robertson is the Safety Coordinator and has worked for Respondent for twenty years. He testified there are closed-circuit television cameras in the location of Petitioner's accident, but only one camera view of the immediate area where Petitioner fell. Mr. Robertson testified he was not in the area when Petitioner fell and that while there were other employees in that area, none are visible in the video. Mr. Robertson reviewed the video of Petitioner's accident and pointed out that in the foreground in front of Petitioner, there is a conveyor system, support beam, case packing machine, yellow barrier, pedestal fan, and poles for the spiral conveyor. He testified that Petitioner walked through an open path by the yellow barrier.

Shelby Willoughby testified on behalf of Respondent. Ms. Willoughby was hired in October 2020 as Respondent's plant manager. Her duties include investigating workers' compensation claims and all safety incidents. During the course of her investigation of Petitioner's accident she came into possession of a spring that she retrieved from the former safety manager Jim Striler. It was Ms. Willoughby's understanding that this was the spring that Petitioner stepped on. Ms. Willoughby conducted an investigation to determine where the spring came from within the facility. She testified the spring is from a roller from an overhead conveyor. Ms. Willoughby testified the springs are encased in the conveyor rollers and do not come out unless the roller explodes or is cut open. She was not aware of a roller ever exploding. She stated that if there was a conveyor belt failure a work order would be submitted to replace the rollers. She testified there was a work order to replace rollers in August 2020 and the damaged rollers are placed in a recycle bin that all employees can access. She testified the spring Petitioner stepped on could not have come from a roller that was still fixed to the conveyor because the spring cannot come out of the roller unless it explodes or is cut open.

Mrs. Willoughby testified that every week at the end of production, fill rooms and secondary production are cleaned thoroughly. She stated the facility was cleaned three days prior to Petitioner's accident. She is not aware of any work accidents in Respondent's facility caused by stepping on a spring.

On cross-examination, Ms. Willoughby testified she has had some involvement in Petitioner's retaliatory discharge claim filed against Respondent. She testified that other operators would walk through the location of Petitioner's accident, but she had no knowledge if any operators walked through the area on 10/20/20. She agreed that any operator that walked through the area could have dropped the spring. Ms. Willoughby agreed that cleaning crews can miss things and she had no knowledge of whether there was or was not a spring on the ground where Petitioner fell. Ms. Willoughby testified that she could not say which conveyor roller was repaired/replaced in August 2020 without reviewing the work order because there are hundreds and hundreds of feet of overhead conveyor in the facility. Ms. Willoughby could not identify the overhead conveyor from which the spring came.

Petitioner testified on rebuttal that she did not take the spring from any metal hardware or retrieve it from a recycle bin. She stated she did not know where the recycle bin was located. She stated she did not have possession of the spring prior to her fall. Petitioner testified that when she came to work on 10/20/20, a boom was repairing the conveyor belt causing the line to be down for hours. She stated the boom was all over the conveyor line and it was possible the spring fell off the boom during repairs.

MEDICAL HISTORY

On 10/22/20, Petitioner presented to Gateway Regional Medical Center where she was seen by nurse practitioner Ashley Tyler for a scheduled follow up for a left wrist condition. Petitioner reported she stepped on a spring and fell forward on 10/20/20. She was prescribed Meloxicam for pain.

On 11/2/20, Petitioner was evaluated by Dr. Sophia Rostovtseva with complaints of body pain after a fall at work. Dr. Rostovtseva noted Petitioner worked as a machine operator and on 10/20/20 she injured her left cheekbone, neck, right knee, right elbow, and left shoulder when she stepped on a spring on the floor and fell on her left face. Physical examination revealed right elbow tenderness, left shoulder tenderness and decreased range of motion, and right knee tenderness. Petitioner also complained of neck pain and stiffness. Dr. Rostovtseva diagnosed Petitioner with a neck strain, right elbow pain, and left shoulder strain. Physical therapy was ordered and she was prescribed muscle relaxants. Petitioner was referred for orthopedic evaluation. Petitioner followed up with Dr. Rostovtseva on 11/13/20 and her symptoms remained unchanged.

On 11/23/20, Petitioner was examined by orthopedic surgeon Dr. Matthew Bradley for complaints of right elbow, right knee, and left shoulder pain. Dr. Bradley noted that on 10/20/20 Petitioner was attempting to clear an overhead jam and as she walked to the area, she "stepped on a spring and fell, landing face first." Petitioner advised Dr. Bradley she had a history of a left

rotator cuff tear and surgery in 2019. She stated she recovered from that injury with very mild lingering symptoms and was able to perform her work duties without restrictions prior to 10/20/20. Petitioner denied any history of injury to her right knee or elbow prior to 10/20/20. Physical examination of the left shoulder revealed impingement pain. X-rays of the left shoulder, right elbow, and right knee were negative for fractures. Dr. Bradley assessed right elbow strain, possible right knee ACL tear, and left shoulder derangement indicative of labral tear versus anterior shoulder strain. Dr. Bradley ordered physical therapy and recommended MRIs of the left shoulder and right knee. Petitioner was given light duty restrictions.

On 12/11/20, Petitioner underwent an MRI arthrogram of her right knee that revealed a chronically torn posterior cruciate ligament without acute change, intact menisci, mild patellofemoral degenerate changes, and a small Baker's cyst. An MRI of the left shoulder revealed a re-tear of the supraspinatus tendon distally near the prior anchor sights with thinning and irregularity of the cuff, and a possible tear or tenodesis with a surgical metallic artifact near the bicipital groove. On 12/17/20, Dr. Bradley recommended arthroscopic surgery of the left shoulder and strengthening of the quadriceps and hamstrings due to right knee pain.

On 1/22/21, Dr. Bradley performed an arthroscopic labral debridement, rotator cuff repair, and subacromial decompression. Petitioner was kept off work and retuned to Dr. Bradley on 2/4/21 reporting mild pain. Dr. Bradley ordered physical therapy and light duty work. Petitioner initiated physical therapy on 2/22/21 at King Spinal and Sports Rehabilitation.

On 3/15/21, Petitioner reported improvement in her left shoulder. Dr. Bradley recommended strength training and continued light duty work. On 4/29/21, Petitioner reported doing "exceptionally well" and denied any left shoulder pain. She felt that her range of motion and strength were normal after completing a full course of physical therapy. Dr. Bradley recommended that she continue home exercises to maintain her motion and strength. He suggested that she use Tylenol and anti-inflammatory medications as needed. Dr. Bradley increased her work restrictions and ordered her to return in two to three months.

On 5/13/21, Petitioner was evaluated by Dr. Lyndon Gross pursuant to Section 12 of the Act. Dr. Gross noted Petitioner was a packaging operator for Respondent where she had worked for 20 years. He noted that on 10/20/20 Petitioner tripped over a spring on the concrete floor while holding a large pole in front of her, causing injury to her left shoulder. Dr. Gross reviewed the medical records of Dr. Rostovtseva, Dr. Bradley, Dr. Mark Miller, and the MRI arthrogram of Petitioner's left shoulder dated 12/11/20.

Dr. Gross noted Petitioner's left shoulder surgery on 12/2/19 and that she was released to full duty work. He stated Petitioner did well following the 2019 surgery and had only mild pain with unrestricted activities until her work accident on 10/20/20. Dr. Gross noted the MRI scan following her work accident showed changes consistent with the previous rotator cuff repair as well as tearing of the rotator cuff anterior to the repaired area. He performed a physical examination and concluded that based on the mechanism of injury and his review of Petitioner's medical records, Petitioner sustained a left shoulder re-tear of the rotator cuff anterior to the previous repair and her condition was causally related to her work accident on 10/20/20.

Dr. Gross believed Petitioner was doing well following surgery with Dr. Bradley. She appeared to regain range of motion in her shoulder, and while she had mild provocative signs for rotator cuff pathology, she had good strength in her rotator cuff. He opined she did not require further treatment and could return to full duty work.

On 5/19/21, Petitioner was evaluated by Dr. Ryan Pitts pursuant to Section 12 of the Act related to her right knee. Dr. Pitts obtained a history that on 10/20/20 Petitioner was clearing a box jam on an overhead conveyor belt when she slid on a spring under her right foot and fell forward onto her face. He noted she did not fall directly onto her right knee. He performed a physical examination, reviewed medical records from Dr. Rostovtseva and Dr. Bradley, and a right knee MRI dated 12/14/20. Petitioner advised Dr. Pitts she previously had right knee surgery but denied any history of injury or treatment to her right knee following the surgery until her accident on 10/20/20. Dr. Pitts diagnosed Petitioner with pre-existing right knee osteoarthritis and a chronic degenerative posterior cruciate ligament tear. He did not believe the mechanism of injury caused a PCL injury and opined her symptoms were consistent with moderate osteoarthritic changes. Dr. Pitts recommended anti-inflammatories and physical therapy.

On 6/3/21, Petitioner returned to Dr. Bradley and reported her shoulder was improving with rehabilitation with only mild pain when sleeping. Physical examination revealed full motion and strength without severe pain. He recommended continued daily home exercises and anti-inflammatories as needed. Dr. Bradley released Petitioner at MMI.

On 6/24/21, Valentina Ngai, Ph.D. authored a biomechanical engineering report at the request of Respondent and testified by way of deposition on 10/21/21. Dr. Ngai is employed by Robson Forensic as a biomechanical engineer. Dr. Ngai has testified as an expert in workers' compensation and civil cases in both circuit and federal court. She was retained by Respondent to analyze and determine if Petitioner slipped or tripped on a spring at Respondent's facility.

Dr. Ngai viewed the video clip of Petitioner's fall in slow motion and isolated pictures from the clip. Dr. Ngai then applied principles of human gait mechanics, the stance phase and swing phase of walking, to determine body center of mass and Petitioner's body weight transfer. Dr. Ngai opined that Petitioner neither slipped nor tripped. She testified that just prior to falling Petitioner was able to plant her left foot, transfer her weight to her planted right foot, both feet being in "stance phase," and then she fell. Her right foot never moved, and she simply fell forward. There was neither a trip where her forward progress was suddenly stopped by an external force, nor a slip where one or the other of her weight bearing feet slid from beneath her due to a lack of friction on the floor. She stated Petitioner fell face forward to the floor from a balanced standing position.

On cross-examination, Dr. Ngai testified that approximately 90% of her work is performed for the purpose of litigation. Her last lecture was in January 2021 at the Missouri Organization of Defense Lawyers where she advertised she had a wealth of experience defending catastrophic injury cases. She stated it was possible she was featured in the October 2010 issue of a magazine called "For the Defense," but she could not recall seeing the magazine. Dr. Ngai testified she could not divulge her salary due to a confidentiality agreement. She charged $595.00 an hour for her work for Respondent but did not know how many hours she had

invested. Dr. Ngai stated she provides expert opinions in various fields such as biomechanics, admiralty, architecture, and alcohol and drug abuse investigation. Dr. Ngai admitted she did not visit Respondent's plant or examine the location of Petitioner's accident. She also did not analyze whether Petitioner's impact with the concrete floor could have caused an injury.

Dr. Matthew Bradley testified by way of evidence deposition on 10/22/21. Dr. Bradley is a board-certified orthopedic surgeon who performs five to eight surgeries per day, two to three days per week. He testified that approximately 30-40% of his practice is devoted to treating shoulder conditions, and approximately 50% of his practice is devoted to treating knee conditions. Dr. Bradley's testimony was consistent with his medical records. He stated that during Petitioner's fall she struck her right elbow and left shoulder and may have suffered a twisting type injury to her right knee. Dr. Bradley reviewed the video of the accident and noted it showed Petitioner falling face first as described in his records.

Dr. Bradley noted Petitioner's prior history of left shoulder surgery in 2019 from which she made a full recovery. She denied any history of right knee injury or right elbow treatment prior to 10/20/20. He performed a physical examination of Petitioner's left shoulder, right knee, and right elbow. He reviewed x-rays of the left shoulder, right elbow, and right knee and assessed Petitioner with a right elbow strain, possible ACL or PCL tear in the right knee, and possible anterior rotator cuff tear or labral tear in the left shoulder. He reviewed the MRIs and diagnosed a new rotator cuff tear anterior to the tear that was surgically addressed in her shoulder by Dr. Miller in 2019. He believed the new tear was acute. On review of the right knee MRI, Dr. Bradley observed a chronic PCL tear with acute findings of edema. He diagnosed a rotator cuff tear, exacerbation of Petitioner's underlying mild arthritis and PCL tear in the right knee, and a right elbow sprain or contusion.

Dr. Bradley testified that the video of Petitioner's fall and her description of the accident were consistent with the mechanism of injury that can cause a rotator cuff tear. He also believed that the mechanism of injury could have exacerbated Petitioner's underlying degenerative PCL tear. Intraoperatively, Dr. Bradley observed a full thickness tear of the supraspinatus which he believed to be acute in appearance. Dr. Bradley opined that Petitioner's fall on 10/20/20 was certainly a precipitating factor, if not the main factor, in the development of her rotator cuff tear.

Dr. Bradley further opined that Petitioner's work accident resulted in a sprain or contusion to her right elbow and exacerbation of her underlying chronic right knee condition. He reviewed Dr. Gross' report and agreed with Dr. Gross' interpretation of the left shoulder MRI. While Dr. Bradley did not have an opportunity to review the prior medical records of Dr. Miller, he reviewed the summary of those records contained in Dr. Gross' report and believed that summary was consistent with what Petitioner described to him. Dr. Bradley agreed with Dr. Gross that the mechanism of injury was a recurrent tear of Petitioner's rotator cuff tear anterior to the previous repair and that her condition was causally related to her work accident.

Dr. Bradley also reviewed Dr. Pitts' report concerning Petitioner's right knee. Dr. Bradley testified that Dr. Pitts' physical examination findings were consistent with his physical examination of Petitioner. He agreed with Dr. Pitts' diagnosis of preexisting arthritis and PCL

tear, but opined the work accident exacerbated the underlying arthritic condition as it made her otherwise asymptomatic right knee condition temporarily symptomatic.

Dr. Bradley reviewed the biomechanical report of Dr. Valentina Ngai. He testified that her report did not impact his causation opinions as it focused more on whether or not Petitioner stepped on a spring. He stated the video clearly shows Petitioner falling very hard face first.

CONCLUSIONS OF LAW

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

The Act is a remedial statute, which should be liberally construed to effectuate its main purpose of providing financial protection for injured workers. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 149, 337 Ill.Dec. 707, 923 N.E.2d 266 (2010). According to the Act, in order for a claimant to be entitled to workers' compensation benefits, the injury must "aris[e] out of" and occur "in the course of" the claimant's employment. 820 ILCS 305/1(d) (West 2014). Case law interpreting the Act makes it clear that both elements must be present at the time of the accidental injury in order to justify compensation. *Orsini*, 117 Ill. 2d at 44-45, 109 Ill.Dec. 166, 509 N.E.2d 1005; *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483, 137 Ill.Dec. 658, 546 N.E.2d 603 (1989); *Fire King Oil Co. v. Industrial Comm'n*, 62 Ill. 2d 293, 294, 342 N.E.2d 1 (1976); *Wise v. Industrial Comm'n*, 54 Ill. 2d 138, 142, 295 N.E.2d 459 (1973). 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, 278 Ill.Dec. 70, 797 N.E.2d 665 (2003) (collecting cases).

The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 366-67, 5 Ill.Dec. 854, 362 N.E.2d 325 (1977). "A compensable injury occurs 'in the course of' employment when it is sustained while a claimant is at work or while he performs reasonable activities in conjunction with his employment." *Wise*, 54 Ill. 2d at 142, 295 N.E.2d 459. The record is clear that Petitioner was, in fact, at work and in the middle of her shift, when she sustained accidental injuries. Moreover, she was performing activities in conjunction with her employment when she was working on a line and attempting to clear a jam in an overhead conveyor. For these reasons, Petitioner has met her burden of proving that her accident occurred in the course of her employment with Respondent.

An injury arises out of one's employment if its origin is in a risk connected with or incidental to the employment so that there is a causal relationship between the employment and the accidental injury. *Orsini v. Indus. Comm'n*, 509 N.E.2d 1005 (1987). 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.* Specifically, the Court has acknowledged the existence of three categories of risk: (1) risks distinctly associated with her employment; (2) personal risks; and (3) neutral risks which have no particular

employment or personal characteristics. *Springfield Urban League v. Illinois Workers' Comp. Comm'n*, 2013 IL App (4th) 120219WC, 990 N.E.2d 284, 290 (4th Dist. 2013). Injuries resulting from a neutral risk generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public. *Id.* This increased risk may be qualitative, such as some aspect of employment that contributes to risk, or quantitative, such as the number of times they are required to encounter the risk. *Id.*

The first category of risks involves risks that are distinctly associated with employment. "Employment risks include the obvious kinds of industrial injuries and occupational diseases and are universally compensated." *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162, 247 Ill.Dec. 22, 731 N.E.2d 795. Examples of employment-related risks include "tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work site, or performing some work-related task which contributes to the risk of falling." *First Cash Financial Services*, 367 Ill. App. 3d at 106, 304 Ill.Dec. 722, 853 N.E.2d 799. Injuries resulting from a risk distinctly associated with employment are deemed to arise out of the claimant's employment and are compensable under the Act. *Steak 'n Shake*, 409 Ill.Dec. 359, 67 N.E.3d 571 (2016).

The first step in risk analysis is to determine whether the claimant's injuries arose out of an employment-related risk—a risk distinctly associated with the claimant's employment. *Mytnik*, 2016 IL App (1st) 152116WC, ¶ 39, 409 Ill.Dec. 491, 67 N.E.3d 946; *Steak 'n Shake*, 2016 IL App (3d) 150500WC, ¶ 38, 409 Ill.Dec. 359, 67 N.E.3d 571. A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer; (2) acts that he or she had a common-law or statutory duty to perform; or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties. *Caterpillar Tractor*, 129 Ill. 2d 52, 58, 133 Ill.Dec. 454, 541 N.E.2d 665; see also *The Venture—Newberg-Perini, Stone & Webster v. Illinois Workers' Compensation Comm'n*, 2013 IL 115728, ¶ 18, 376 Ill.Dec. 823, 1 N.E.3d 535; *Sisbro*, 207 Ill. 2d at 204, 278 Ill.Dec. 70, 797 N.E.2d 665.

The Arbitrator finds that Petitioner's injuries arose out of an employment-related risk because the evidence supports that at the time of the occurrence, she was performing an act distinctly associated with her employment as a machine operator. The act of stepping on a spring while walking to a conveyor belt to clear a jam is a risk incidental to Petitioner's employment. There was no evidence that clearing jams on the conveyor belt were not part of Petitioner's job duties or that she was instructed not to perform such act. Petitioner testified that her light duty work assignment was to place boxes on the conveyor line. Her job duties required her to keep the line moving. When the line became jammed, Petitioner obtained a long extension pole and walked toward the area of the jam.

Petitioner's act of unjamming the conveyor line is also an act that Respondent would reasonably expect her to perform. Petitioner's job was to place boxes on the conveyor. It is reasonable that Petitioner felt it her duty to unjam the line to keep the line moving. Respondent provided a long extension pole for this purpose.

The Arbitrator is not persuaded by the opinion of biomechanical engineer, Dr. Ngai, who testified Petitioner could not have slipped or tripped on a spring because her gait pattern was not

consistent with a slip or trip. Dr. Ngai did not visit Respondent's facility to examine or investigate the area in which Petitioner fell. Dr. Ngai did not offer any opinions as to the cause of Petitioner's fall or whether the force of the fall could have caused Petitioner's injuries. Dr. Ngai's opinions are based on her review of Petitioner's medical records and a video of the accident.

The Arbitrator notes the video depicts Petitioner walking at a steady pace carrying a long extension pole in her right hand. She turns left to walk through a narrow path where a majority of her body is obscured by a yellow barrier. Petitioner can be seen through a portion of the barrier placing her left foot on the floor as she walked. Petitioner then placed her right foot forward and immediately fell forward, striking the concrete floor with force. Petitioner's entire body is obscured just prior to her fall, including her right foot and the ground where she stepped. Petitioner laid on the floor face down for 4 to 5 seconds before she rolled over on her right side and placed her hands and knees on the floor prior to standing up. The video footage ends just as Petitioner is standing up.

Dr. Ngai testified that just prior to falling Petitioner was able to plant her left foot, transfer her weight to her planted right foot, both feet being in "stance phase," and then she fell. She further testified that Petitioner's right foot never moved. Pursuant to the Arbitrator's review of the video footage, it is not apparent that Petitioner "planted" her right foot or transferred her weight to her right foot before she fell. Petitioner's right foot is not depicted on the video due to objects obscuring most of Petitioner's body including her right foot. The video also does not depict Petitioner in "stance phase" when she fell, and contradicts Petitioner's testimony that she stepped on a spring and her foot was not on the ground. Because Petitioner's right foot is obscured, it is not apparent that her right foot "never moved" as concluded by Dr. Ngai.

The Arbitrator finds Petitioner's testimony credible and consistent with video footage of the accident. Petitioner testified that when she was walking around the yellow barrier to clear the overhead conveyor, she stepped on a spring with her right foot, felt it roll underneath the ball of her foot, lost her balance, and fell forward. Petitioner testified she first noticed the spring when she was sitting on boxes low to the ground after she fell. The Arbitrator notes that the video footage did not depict any activity after Petitioner stood up from the ground. Petitioner gave the spring to her supervisor and identified it as the cause of her fall. There is no dispute that similar springs are contained in the conveyor rollers of which there are hundreds and hundreds throughout Respondent's facility. Although it is unrebutted that the springs are encased in the conveyor rollers and can only come out if the roller explodes or is cut open, Petitioner testified that maintenance was working on the overhead conveyor belt all morning and into her afternoon shift. Respondent testified that the room was thoroughly cleaned once per week which was three days prior to Petitioner's accident. Respondent agreed that other employees had access to the area where Petitioner fell. Other than Petitioner's explanation for the cause of her injuries, there was no other explanation or alternative theory offered as to what may have caused Petitioner to lose her balance and fall.

Based on the above, the Arbitrator finds that Petitioner sustained her burden of proof in establishing that she sustained 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 finds that Petitioner's current condition of ill-being in her left shoulder is causally connected to her work injury of 10/20/20. Both Dr. Bradley and Respondent's Section 12 examiner, Dr. Gross, opined that Petitioner's left shoulder injury and ultimate need for surgery was causally related to her work accident.

With respect to Petitioner's right knee and right elbow conditions, the Arbitrator finds that Petitioner met her burden of proof on causal connection. Petitioner denied any complaints of right knee or right elbow pain or injuries prior to her work accident. Following her work accident, Petitioner developed an immediate onset of pain in both her right knee and elbow which necessitated conservative management in the form of physical therapy and imaging studies. While Dr. Pitts did not believe that Petitioner's imaging studies showed any evidence of acute pathology, nor did he believe that her mechanism of injury was consistent with an injury to her right knee, the Arbitrator finds the opinion of Dr. Bradley more persuasive. Dr. Bradley testified that he reviewed the video of the accident and he indeed believed that the mechanism of injury, just as Petitioner described, could have temporarily exacerbated her underlying right knee arthritis. This is corroborated by the chain of events as Petitioner's right knee and right elbow were pain free prior to her work accident and became symptomatic following the accident.

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

Based upon the above findings as to accident and causal connection, the Arbitrator finds that the medical treatment rendered to Petitioner has been reasonable and necessary in the quest to cure Petitioner of the effects of her work-related injuries. With respect to Petitioner's left shoulder, both Dr. Bradley and Dr. Gross agreed Petitioner required left shoulder surgery that was causally connected to her work injury. With respect to Petitioner's right knee and right elbow, Petitioner's clinical course supported Dr. Bradley's opinion that her work accident temporarily exacerbated her preexisting knee condition and caused a strain to her elbow. Petitioner and Dr. Bradley both testified that with conservative management her knee and elbow symptoms dissipated and did not require further management beyond imaging studies and therapy.

Respondent shall therefore pay the medical expenses contained in Petitioner's Group Exhibit 1, pursuant to the fee schedule and directly to the medical providers, as provided in Section 8(a) and Section 8.2 of the Act. 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. Pursuant to the stipulation of the parties, Respondent shall receive a credit for all medical bills paid through its group medical plan, if any, under Section 8(j) of the Act. Respondent shall further hold Petitioner harmless from all claims or liabilities made by the group medical plan to the extent of such 8(j) credit.

Issue (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 (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. Industrial Comm'n*, 126 Ill.App.3d 739, 743, 467 N.E.2d 1018, 81 Ill.Dec. 896 (1984).

Petitioner was taken off work on 1/22/21 when she underwent left shoulder surgery by Dr. Bradley. She was released to light duty work on 2/4/21. Petitioner testified she was terminated by Respondent on 2/2/21 for "no call, no show". The Arbitrator notes that Dr. Bradley had not returned Petitioner to work at the time she was terminated, and she had not yet attended a post-surgical follow up appointment with Dr. Bradley or engaged in post-surgical treatment. Petitioner was released to full duty work without restrictions on 6/3/21.

Respondent claims Petitioner is not entitled to temporary total disability benefits on the basis its disputes accident. Given the above findings with respect to accident, the Arbitrator finds Petitioner is entitled to temporary total disability benefits from 1/22/21 through 6/3/21, representing 19 weeks.

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

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment**: Neither Party submitted an AMA rating. Therefore, the Arbitrator gives no weight to this factor.

(ii) **Occupation**: Petitioner testified that she is currently working full duty for a new employer. Her injuries have made her apprehensive when she lifts things at work and she is vigilant to protect her left shoulder from further injury. The Arbitrator places greater weight on this factor.

(iii) **Age**: Petitioner was 52 years old at the time of her injury. She must live and work with her disability for an extended number of years. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity**: Petitioner was terminated by Respondent on 2/2/21. Petitioner has obtained employment and her injuries have not hindered her ability to work full duty. The Arbitrator places some weight on this factor.

(v) **Disability**: Petitioner sustained a recurrent left shoulder rotator cuff tear which necessitated an arthroscopic labral debridement, rotator cuff repair, and sub acromial decompression. With respect to her right elbow and right knee, Petitioner's conditions returned to their baseline with rest, activity modification, and physical therapy shortly after the accident. Petitioner testified that despite the improvement from surgery and physical therapy, she continues to have residual symptoms in her left shoulder. She has aches and pains which require the daily use of over-the-counter medications. She is apprehensive and careful performing activities to prevent reinjury. She cannot ride a bike or hold her grandchildren as long as she did prior to her work accident. Petitioner testified she does not have any lingering symptoms in her right knee or elbow and is not seeking a permanency award for those injuries.

Based upon the foregoing evidence and factors, the Arbitrator orders Respondent to pay Petitioner the sum of $**576.00**/week for a period of **62.5 weeks**, as provided in Section 8(d)2 of the Act, because the injuries sustained caused permanent partial disability to the extent of **12.5% loss of use of Petitioner's body as a whole** related to Petitioner's left shoulder injury. The Arbitrator further finds Petitioner is not entitled to permanent partial disability benefits for injuries related to her right knee or right elbow as she has no lingering issues or permanent disability and testified at trial she is not seeking benefits related to these body parts.

Respondent shall pay Petitioner compensation that has accrued from **6/3/21 through 10/26/21**, and shall pay the remainder of the award, if any, in weekly payments.

Arbitrator Linda J. Cantrell DATED:

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC034859
Case Name	Jerry Potts v. City of Decatur
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0393
Number of Pages of Decision	15
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Kevin Morrisson
Respondent Attorney	Mark Jackson

DATE FILED: 10/13/2022

/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

JERRY POTTS,

Petitioner,

vs. NO: 13 WC 34859

CITY OF DECATUR,

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 (TTD) benefits and permanent partial disability (PPD) benefits, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 6, 2022 is hereby affirmed and adopted.

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

October 13, 2022

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

CAH/pm
O: 10/6/22
052

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC034859
Case Name	POTTS, JERRY v. CITY OF DECATUR
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	Kevin Morrisson
Respondent Attorney	Mark Jackson

DATE FILED: 1/6/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 4,2022 0.22%

/s/ Dennis OBrien, Arbitrator

Signature

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

JERRY POTTS
Employee/Petitioner

v.

CITY OF DECATUR
Employer/Respondent

Case # **13** WC **034859**

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 **October 28, 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 **April 9, 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.

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

In the year preceding the injury, Petitioner earned $**44,008.12**; the average weekly wage was $**846.31**.

On the date of accident, Petitioner was **63** years of age, ***single*** with **no** dependent children.

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 its group medical plan under Section 8(j) of the Act.

ORDER

Petitioner has failed to prove that he suffered an accident on April 9, 2013, which arose out of and in the course of his employment by Respondent.

Petitioner's claim for compensation is therefore denied.

Having found that Petitioner's injuries are not compensable under the Act, all other issues are declared moot.

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

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

Signature of Arbitrator

JANUARY 6, 2022

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner

Petitioner testified that on the date of arbitration he was 71 years old and retired, having retired in 2013. Prior to 2013 he said he worked for Respondent for almost 21 years as a service worker. As a service worker he did a variety of work for the Engineering Department and the Public Works Department of the city, even writing parking tickets at times. He identified Petitioner Exhibit 1 as a letter he wrote his attorney on February 14, 2019 describing his job duties. The exhibit also included photographs of various machinery and vehicles he used in performing his duties. He said from 1992 to 1999 he worked in traffic control. He noted the thermal plastic machine was very heavy and pushing it up and down hills was quite hard. Another machine was for painting concrete, while another is a two man post hole digger which vibrated, shook and jerked, and the worker had to hold the throttle. It is the machine in the photograph with an auger on it.

Petitioner identified another machine which would be rolled and would put down temporary tape for temporary road repairs. He said it was very heavy but it did not vibrate. Another machine on page one of the exhibit was a pressure washer with pressure up to 3000 pounds per square inch and was very hard to hold on to. The last photograph on page one was a hammer drill which vibrated and jerked up and down. When asked how often he used these pieces of equipment Petitioner said, "Periodically all the time pretty much." He said they were used equally and they worked eight hour days.

Petitioner identified the vehicles on page two of Petitioner Exhibit 1 as those he worked with from 1993 to 2013 when he was in the Public Works Department. He said he would do concrete, asphalt repair, asphalt replacement, sewer work, and forestry work. He identified on page two an end loader, which he would operate using the steering wheel, he would use levers to raise and lower the buckets, "slam banging around in dirt piles, etc." Another photograph showed the old style truck they used at the City, with another photograph showing the gearshifts for raising and lowering the truck bed and the snow plow. Another snow photograph showed a street sweeper used on the streets to sweep up the mess. He said it vibrates and jerks. He said he used these types of machines almost every day, for eight hours.

Petitioner said the page three photographs showed a forestry truck, and he would take chainsaws up in the bucket and trim tree limbs. He said he did not do that as often as might be thought. He identified another piece of equipment as a roller, which was used in asphalt repair. Another photograph showed a jumping jack. It was used to pound sand, rock, or dirt to compress it. When started it would begin jumping up and down. He said it was quite hard to handle. He said the next tool on the page was a vibrator for concrete, which he would operate by hanging on to it while it condensed the concrete while it vibrated. He said the operator would have to hold onto it while it jerked.

Petitioner testified that one photograph on page four was of a concrete saw, saying that it required a lot of hand strength and vibrating to cut asphalt or concrete to make repairs. Petitioner said he drove almost all vehicles that Respondent had, including those photographed in the exhibit and snowplows. He said he spent a lot of time on the concrete crew repairing or replacing sidewalks. He said they would do 300 feet of sidewalks a day, setting up 150 feet while actually pouring 150 feet. He said that in doing that he would use the vibrator pictured on page three, as well as all of the hand tools pictured on page four. They were used to pour the concrete, lay it down, and finish it. Petitioner said he also did a lot of jackhammering, a photograph of the machine being at the bottom of page 3.

Petitioner said he was under some restrictions after 1995 as he had several heart attacks and open heart surgery in 1995. He therefore worked light duty from 1995 until the time of his retirement in 2013.

Petitioner testified that while operating this machinery and tools there were a lot of times when he noticed numbness in both of his hands. He said this would happen when the machines were shaking and vibrating, demonstrating this by holding his hands in front of him as if he were holding a handle.

Petitioner said he had diabetes for years, he could not remember when that began.

Petitioner said that when he retired from the city in 2013 he went to his primary care doctor, Dr. Khan, who sent him to Dr. Collins at Midwest Neurology Associates for an EMG study. He said he was then told he had carpal tunnel in both hands. He said he saw Dr. Kefalas' assistant on February 4, 2014 as he had 10 stents and was told to wait a year after having one put in as no doctor would operate on you for a year. He said in the year or so between the EMG test and his seeing Dr. Kefalas the hands continued to tingle and fall asleep.

Petitioner said that once he was finally cleared for surgery Dr. Kefalas performed the right hand carpal tunnel surgery, on November 22, 2016. He said that following the surgery he still had tingling occasionally and he noticed he was not as strong as he had been. He said the last time he saw Dr. Kefalas would have been on February 3, 2017.

Petitioner said he really did not notice his hand numbness except when he was performing his various work activities. He said he did not report the accident before 2013 because his work with the vibration, the driving, the snowplow operation all were having an impact on his hands.

On cross examination when asked if Petitioner Exhibit 1 was drafted at his attorney's request, Petitioner initially said it was not. He said he had a computer at home and had researched it, put it on paper, and sent it to his attorney, then adding that he did not know if his attorney asked for it. He said he probably researched it in 2015 or 2016, and the February 2019 date on the top of the exhibit was probably when he sent it to his attorney.

Petitioner agreed that he had other health issues, including serious heart issues including a triple bypass surgery in 1995. He said that technically he was placed on light duty in 1995, and that he worked under basically those restrictions for the rest of his time with the City. He was not to do heavy lifting over 40 pounds, and no prolonged or heavy strenuous exertions or activities. He said he worked with these restrictions thereafter, saying at times he and the City disagreed on what work he should do, that the supervisors had no concern about light duty.

Petitioner said he thought he advised the City of his carpal tunnel symptoms after he retired, and that was the only time he reported it to them.

Petitioner agreed that he had diabetes, and when asked if there were times when it was not well controlled, he said, "Not really. I try to do the best I can with that."

He said he also had hypothyroidism which was treated by Dr. Khan.

MEDICAL EVIDENCE

Pre-April 9, 2013 Medical Treatment:

Petitioner's problems when seen from April 4, 2011 through March 4, 2013 were for general health issues including his heart, diet and diabetes, foot and leg pain, but not his hands. They at times describe Petitioner's diabetes as "uncontrolled," and "very uncontrolled." (PX 2 p.22-53)

When seen on April 8, 2013 by Dr. Khan, Petitioner did tell him of tingling in his fingers which was worse with driving. Dr. Kahn noted Petitioner had carpal tunnel in both hands. (PX 2 p.20,21)

Post-April 9, 2013 Medical Treatment:

Petitioner was seen on July 19, 2013 by Dr. Kahn. He made no hand complaints on this date. Diabetes is mentioned at length in this note. (PX 2 p.17)

On May 8, 2013 Petitioner was seen at Dr. Khan's request by Dr. Collins. An EMG/NCV was performed on that date, which Dr. Collins interpreted to show findings indicative of mild to moderate right carpal tunnel syndrome, with no evidence of carpal tunnel on the left. Dr. Collins noted that Petitioner's right median nerve motor terminal latency was prolonged at 4.4 msec, and that surgery was recommended for patients with latencies greater than 5. He therefore recommended conservative treatment such as neutral wrist splints. (PX 3 p.1,2)

Petitioner was seen by Dr. Kefalas on February 4, 2015. Petitioner advised that physician that he had filled out a workers' compensation report in May 2013 with the City of Decatur, describing his work there as driving and multiple activities. He had tried resting wrist splints for about a year but still noted right and left hand symptoms. Petitioner advised him that he was an insulin dependent diabetic. Dr. Kafalas noted the EMG findings of 2013. On physical examination Petitioner was found to have Dupuytren's disease in both hands and positive median nerve compression test and Phalen's test on the right. Dr. Kefalas diagnosed right carpal tunnel and said Petitioner should continue using the wrist splints and obtain better glucose control. He said he would be happy to proceed with carpal tunnel surgery once Petitioner's glucose control had improved. (PX 4 p.1,2)

When seen on September 4, 2015 by Dr. Kefalas, Petitioner said he had persistent carpal tunnel and lateral epicondylitis. He wanted to proceed with carpal tunnel surgery. On physical examination Petitioner also had very mild tenderness over the lateral epicondyle, negative Tinel's over the ulnar nerve at the elbow, negative Tinel's over the median nerve in the forearm but positive median nerve compression test at the right wrist. Dr. Kevalas said he would perform surgery on the right carpal tunnel once Petitioner was off Plavix and had clearance from his cardiologist. (PX 4 p.3)

Petitioner was seen a year later, on September 26, 2016. It was noted that he was approaching the point where Petitioner could cease using Plavix and have his carpal tunnel surgery. On physical examination no atrophy was found but he still had a positive median nerve compression test. Surgery was tentatively scheduled for November 2016. (PX 4 p.4)

Petitioner underwent right carpal tunnel release surgery on November 22, 2016. Dr. Kefalas noted that the transverse carpal ligament was quite thickened and the median nerve was quite compressed. (PX 4 p.11,12)

Petitioner was seen by Dr. Kefalas post-operatively on December 5, 2016, January 4, 2017, and February 3, 2017. On that last date Dr. Kefalas noted that Petitioner had full range of motion of the right arm, elbow, wrist and digits, sensation was intact and Petitioner's only complaint was of mild tenderness over the right thenar eminence. Dr. Kefalas felt Petitioner had done well following the surgery, declared him at maximum medical improvement and released him from care. (PX 4 p.5-9)

DEPOSITION TESTIMONY OF DR. JOHN KEFALAS

Dr. Kefalas was deposed as a witness for Petitioner. His curriculum vitae indicates he is a board certified orthopedic surgeon. His testimony reference his office visits, histories, complaints and physical examination findings was consistent with the summary above. He testified that he encouraged Petitioner to maintain tight blood glucose control. He said patients with poorly controlled diabetes can have nerves become affected and it can hinder potential wound healing if poorly controlled. He noted Petitioner had A1C when first seen of nine, which was indicative of a poor control of his blood sugars, that they normally want an A1C of below eight. He noted that no surgery could be immediately performed as Petitioenr was on a medication for patients who had recently had stents installed, Plavix, which was a blood thinner, and if operated on he might not stop bleeding. Petitioner was eventually cleared by his cardiologist for the surgery. (PX 5 p.6-13; Petitioner's Exhibit 1 of PX 5)

Dr. Kefalas said Petitioner had "pretty instant relief from release of his carpal tunnel." He said that postoperatively Petitioner's numbness had resolved. When last seen on February 3, 2017, he said Petitioner was doing quite well and was told to return if needed. (PX 5 p.13,14)

Dr. Kefalas said that there was an association of symptoms of carpal tunnel in patients with diabetes, and a higher association in people with out of control or poorly controlled diabetes. He said that as a person ages the incidence of carpal tunnel increases. Certain activities that require force of a repetitive nature has also been associated with the development of carpal tunnel syndrome. He said that activities such as using a chain saw for eight hours a day or using a jackhammer all day are known to be associated with the development of carpal tunnel syndrome due to the force required to do those activities, that it is possibly due to the force used to grip the tool. He said they did not know if it was due to prolonged gripping. When asked if driving heavy machinery could contribute to the development of carpal tunnel syndrome, Dr. Kefalas said he did not know, saying, "so hypothetically if you can show that that particular activity required significant force/posture over a prolonged period of time during one's day, then maybe there's an association." (PX 5 p.14-17)

Dr. Kefalas was then asked a hypothetical question about Petitioner working for over 20 years as an employee of Respondent in various departments from 1992 to 1999, using various machines. He was then

handed a copy of what was later introduced as Petitioner Exhibit 1 with the photos of tools and machines which Petitioner would have used up to 1999. It was noted Petitioner would testify that from 1999 to 2013 he would have worked in a different department, Public Works, and operated various equipment, including dump trucks, end loaders, street cleaners and would do snow removal, with his hand gripping the plow handle for up to 11 hour shifts, and that most of his job in his final ten years of work was driving trucks. It was noted that he had been under cardiologist-imposed restrictions of no lifting over 40 pounds and no activities requiring strenuous exertion since 2009, but that at time he exceeded those restrictions in his work. When asked if operating heavy vehicles such as those pictured could require more forceful gripping than a personal vehicle, the doctor said he did not know, he had never been in any of these vehicles and did not know how much force was required to operate them. He said he did not know of operating dump trucks, end loaders or street sweepers being associated with carpal tunnel syndrome, and he did not know if they were vibratory in nature or if driving had an association. He said that there was a possible association between carpal tunnel and the use of jackhammers or jumping jacks in development of or aggravation of carpal tunnel, if the person was required to do that for a prolonged period of time. Similarly, using a concrete saw eight hours per day could have an association with carpal tunnel syndrome. He said the sporadic or intermittent use of these tools would make the association less likely. (PX 5 p.17-27)

Dr. Kefalas said that a diabetic or obese person could also have work be a contributing factor for the development of carpal tunnel syndrome. He said that the non-occupational risk factors for developing carpal tunnel syndrome would be increasing age, obesity, and diabetes. He said a person could have all of those non-occupational risk factors and still have work be one of the contributing factors if the occupational factor generated significant force and repetition. (PX 5 p.28)

Dr. Kefalas said that if Petitioner testified that later in his career he had used the jumping jack, jackhammer, concrete mixer and asphalt saw, to a somewhat regular degree, that could hypothetically be a contributing factor to the development of carpal tunnel syndrome, depending on the force generated and the amount of time he spent performing these tasks. (PX 5 p.28,29)

Dr. Kefalas said Petitioner's prognosis was good and that he did not suggest any further treatment for Petitioner's lateral epicondylitis. (PX 5 p.29)

On cross-examination Dr. Kefalas said he first saw Petitioner on February 4, 2015, when Petitioner was age 65, and nearly two years after he ceased working for Respondent. The only knowledge he had of the date of onset of the symptoms was Petitioner's filling out a workers' compensation report in May of 2013. He said Petitioner told him of driving for Respondent and of doing various other activities, but there was no further specificity of what those other activities were, and he had no way of knowing whether those activities required forceful wrist flexion or extension. When seen in his office Petitioner did not tell him that he had been on restricted duty for the last three or four years of his employment with Respondent. Dr. Kefalas was shown a report of Dr. Kolas relating to Petitioner's restriction and said he had not seen it prior to the date of his deposition. (PX 5 p.29-32)

Dr. Kefalas said age is one of the risk factors that increased the odds of a person having carpal tunnel syndrome, and that Mr. Potts was 65 years of age. He said diabetes was another risk factor for carpal tunnel and that Petitioner was a poorly controlled diabetic. He said a poorly controlled diabetic who was 65 years of age

could certainly get carpal tunnel syndrome regardless of work activity. While Dr. Kefalas said he did not know if Petitioner's weight and height constituted obesity, an obese person could have carpal tunnel syndrome regardless of his work activities. (PX 5 p.33,34)

Dr. Kefalas said that if Petitioner had been working he would have released him to return to work after his surgery. (PX 5 p.35)

On re-direct examination Dr. Kefalas was asked if Petitioner's being found to have right hand carpal tunnel by EMG study in 2013 made it more likely than not that he would have had the condition for a period of time or for years before that, and he said he could not extrapolate backwards based upon a test which showed the condition existed at that one moment. The only time he could do that was with pregnant women who had fluid shifts during pregnancy and, once the child was delivered, the symptoms went away, he did not know of any other instances where that could be determined. He did say it was a condition which, barring a specific trauma, developed over time. (PX 5 p.36-38)

On recross examination Dr. Kefalas said there was no correlation between Dupuytren contracture and the development of carpal tunnel syndrome. (PX 5 p.39,40)

DEPOSITION TESTIMONY OF DR. LAWRENCE LI

Dr. Li was deposed as a witness for Respondent. He is a board certified orthopedic surgeon who, as part of his practice, performs carpal tunnel surgeries. He said he performed an independent medical examination of Petitioner at the request of Respondent on February 21, 2019. He said he received a history from Petitioner including his age, his working for Respondent from 1992 to 2013, performing a variety of jobs and a review of a document brought in by Petitioner showing him the vehicles he drove and the tools he used. Petitioner advised him he did a variety of activities and that 80 to 90 percent of his activities involved driving. Petitioner advised him that he retired in 2013, that he continues to ride a motorcycle, which he had done for over 20 years, and he enjoyed golfing. He told Dr. Li that as early as 1999 or 2000 he noticed his right hand would go to sleep but it wasn't until 2013 when he saw Dr. Khan for his condition that he knew he had carpal tunnel syndrome, as shown by Dr. Collins' EMG. Petitioner said he had surgery by Dr. Kefalas which had given him significant relief. (RX 1 p.5-8)

Dr. Li said he got a history of comorbidities which included insulin-dependent diabetes since 1995, hypothyroidism for at least five years, and being in his 60s. He said his weight placed him right around being obese, he had a higher BMI. Dr. Li reviewed medical records. Dr. Li was shown a copy of a report by Dr. Kola from 2009 which placed Petitioner on restricted duty, and he said the restrictions mentioned in that report were consistent with his discussions with Petitioner regarding the activities he did for Respondent. (RX 1 p.8-19)

Dr. Li said that his physical examination of Petitioner revealed a well-healed scar on the right hand, intact sensation in the median and ulnar distributions and no evidence of atrophy in the hand. Provocative testing for carpal tunnel was normal as was his range of motion. He said it was essentially a normal examination. He said Petitioner had made a great recovery. (RX 1 p.10,11)

Dr. Li was of the opinion that, assuming Petitioner's age, obesity, uncontrolled diabetes, hypothyroidism and his work activities as noted in his conversation with Petitioner, that Petitioner's work duties with Respondent did not cause or aggravate Petitioner's carpal tunnel syndrome. (RX 1 p.11)

On cross examination Dr. Li said he did not disagree with Dr. Kefalas' treatment of Petitioner, he thought Dr. Kefalas had done a great job. He agreed that carpal tunnel syndrome was multifactorial and that use of vibratory tools was one of the most obvious contributing factors in the development of Petitioner's condition and that prolonged forceful gripping can be associated with it as well. When asked if the use of vibratory tools or forceful gripping for long period of time along with the other comorbidities mentioned could lead to the development of carpal tunnel syndrome, Dr. Li said it would depend on how much he did of those activities. (RX 1 p.12,13)

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 9. 2013, 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's description of his work was broken into two groups, one while working with Traffic Engineering from 1992 to 1999 and the other while working with Public Works from 1999 until his retirement in 2013. Most of the power tools he described using were in the pre-1999 years. The vast majority of his post-1999 work involved driving trucks. Petitioner did not quantify how long or how often he used any of the equipment or any of the vehicles. He said the tools/machines he used in traffic engineering were "periodically all the time, pretty much." He did not indicate how many hours a day he used a tool or machine, nor did he describe how many days per week or month he might do one tool or machine. He did not quantify how much of his day might have been in meetings, traveling, waiting for others, etc. He just said he worked eight hour days. He did mention using concrete saws and chainsaws while doing different tasks, but he did not say how often or for how long, other than to say that his chainsaw work in a bucket truck was not as often as you might think. Petitioner agreed he was for many years prior to retirement working with a restriction of no lifting over 40 pounds and no prolonged heavy or strenuous exertions or activities. That restriction would limit how many of the tasks he described could be done, totally eliminating some of them. Petitioner testified that he and the City at times disagreed on what he should do, saying that his supervisors had no concern about light duty. He did not describe the nature of those disagreements, how often they occurred or what, if anything, outside of his restrictions he was asked or ordered to do.

Some pre-April 9, 2013 medical records of Dr. Khan were introduced into evidence by Petitioner. They indicate that in 2011, 2012, and 2013 Petitioner was not complaining of his hands, and that at times his doctor described his diabetes as "uncontrolled," and "very uncontrolled. (emphasis in original) Petitioner on April 8, 2013 complained Dr. Khan of tingling in his fingers. Dr. Khan referred Petitioner to Dr. Collins, whose EMG

showed evidence of right carpal tunnel syndrome, and to Dr. Kafalas, who performed surgery on Petitioner's right hand on November 22, 2016, after Petitioner had gotten clearance for surgery from his cardiologist who had placed stents in Petitioner's arteries a year or so earlier. When deposed Dr. Kafalas testified there was an association of symptoms of carpal tunnel in patients with diabetes, with an even higher association in people with out of control diabetes. He got a very minimal work history from Petitioner and even when given a hypothetical by Petitioner's attorney and shown the photographs introduced at arbitration, Dr. Kefalas said that with the exception of using a chain saw for eight hours a day or using a jackhammer all day, he did not know if the activities described would cause carpal tunnel syndrome. In regard to driving vehicles Dr. Kefalas said that "hypothetically if you can show that that particular activity required significant force/posture over a prolonged period of time during one's day, then maybe there's an association." Again, there was no quantification by Petitioner of how much force was required to do any of these driving jobs, nor was there any testimony as to how much time Petitioner actually operated a truck or other piece of equipment at any one time or even an average amount for a day or week. The only quantification given by Petitioner was that he could be called on to drive a snow plow for an eleven hour shift, but he did not say how often that occurred, and by its very nature it is a seasonal and intermittent activity. Dr. Kefalas specifically said that he did not know if operating the vehicles from 1999 to 2013 required more forceful gripping than a personal vehicle, saying he had never been in any of these vehicles and did not know how much force was required to operate them. Petitioner did not testify in regard to how much pressure was required in gripping the steering wheel to drive these vehicles. He said he did not know if operating dump trucks, end loaders or street sweepers was associated with carpal tunnel syndrome, or if driving had such an association. While Dr. Kefalas testified that if Petitioner testified that later in his career he used the jumping jack or the jackhammer, concrete mixer or asphalt saw to a somewhat regular degree, that could hypothetically be a contributing factor. But Petitioner did not quantify the use of any of those machines in any way, and his history to Dr. Li would be contrary to that, as he told Dr. Li that 80 to 90 percent of his activities involved driving.

Dr. Kefalas testified that a poorly controlled diabetic who was 65 years of age could certainly get carpal tunnel syndrome regardless of work activity. The medical records of both Dr. Khan and Dr. Kefalas indicate Petitioner's diabetes was uncontrolled.

Dr. Li while performing his independent medical examination reviewed the previous medical records and took a history from Petitioner of 80 to 90 percent of Petitioner's work involving driving. He also noted that Petitioner told him that he was a motorcyclist, and had been for over 20 years, an activity which by its very nature requires the gripping of handlebars and vibration of a motor. Dr. Li's physical examination was normal, which was consistent with Petitioner's already having had the carpal tunnel surgery by Dr. Kefalas. Dr. Li was of the opinion that Petitioner's work duties with Respondent did not cause or aggravate Petitioner's carpal tunnel syndrome, based upon Petitioner's age, obesity, uncontrolled diabetes, hypothyroidism and the work activities described to him by Petitioner. When asked on cross examination if the use of vibratory tools or forceful gripping for long periods of time along with the comorbidities previously mentioned could lead to the development of carpal tunnel syndrome, Dr. Li said it would depend on how much of the activities Petitioner performed. His opinion is therefore consistent with the opinions of Dr. Kafalas. Again, no proof was introduced of how long or when Petitioner worked with any of the tools or machines other than the history to Dr. Li that 80 to 90 percent of his time involved driving. Petitioner did not contradict that history at arbitration.

The Arbitrator finds that Petitioner has failed to prove that he suffered an accident on April 9, 2013, which arose out of and in the course of his employment by Respondent. This finding is based upon the fact and opinion summary above.

Petitioner's claim for compensation is therefore denied.

Having found that Petitioner's injuries are not compensable under the Act, all other issues are declared moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC033308
Case Name	Bonnie F Holland v. State of Illinois – Warren G Murray Developmental Center
Consolidated Cases	15WC029432; 17WC037186;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0394
Number of Pages of Decision	27
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Nathan Lanter
Respondent Attorney	Natalie Shasteen

DATE FILED: 10/13/2022

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Bonnie Holland,

Petitioner,

vs. NO: 14WC 33308

State of Illinois/Warren G. Murray
Developmental 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 temporary total disability, causal connection, medical expenses, prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 24, 2022, is hereby affirmed and adopted.

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

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.

October 13, 2022

MP:yl
o 10/6/22
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	14WC033308
Case Name	HOLLAND, BONNIE F. v. STATE OF ILLINOIS/WARREN G. MURRAY DEVELOPMENTAL CENTER
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	24
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Nathan Lanter
Respondent Attorney	Natalie Shasteen

DATE FILED: 2/24/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 23, 2022 0.71%

/s/ Linda Cantrell, Arbitrator
Signature

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

February 24, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Bonnie F. Holland
Employee/Petitioner

v.

State of Illinois/Warren G. Murray Developmental Center
Employer/Respondent

Case # **14** WC **033308**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin**, on **12/21/21**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **7/6/2014**, 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 the accident ***was*** given to Respondent.

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

In the year preceding the injury, Petitioner earned $**47,003.93**; the average weekly wage was $**903.92**.

On the date of accident, Petitioner was **48** years of age, ***married*** with **1** dependent child.

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**all extended benefits paid from 7/7/14 through 7/19/14 and 7/21/14 through 8/19/14**, for a total credit of **$extended benefits paid.**

Respondent is entitled to a credit of $**all amounts paid through its medical group plan**, under Section 8(j) of the Act.

ORDER

Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's group exhibit 10 for the period 7/6/14 through 9/2/15, pursuant to the medical fee schedule or PPO agreement (whichever is less), as provided in §8(a) and §8.2 of the Act. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits and hold Petitioner harmless from any claims arising from the expenses for which it receives credit. The parties stipulate that Respondent shall receive credit for any medical bills paid through its group medical plan, under Section 8(j) of the Act, and Respondent shall hold Petitioner harmless for any claims made by the group medical plan for which it receives credit.

Based on the Arbitrator's finding that Petitioner's subsequent work accident of 9/3/15 was an intervening incident that broke the chain of causation with respect to her cervical condition, the Arbitrator awards additional benefits accordingly in Case No. 15-WC-029432 and denies Petitioner's claim for prospective medical care herein.

Respondent shall pay temporary total disability benefits for the period **7/15/14 through 8/19/14**, representing **5-1/7th** weeks at the rate of $**602.61**/week. Respondent is entitled to a credit for all extended benefits paid from 7/7/14 through 7/19/14 and 7/21/14 through 8/19/14.

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

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

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

FEBRUARY 24, 2022

Arbitrator Linda J. Cantrell

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

BONNIE F. HOLLAND,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 14-WC-033308
	)	
STATE OF ILLINOIS/WARREN G. MURRAY DEVELOPMENTAL CENTER,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Herrin on December 21, 2021 pursuant to Section 19(b) of the Act. On October 1, 2014, Petitioner filed an Application for Adjustment of Claim alleging injuries to her "neck, left upper extremity, man as a whole, and other body parts" as a result of being "injured during the course and scope of her employment" on July 6, 2014. (Case No. 14-WC-033308). On September 9, 2015, Petitioner filed an Application for Adjustment of Claim alleging injuries to her "neck, back, both knees, both upper extremities, both lower extremities, and MAW" as a result of being "injured during the course and scope of her employment" on September 3, 2015. (Case No. 15-WC-029432). On December 19, 2017, Petitioner filed an Application for Adjustment of Claim alleging injuries to her "head, neck, MAW, and other body parts" as a result of being "injured when a resident grabbed her and threw her down" on May 12, 2017. (Case No. 17-WC-037186).

The parties stipulate that all three accidents arose out of and in the course of Petitioner's employment with Respondent. The parties further stipulate that this Section 19(b) proceeding is limited to Petitioner's cervical and lumbar spine and any disputed issues with respect to Petitioner's right shoulder are reserved.

The issues in dispute in Case No. 14-WC-033308 are causal connection, medical expenses, temporary total disability benefits, and prospective medical treatment. The Arbitrator has simultaneously issued separate Decisions pursuant to Section 19(b) of the Act in Case Nos. 15-WC-029432 and 17-WC-037186.

TESTIMONY

Petitioner was 48 years old, married, with one dependent child at the time of accident. In July 2014, Petitioner was working full duty as a Mental Health Tech II. In September 2015 and May 2017 her job title was Mental Health Tech III. Her job duties in both positions involved taking care of the well-being of mentally challenged adults.

In the ten years prior to July 2014, Petitioner did not suffer any injuries to her neck, right shoulder, head, or low back. She did not have any pain radiating from her neck into her arms or numbness in her hands prior to July 2014. In the days, week, and months before July 2014 she was not experiencing any significant pain in her low back. She was not under a doctor's care for treatment for her neck, shoulders, low back, or arms at the time of her July 2014 accident. Petitioner was able to fully perform her job duties without any difficulty. Prior to September 2015, Petitioner did not experience any significant pain in her low back.

Petitioner testified that on 7/6/14 she intervened in an altercation between residents when one of the residents grabbed her by the hair and yanked her around. Petitioner fell to the ground and hit her right shoulder on the wall. Petitioner stated she immediately experienced a little bit of pain in her neck and shoulder. She reported her injury to her supervisor and completed an incident report the same day.

Petitioner initially sought treatment a St. Mary's Hospital and followed up with her primary care physician Dr. Settlemoir for complaints of pain in her neck, right shoulder, and numbness in her right hand. Petitioner underwent MRIs and physical therapy for her neck and right shoulder. She underwent injections recommended by Dr. Gornet in September and October 2014, and April 2015. Dr. Gornet referred Petitioner to Dr. Tanaka for her shoulder. Petitioner was referred to Dr. Paletta for her shoulder after Dr. Tanaka moved. She underwent facet rhizotomies by Dr. Blake. Petitioner testified that the injections into her neck and shoulders and the rhizotomies provided temporary relief.

Petitioner was kept off work from 7/15/14 through 8/19/14. When Petitioner saw Dr. Gornet he noted she was already working under a 5-pound weight limit and he increased her restriction to 10 pounds. Dr. Gornet eventually allowed Petitioner to return to work full duty, with no overtime. On 7/30/15, Dr. Gornet allowed Petitioner to return to work full duty, with limited overtime of two days per week.

On 9/3/15, Petitioner sustained a second work accident when a resident grabbed her by the hair and yanked her around. Petitioner's head and shoulder hit a door frame. Petitioner's supervisor grabbed the resident and Petitioner and the resident went to the ground while the resident was still holding onto Petitioner's hair. The resident weighed over 300 pounds and was taller than Petitioner. Petitioner testified that this injury was very bad and worse than the July 2014 injury. Petitioner completed an incident report and was taken to St. Mary's Hospital Emergency Room.

On 9/16/15, Petitioner returned to Dr. Gornet with increased neck pain, headaches, bilateral trapezius pain, upper back pain, and pain into both buttocks and hips. Petitioner

underwent MRIs of her neck and low back and Dr. Gornet recommended surgery. Petitioner sought a second opinion with Dr. Taylor which was paid for by Respondent.

Petitioner testified that following the September 2015 injury, she was kept off work by Dr. Galanos from 9/4/15 through 9/7/15. Dr. Gornet kept her off work from 9/16/15 through 11/19/15, at which time she returned to full duty work. Dr. Taylor referred Petitioner to Dr. Hurford for nerve blocks which she received.

Petitioner testified that on 5/12/17 her hair was grabbed and pulled by a resident and a co-worker got the resident to let go. Petitioner reported the injury to her supervisor and sought treatment at St. Mary's Hospital and followed up with Dr. Taylor.

Petitioner testified she most recently saw Dr. Taylor on 7/30/19 and underwent the conservative care he recommended. Petitioner testified that Dr. Taylor recommends surgery on her neck and low back which she desires to undergo.

Petitioner testified she still experiences neck pain that radiates into her right arm and sometimes into her left arm. She experiences occasional numbness in her right hand and fingers. Despite her symptoms, Petitioner continues to work full duty. She was promoted to a Mental Health Tech V, which is a less restrictive position. Petitioner's income supports her family. She continues to have low back pain and numbness in her left leg and foot that causes her to frequently trip when walking. She has difficulty sitting for more than a couple of hours and lifting causes pain. Petitioner testified that prior to the hearing she reviewed Dr. Taylor's 7/30/19 report and stated it is consistent with her current cervical and lumbar symptoms.

Petitioner agreed she was kept off work from 5/12/17 through 5/15/17 and was kept off work following one of the injections administered by Dr. Hurford. She testified that her neck has not been 100% pain free since 7/6/14 and her back has not been 100% pain free since 9/3/15.

On cross-examination, Petitioner testified she has been working full duty since 11/19/15 at her request. She is currently taking Hydrocodone prescribed by her primary care physician for neck, hip, and back pain. Petitioner received treatment from Dr. Gornet following the 2014 and 2015 accidents and he diagnosed an annular tear at C3-4 on the left side and multiple levels of degeneration on the right side. Petitioner stated that Dr. Gornet also recommended lumbar surgery which caused her to seek a second opinion.

Petitioner testified, as she sat for the hearing, she had a burning pain in her neck and a burning, stabbing pain in her back. Her back pain is in the middle part of her back and sometimes radiates up to her neck. Petitioner testified that a Mental Health Tech II and III have similar job duties which includes showering patients, dealing with patient behavior, getting patients ready for their daily routines, and wheelchair transfers. Petitioner became a Mental Health Tech V a few weeks after the May 2017 incident. As a Mental Health Tech V, she is an activity therapy person and performs activities with the residents, including taking them on outings and preparing paperwork for the building to which she is assigned. Petitioner testifies she is required to load residents onto a bus or van for outings and she uses a lift if a resident is wheelchair dependent. She occasionally works as a Mental Health Tech II.

Petitioner testified that other than one appointment with Dr. Taylor in 2019, she has not treated since 2017, other than taking pain medication. She is not currently receiving physical therapy or injections and she does not wear any type of brace. Petitioner testified she is able to do her job satisfactorily, but she has a lot of pain. Working as a Mental Health Tech V is a lot easier. She currently works full time, Tuesday through Saturday, and works some overtime as a Mental Health Tech II.

On re-direct, Petitioner testified that when she saw Dr. Chabot she completed an intake form, which is a spine questionnaire. (RX6). On the questionnaire, Petitioner indicated dates of injury of 9/3/15 and another date of injury in May 2017. She reported that her current symptoms were neck and mid-back pain. She testified she associates her mid-back pain with the back pain from her September 2015 injury, when the very large 300-pound woman grabbed her hair, because that injury was worse compared to the other two. She stated she has not received the recommended surgeries or additional treatment because Dr. Taylor does not accept her group health insurance and Respondent has denied her worker's compensation claims.

MEDICAL HISTORY

On 7/7/14, Petitioner presented to St. Mary's Hospital's emergency room where she provided a history of a resident grabbing her and pulling her hair. (PX1). Petitioner complained of burning and stabbing neck pain and headaches. Petitioner was not taking narcotic pain medication at that time. (PX1 p. 9). X-rays of Petitioner's right shoulder and cervical spine showed degenerative changes with no acute injuries.

On 7/15/14, Petitioner followed up with her primary care physician Dr. Hyet Settlemoir. (PX2). Petitioner reported that a resident grabbed her by her hair, pulled her to the floor, and jerked her body. (PX2 p. 384). Petitioner reported having a headache since the incident, burning pain when turning her head to the left, and constant pain in the back of her neck that radiated to her mid-back. She rated her pain 10/10. Physical exam revealed tenderness on palpation and reduced cervical range of motion. She was assessed with a neck sprain/strain. Dr. Settlemoir ordered cervical spine and right shoulder x-rays that revealed a normal cervical spine and mild degenerative changes of the acromioclavicular joint of the right shoulder. (PX1 p. 20-21, PX2 p. 390-391). Dr. Settlemoir prescribed Vicodin, Flexeril, and Ibuprofen and ordered Petitioner off work until 7/22/14.

On 7/21/14, Petitioner returned to Dr. Settlemoir with improved pain, but persistent neck pain and moderately reduced range of motion. (PX2 p. 339). Diagnosis remained the same and she was kept off work until 8/1/14. (PX2 p. 400). Dr. Settlemoir recommended continued use of NSAIDS and to follow up in two weeks.

On 7/31/14, Petitioner returned to Dr. Settlemoir with continued headaches and burning pain in her neck, stabbing pain between her shoulder blades, and pain in her right shoulder. (PX2 p. 405). He ordered Petitioner to continue medications and kept her off work until 8/7/14.

On 8/5/14, Petitioner saw her primary care provider, nurse practitioner, Debbie Malone, who noted Petitioner's symptoms, which included persistent neck and right shoulder pain, began

on 7/6/14 after she was pulled to the floor by her hair and kicked by a resident at work. NP Malone noted intermittent numbness in Petitioner's right hand since the injury. She kept Petitioner off work for two weeks and ordered a cervical and right shoulder MRI. (PX2 p. 409). The cervical MRI was performed on 8/14/14 and was normal. (PX2 p. 427). The right shoulder MRI revealed tendinopathy of the distal supraspinatous tendon with a small intrasubstance tear. (PX2 p. 428).

On 8/18/14, Petitioner returned to NP Malone who assessed neck pain and a traumatic tear of supraspinatus tendon of the right shoulder. She noted Petitioner's neck pain was 4-5/10 and her right shoulder pain was 6-8/10. NP Malone noted Petitioner continued to have occasional numbness in her right upper extremity. She noted Petitioner had an appointment with orthopedist Dr. Matthew Gornet on 9/11/14. Physical therapy was prescribed and Petitioner was place on a 5-pound lifting restriction. (PX1 p. 53).

On 9/5/14, Petitioner presented to St. Mary's Hospital for physical therapy. (PX1 p. 49). It was noted Petitioner had been working light duty, her neck and shoulder symptoms were worse, and she was sleeping in a recliner due to her symptoms. (PX1 p. 53). Physical exam showed tenderness to palpation in her trapezius and cervical spine. She was diagnosed with neck pain and a right rotator cuff tear. Petitioner underwent physical therapy for her neck and right shoulder through 10/3/14. (PX1 p. 87-129).

On 9/11/14, Petitioner was examined by Dr. Gornet and stated she was taking Hydrocodone for her symptoms. (PX3 p. 435). The pain diagram showed burning and stabbing pain in her neck, mid-back, and right shoulder, and stabbing pain and numbness down her right arm into her hand. (PX3 p. 433). Dr. Gornet noted Petitioner's symptoms included neck pain, headaches, pain into both trapezius, both shoulders, particularly the right shoulder and down her right arm into the hand with numbness and tingling. Dr. Gornet noted Petitioner was working light duty with a 5-pound lifting limit. Her symptoms remained constant and worse with arm activity, including bending and lifting. Dr. Gornet noted Petitioner was having predominantly right arm symptoms, including numbness and tingling, but was also having some left-sided symptoms. Physical exam revealed neck pain into both trapezius, particularly in the right shoulder, and radiculopathy in the right arm and hand. Dr. Gornet noted mild decreased range of motion in flexion/extension which exacerbated her symptoms. He reviewed the cervical MRI film dated 8/14/14 and although he believed it to be of poor quality, he noted an annular tear and several disc protrusions. Dr. Gornet recommended injections at C4-5 and C5-6 on the right to be performed by Dr. Boutwell. He referred Petitioner to Dr. Miho Tanaka for a right shoulder evaluation. He increased Petitioner's work restrictions to 10-pounds, with no overhead work. Dr. Gornet opined that Petitioner's symptoms in their level of magnitude and severity were causally connected to her recent work injury.

On 9/29/14, Dr. Kaylea Boutwell administered a right C5-6 epidural steroid injection. On 10/1/14, Dr. Gornet allowed Petitioner to return to full duty work with no overtime. On 10/13/14, Dr. Boutwell administered another right C5-6 epidural steroid injection. (PX5 p. 482).

On 11/10/14, Petitioner reported to Dr. Gornet that her pain continued to affect her quality of life. (PX3 p. 440). He noted no lasting relief from conservative care, including

Tramadol, anti-inflammatories, and muscle relaxants. Physical exam still showed a mild decrease in biceps on the right at 4/5. He noted Dr. Tanaka recommended a MR arthrogram of the right shoulder and he recommended a new cervical MRI with foraminal view. He continued to believe Petitioner's symptoms and need for treatment were causally connected to her 7/6/14 accident. He continued Petitioner on full duty work.

On 2/2/15, Petitioner returned to Dr. Gornet who noted Dr. Tanaka communicated with him that Petitioner had objective shoulder pathology consistent with her symptoms after reviewing the right shoulder MR arthrogram. (RX3 p. 441). Dr. Gornet believed some of Petitioner's shoulder pain was also coming from her neck injury. He believed the recent cervical MRI revealed low grade central herniations at C5-6 and C6-7, which accounted for the predominant symptoms in Petitioner's neck and headaches. He believed there was also some suggestion of foraminal stenosis at C4-5 on the right which was playing a role in her symptoms. He stated that since Petitioner's predominant symptoms were significant axial neck pain, the best option would be to treat that area first. He noted that the cervical injections failed, and he recommended a cervical CT myelogram and possible disc replacement surgery at C5-6 and C6-7, and possible treatment at C4-5.

On 4/2/15, Petitioner returned to Dr. Gornet with persistent axial neck pain and pain into her shoulder. (PX3 p. 443). She underwent a cervical myelogram and CT post myelogram prior to the exam. (PX6 p. 490-491). Dr. Gornet stated the myelogram revealed some facet arthritis at multiple levels including fairly significant foraminal stenosis secondary to facet changes at C4-5. He also believed the study revealed some right-sided facet changes at C5-6 and C6-7. He suspected an aggravation of underlying facet changes and foraminal stenosis. He believed Petitioner may have suffered a disc injury with central disc protrusions at C5-6 and C6-7. Dr. Gornet recommended facet rhizotomies at C4-5, C5-6, and C6-7 as opposed to surgery. Petitioner indicated a lot of her arm pain had resolved since the injection to the right side. Dr. Gornet noted Petitioner continued to have right shoulder symptoms and was now having left shoulder symptoms which was consistent with foraminal stenosis. He recommended a steroid injection at C4-5 on the left as well as facet rhizotomies. He allowed Petitioner to continue to work full duty with no overtime.

On 4/27/15, Dr. Boutwell administered a right C5-6 epidural steroid injection. (PX5 p. 483). On 5/11/15, Dr. Boutwell performed a left C4-5, C5-6, and C6-7 radiofrequency ablation. (PX5 p. 484). On 6/15/15, Dr. Boutwell performed a right C4 through C7 radiofrequency ablation. (PX5 p. 485).

On 7/20/15, Dr. Gornet noted Petitioner responded well to the facet rhizotomies and other injections but was still having right shoulder pain. (PX3 p. 448). Petitioner's arm pain resolved. He noted that Dr. Tanaka moved and he referred her to Dr. Paletta for continued right shoulder care. Dr. Gornet considered additional injections and rhizotomies. He allowed Petitioner to continue working full duty with no overtime. (PX3 p. 447).

On 7/23/15, Petitioner was examined by Dr. Paletta. (PX4 p. 474). He noted Petitioner had undergone treatment for her neck including injections and ablations, which provided some relief. He noted her treatment with Dr. Tanaka, which included a shoulder injection and physical

therapy which did not provide relief. Dr. Paletta reviewed the right shoulder MRI dated 2/2/15 and assessed AC joint pain and chronic subacromial bursitis in the setting of a partial thickness bursal-sided rotator cuff tear. (PX4 p. 476). He believed the majority of her symptoms appeared to be related to the AC joint. He recommended an ultrasound or a fluoroscopically guided injection to the AC joint for diagnostic and therapeutic purposes. He allowed Petitioner to work full duty.

On 7/29/15, Dr. Boutwell administered a right AC joint injection under ultrasound. (PX5 p. 486). On 7/30/15, Petitioner contacted Dr. Gornet's office and requested she be allowed to work at least two days of overtime per week. (PX3 p. 450). Dr. Gornet complied.

Following the 9/3/15 accident, Petitioner was immediately taken by ambulance to St. Mary's Hospital. (PX1 p. 132). A history of injury was provided, and Petitioner complained of headache, neck pain, knee pain, and back pain. (PX1 p. 179). The clinical history was assault and back pain. (PX1 p. 136). Petitioner underwent a CT scan of her cervical spine and head, and x-rays of her thoracic spine and left knee. (PX1 p. 136-137). The cervical CT scan revealed multilevel endplate and facet joint degenerative changes most prominent at C4-5 and C5-6. The thoracic spine x-ray was normal. She was prescribed pain medication, including Hydrocodone, and discharged.

On 9/4/15, Petitioner returned to St. Mary's Hospital emergency department with complaints of dizziness, nauseous, and "seeing spots". (PX2 p. 179-181). Her symptoms resolved at the hospital and she was provided an off-work slip from 9/4/15 through 9/7/15.

On 9/16/15, Petitioner returned to Dr. Gornet and provided a history of being grabbed by the hair by a 300-pound resident that shook her and hit her head on a concrete wall on 9/3/15. (PX3 p. 452). Dr. Gornet noted increasing neck pain, headaches, pain in both trapezius, upper back, the base of her neck, and pain into both shoulders. He also noted Petitioner had low back pain into both buttocks and hips. Petitioner denied any significant arm or leg pain. Physical examination revealed no focal neurologic deficits. A lumbar x-ray revealed an isthmic type spondylolisthesis with grade 1 translation at L5-S1. A cervical x-ray revealed mutilevel facet changes and foraminal stenosis, particularly on the right. Dr. Gornet believed the September 2015 incident aggravated her underlying cervical spine condition making her more symptomatic and possibly causing a new disc injury. He recommended conservative care, including heat, gentle traction, and massage to her neck and upper back. He took Petitioner off work and prescribed Meloxicam and Cyclobenzaprine. He stated if her symptoms increased in severity short term, he would consider oral steroids and/or Tramadol. He opined her current level of symptoms and need for treatment were causally related to the recent injury of 9/3/15. (PX3 p. 453). The pain diagram completed by Petitioner indicated stabbing, aching neck pain, aching pain from her neck down to her mid-back, burning and aching mid-back pain, and aching in both hips and buttocks. (PX3 p. 454). On the intake questionnaire, Petitioner stated pain in her back and neck as the reason for her visit. (PX3 p. 455). Dr. Gornet kept Petitioner off work from 9/16/15 through 11/16/15. (PX3, p. 461).

Petitioner attended physical therapy at Salem Township Hospital from 10/19/15 through 11/11/15. (PX9). Cervical and lumbar pain was noted. (PX9 p. 905). Petitioner attended nine

therapy sessions and the discharge note indicates she felt stronger and more flexible but her cervical and lumbar pain remained 8/10 most of the time. Petitioner was not able to tolerate most exercises due to pain and her therapy goals were not met. (PX9 p. 915). The therapist noted Petitioner had an antalgic gait and was guarding her neck area.

Petitioner underwent cervical and lumbar MRIs and returned to Dr. Gornet on 11/16/15. (PX3, p. 460). Dr. Gornet diagnosed an annular tear and disc pathology at C6-7 and C3-4 on the left side, with some facet changes at multiple levels on the right side. He saw no significant nerve compression, but she did have right foraminal stenosis at C4-5 and C5-6. Dr. Gornet did not comment on the lumbar MRI which revealed severe bilateral stenosis but no canal stenosis. He noted Petitioner's pain continued and she had not reached MMI. He prescribed Meloxicam and Cyclobenzaprine and ordered her to return in three months. He kept her off work from 11/16/15 through 11/18/15 and released her to return to full duty work without restrictions on 11/19/15. (PX3 p. 462).

On 2/2/16, Petitioner was examined by Dr. Bret Taylor for a second opinion. (PX7). The appointment was paid for by Respondent. Petitioner complained of neck pain, back pain, and migraines. She described bilateral arm numbness and pain in her mid and low back. She had leg pain she described as frequent. Dr. Taylor took a detailed history of injury on 7/4/15 and a second injury in September 2015. He performed a physical examination and reviewed Petitioner's prior medical records, including diagnostic studies. Mild bilateral paraverterbral muscle spasms were noted, along with changes over the right elbow consistent with ulnar nerve transposition and right hand weakness. Dr. Taylor diagnosed congenital stenosis in the cervical and lumbar spine with marked degenerative changes. (PX7 p. 552). He believed Petitioner's symptoms were consistent with tandem stenosis. He ordered additional studies, including EMGs of the upper and lower extremities and a whole-body bone scan with lumbar SPECT. He also recommended a left AFO brace for Petitioner's leg weakness and history of tripping. Dr. Taylor further recommended BHI and MMPI testing to rule out psychological overlay.

On 8/16/16, Petitioner returned to Dr. Taylor who noted Petitioner continued to work full duty and was having increased numbness in both of her feet. (PX7 p. 634). He noted she was having increased back and neck pain and headaches that were different than her pre-injury migraine headaches. Physical exam revealed an antalgic gait and cervical and lumbar abnormalities. He reviewed the lower extremity EMG completed by Dr. Daniel Phillips on 8/16/16 and believed it showed chronic bilateral L5 radiculopathy as well as tibial neuropathy across the tarsal tunnels. (PX7 p. 635, 639-644). Dr. Phillips noted normal strength in both legs, symmetrical reflexes, and no evidence of foot drop. Dr. Taylor recommended an upper extremity EMG, a whole-body bone scan and lumbar SPECT CT scan, and a left AFO brace for foot drop. He asked the tests to be approved in an expedited fashion as delay in evaluation and treatment would negatively affect her overall prognosis. He allowed Petitioner to continue working full duty.

On 11/1/16, Petitioner returned to Dr. Taylor, who reviewed the completed upper extremity EMG study and noted Petitioner was increasingly symptomatic. (PX7 p. 645). Dr. Taylor noted Petitioner was working full duty but was tripping more frequently on her left side. The upper extremity EMG performed by Dr. Phillips on 11/1/16 showed chronic ulnar

neuropathy. (PX7 p. 645, 647-653). Dr. Taylor noted Petitioner was treating with Dr. Bonner for her left knee and was awaiting a left knee replacement. Dr. Taylor again recommended a whole-body bone scan, lumbar SPECT scan, and a left AFO brace.

On 11/2/16, Petitioner underwent a nuclear medicine bone scan at St. Mary's Hospital that revealed degenerative changes involving the L5-S1 level. (PX2 p. 219). The clinical history was back pain. On 12/5/16, Petitioner returned to Dr. Taylor who noted she was symptomatically unchanged. He reviewed the test results with Petitioner and believed a final attempt with nonoperative care with a pain specialist was appropriate. (PX 11 p. 1000-1001).

On 12/12/16, Petitioner saw Dr. Patricia Hurford at Dr. Taylor's referral. (PX8). Petitioner provided a history of her work accidents. Dr. Hurford noted Petitioner had pain that occurred daily from morning to night that interrupted her sleep. The pain was primarily in the right upper trapezius region to the mid back, with a burning, stabbing sensation, and occasional numbness affecting both upper extremities, with the right and left side equally affected. Dr. Hurford performed a physical exam and reviewed cervical x-rays. Her impression was two work-related injuries that affected the cervical region and evidence of overlying cervical myofascial symptoms, chronic pain symptoms, and sensory complaints, with no objective evidence of radiculopathy or myelopathy. (PX8 p. 822). Dr. Hurford wanted to put together a more comprehensive treatment plan after reviewing Petitioner's prior diagnostic studies. In the meantime, she recommended home exercises and did not restrict Petitioner's work activities.

On 12/20/16, Dr. Hurford reviewed Petitioner's diagnostic studies that showed Grade I-II spondylolisthesis in the lumbar spine, with bilateral pars defect at L5, multi-level degenerative changes in the cervical spine with diffuse disc bulging, and right greater than left foraminal narrowing. Results of the nuclear medicine bone scan demonstrated degenerative changes a L5-S1. Petitioner rated her pain 9/10. On exam, Petitioner was noted to have persistent left greater than right-sided neck pain, with headaches that were different from her migraines. Dr. Hurford's impression included persistent cervical pain symptoms with radiculitis, with no objective evidence of radiculopathy, and cervicogenic headaches. (PX8 p. 826). Dr. Hurford recommended an increase of Duloxetione and medial branch blocks for diagnostic purposes on the left at levels C2, C3, C4, and C5. Dr. Hurford did not limit Petitioner's work activities.

On 1/31/17, Petitioner underwent left C2, C3, C4, and C5 medial branch blocks under fluoroscopic guidance administered by Dr. Hurford. (PX8 p. 828). Petitioner's pain rating before the procedure was 8/10 and post-injection it was 0/10. On 2/14/17, Petitioner returned to Dr. Hurford who noted the relief provided by the medial branch blocks. (PX8 p. 829). She also noted that despite this improvement, Petitioner requested no further interventional procedures. Dr. Hurford referred Petitioner back to physical therapy for myofascial treatment and scapular postural strengthening. Petitioner was prescribed a trial of Trazodone.

On 2/23/17, Petitioner returned to St. Mary's Hospital for physical therapy for chronic neck and back pain. (PX2 p. 231). Petitioner attended nine therapy sessions through 3/23/17. (PX2 p. 229-327).

On 3/30/17, Petitioner returned to Dr. Hurford who noted Petitioner continued to have severe headaches and neck pain and was now reporting migraine symptoms after physical therapy. Her sleep was being disrupted. Dr. Hurford's impression was severe cervicalgia and cervicogenic headaches, and myofascial symptoms following a cervical strain injury with primarily cervical complaints. (PX8 p. 836). Petitioner did not want to undergo radiofrequency ablations and wanted a surgical follow-up. Dr. Hurford referred Petitioner back to Dr. Taylor.

On 5/3/17, Petitioner returned to Dr. Taylor who noted Petitioner's symptoms improved for one day following the medial branch blocks but returned to baseline. She denied radiation into her upper extremities. No radiation was noted to her lower extremities. She stated she occasionally wears the AFO brace. Mylopathic and Spurling tests were negative. Dr. Taylor noted an antalgic gait and diagnosed critical cervical stenosis, cervical facet arthropathy, cervicogenic headaches, lumbar spondylolisthesis at L5-S1, and lumbar radiculopathy at L4-5. (PX7 p. 655). He discussed with Petitioner what RFAs had to offer and Petitioner wanted to avoid surgery if possible. Petitioner decided to undergo the ablations. Dr. Taylor believed Petitioner was ultimately a surgical candidate, including a C4-C7 ACDF with possible delayed stage C2-T1 posterior fusion, and an L4-S1 anterior posterior lumbar fusion.

On 5/12/17, Petitioner returned to St. Mary's Hospital emergency room following an altercation at work where a resident grabbed her hair and pulled her to the floor. (PX2 p. 328). Petitioner reported pain in her head, right neck, back, and left shoulder. A cervical CT scan showed multilevel degenerative disc disease with endplate and facet hypertrophy and mild narrowing of the neural foramina. Lumbar imaging revealed spondylosis at L5 with Grade II spondylolisthesis of L5 in relation to S1 and severe disc degeneration at L5-S1. The assessment was injury due to an altercation, neck pain, low back pain without sciatica, and intractable headache. (PX2 p. 337). Petitioner was kept off work from 5/12/17 through 5/15/17.

On 6/21/17, Petitioner returned to Dr. Hurford to proceed with the radiofrequency ablations. (PX8, p. 855). Petitioner rated her neck pain 9/10, with left slightly worse than the right. Dr. Hurford noted Petitioner used Hydrocodone as-needed for severe pain. Her impression was persistent significant and severe cervicalgia after a work-related injury, cervical spondylosis and degenerative disc changes, and cervicogenic and migraine headache disorder. Dr. Hurford recommended the RFA procedure and prescribed Hydrocodone. No work restrictions were given with the exception of being off work for 24 hours post injection.

On 7/11/17, Petitioner underwent the RFA administered by Dr. Hurford. (PX8 p. 872). Petitioner's pain rating before the procedure was 10/10, post-injection it was 0/10. On 7/31/17, Dr. Hurford noted the RFA provided pain relief until one and one-half weeks ago when the pain returned. (PX8 p. 882). Petitioner was having left-greater-than-right-sided neck pain. She again rated her pain 9/10. Dr. Hurford recommended increased Duloxetine, Tylenol for sleep disorder, and physical therapy for a TENS unit.

On 9/5/17, Petitioner returned to Dr. Hurford, who noted Petitioner was having increased axial symptoms without radiation. (PX8 p. 890). The TENS unit had not been approved by Respondent. Petitioner reported some improvement with increased use of Duloxetine and Tylenol. Dr. Hurford's impression remained the same and she recommended a short course of

oral corticosteroids, topical Lidocaine, a TENS unit via physical therapy, and no work restrictions. (PX8 p. 892). On 9/26/17, Dr. Hurford referred Petitioner back to Dr. Taylor.

On 10/20/17, Petitioner returned to Dr. Taylor who noted Petitioner was dissatisfied with her condition and her persistent symptoms were worsening. (PX7 p. 664). He recommended the cervical and lumbar surgeries described on 5/3/17.

On 2/2/18, Petitioner was examined by Dr. Chabot pursuant to Section 12 of the Act. (RX4). Petitioner complained of burning/stabbing neck pain along the posterior aspect of her neck. She stated her right hand greater than left occasionally fell asleep and her symptoms were nocturnal. Petitioner has not been diagnosed with carpal tunnel syndrome. She complained of low and mid back pain with sitting and pain along the bra line at the thoracolumbar junction. No radiation into her lower extremities was noted. A neurologic exam of Petitioner's upper extremities showed positive palmar pressure testing involving the bilateral wrists with aggravation of carpal-tunnel symptoms; positive Tinel's signs of the left wrist and negative on the right, and positive testing along the right cubital tunnel. Neurologic exam was otherwise normal and lower extremity exams were unremarkable. Dr. Chabot did not believe additional medical treatment was necessary or related to the work incidents. Petitioner had chronic degenerative conditions that would continue to cause symptoms. He noted that Dr. Taylor's recommendation for surgical intervention to the L-spine based on significant neural deficits in the lower extremities were not confirmed by Dr. Phillips, a neurologist, who performed a physical examination and nerve study. The nerve study showed no evidence of active radiculopathy.

On 7/30/19, Petitioner returned to Dr. Taylor who noted Petitioner continued to work full duty and was persistently symptomatic. (PX7 p. 706). He noted she underwent a total knee replacement with Dr. Bonutti stemming from another worker's compensation claim. Petitioner was prescribed Hydrocodone by Dr. Varanasy. Dr. Taylor noted Petitioner's third work-related injury caused a temporary increase in her neck pain which had since returned to her pre-third injury baseline level. Petitioner reported working at a new position and she lost her AFO brace in a house file. She was taking Hydrocodone on rare occasions. (PX7 p. 706-707). Her pain questionnaire was positive for neck and lumbar spine pain and radicular symptoms. (PX7 p. 707). Dr. performed a physical exam of Petitioner's cervical and lumbar spine and reviewed x-rays taken that day. His impression was cervical degenerative disc disease, cervical congenital stenosis, cervical radiculopathy, lumbar spondylolisthesis at L5-S1, lumbar congenital stenosis, and lumbar degenerative disc disease. (PX7 p. 709-710). He noted Petitioner's pain went into her upper back, and she had weakness in her left upper arm. She continued to have problems with balance and tripping. She had frequent headaches. Her neck disability index was 44, neck pain was a scale seven, and her Japanese Orthopedic Association (JOA) score for myelopathy was moderate. She had lumbar spine symptoms that included 60% back pain and 40% leg pain. (PX11 p. 1007). Her leg pain was 25% in the right leg and 70% in the left leg. She had pain in her left buttock, back of her thigh, and weakness in her left ankle and foot. Her symptoms were worse with sitting and standing. She was able to stand and walk 15 to 30 minutes. He again recommended the surgical procedures he described on 5/3/17. (PX7 p. 710).

Dr. Bret Taylor testified by way of deposition on 3/3/20. (PX11). Dr. Taylor is an orthopedic surgeon. His testimony was consistent with his medical records. His history of Petitioner's July 2014 injury included details of a resident grabbing Petitioner's hair with both hands, pulling her down a hall, with the assault lasting three to four minutes before assistance arrived. Dr. Taylor stated Petitioner's neck and right shoulder were the most symptomatic following her accident and conservative treatment did not provide lasting relief. Dr. Taylor noted a history of the September 2015 injury that involved a tall, 300-pound person grabbing Petitioner by the hair with both hands and swinging her into a wall, then falling backwards and pulling Petitioner on top of her. Petitioner described this attack as more violent. Her primary complaints following that accident were persistent symptoms in her neck, back, and headaches which were different than the baseline headaches she had prior to the incident. She also reported bilateral arm numbness and pain, numbness and pain in her mid and low back, and leg symptoms that included tripping while walking on flat surfaces. Dr. Taylor diagnosed cervical congenital stenosis, pre-existing cervical degenerative disc disease, facetogenic pain causing headaches, and incidental findings of cervical hemangiomas. He also diagnosed lumbar congenital stenosis, pre-existing degenerative disc disease, and L5-S1 isthmic spondylolisthesis.

Dr. Taylor was not aware of Petitioner having cervical or lumbar complaints in the days, weeks, and months before July 2014, or that she had any lumbar pain in the days, weeks, and months before her September 2015 accident. He opined that Petitioner's work accident in 2014 resulted in a permanent aggravation of her pre-existing cervical condition and additional treatment was necessary to cure and relieve her symptoms. He opined the September 2015 event further aggravated both her cervical condition that never went away and aggravated her pre-existing lumbar spine causing it to become symptomatic. He opined that Petitioner's need for lumbar spine treatment was a result of the 2015 work incident.

Dr. Taylor testified that Petitioner has exhausted conservative treatment and the cervical and lumbar surgeries are reasonable and necessary. He opined Petitioner has not reached MMI and if she does not receive the recommended surgeries her prognosis is poor to guarded. He continues to recommend an anterior cervical fusion from C4 to C7, a possible delayed staged posterior procedure from C2 to T1, and an anterior/posterior L4 to S1 fusion. His preoperative testing would include a CT myelogram and updated three Tesla MRIs of the cervical and lumbar spine and a DEXA scan due to Petitioner's risk of osteopenia/osteoporosis. He has not seen Petitioner since 7/30/19.

Dr. Taylor disagreed with Dr. Chabot's opinion that the diagnostic tests (cervical MRIs, cervical myelogram, and CT post myelogram) showed only minimal disc bulging. Dr. Taylor's review of the studies was more consistent with a herniation. He stated Petitioner's diagnosis of tandem spinal stenosis means she has a spinal canal that is smaller than it should be. She can have relatively minor degenerative changes that causes significant clinical pathology because she has a canal that is too small. He explained that when the pre-existing static effects of arthritis are combined with trauma where there are dynamic effects, flexion and extension, it can aggravate the degenerative condition. Petitioner also has additional pathology of isthmic spondylolisthesis L5-S1. Dr. Taylor opined that Petitioner's mechanism of injury to her cervical spine could aggravate her pre-existing condition. The forced dynamic movement of a person's head and neck into flexion/extension movements increases the compression of the neural elements and can

injure those neural elements and cause permanent structural damage and permanent aggravation resulting in symptomatology.

Dr. Taylor also disagreed with Dr. Chabot's opinion that Petitioner was not a surgical candidate for her cervical or lumbar complaints because Petitioner did not have radicular complaints in her legs or arm. Dr Taylor opined the medical literature disagreed with Dr. Chabot. He stated that cervical EMGs have a very high false negative rate and just because the EMG studies are negative does not mean Petitioner does not have cervical pathology. Dr. Taylor stated that Petitioner has tandem spinal stenosis which carries a certain prognosis. Individuals with tandem spinal stenosis and myelopathy do not do well absent surgery which halts the progression of myelopathy. Without surgery, the myelopathy worsens for over 90% of patients either catastrophically or gradually. Dr. Taylor testified that patients, like Petitioner, with congenital stenosis in the lumbar spine, isthmic spondylolisthesis, and radiculopathy, having a foot drop and needing an AFO brace will benefit from surgery to stabilize their condition. He stated that surgery will not correct Petitioner's foot drop but will stop its progression and prevent it from occurring in her opposite leg.

On cross-examination, Dr. Taylor opined the work incidents of 2014 and 2015 permanently aggravated Petitioner's pre-existing cervical and lumbar tandem stenosis, pre-existing cervical and lumbar degenerative disc disease, and pre-existing lumbar isthmic spondylolisthesis at L5-S1. He believed Petitioner had suffered a permanent acute injury to the neural elements when the dynamic event of having her head grabbed and pulled back and forth aggravated her pre-existing static stenosis which she had because she had congenital stenosis and arthritis. This creates a cascade of events that can include cell death that results in permanent neurologic damage, dysfunction, and pain. Dr. Taylor cited medical literature in his records that support these opinions. To objectively test those injured nerves, Dr. Taylor uses a patient's history, physical exam, and diagnostic tests. He stated that Petitioner had cervical myelopathy based on the JOA scale that was moderate. She also had chronic radiculopathy and a foot drop which is causally connected to her lumbar spine pathology. He testified that Petitioner is a very classic example of a person with tandem stenosis. On physical exam, he found a combination of both radiculopathy and myelopathy. He diagnosed Petitioner with myelopathy on 2/2/16 and his working diagnosis was tandem stenosis and the combination of upper extremity pathology, cervical pathology, lumbar radiculopathy, and lumbar pathology in the form of isthmic spondylolisthesis and congenital stenosis.

Dr. Taylor testified that people with cervical myelopathy have a number of symptoms, including difficulty with their gait and they can trip and fall. Not all symptoms of cervical myelopathy involve the upper extremities. He testified that in his experience, myelopathy from tandem stenosis usually arises out of some trauma and it a clinical diagnosis that is not see on imaging studies. He stated that Petitioner's JOA score shows her symptoms were worsening over time. Petitioner's myelopathy was not so severe that all the tests were positive and some of her testing was negative on physical exam.

Dr. Michael Chabot testified by way of deposition on 9/28/18. (RX5). Dr. Chabot is a board-certified orthopedic surgeon with a subspecialty in spine surgery. Dr. Chabot's testimony was consistent with his reports. He reviewed medical records dating back to 2014 and beyond,

multiple diagnostics, and performed a physical examination on Petitioner. He stated that Petitioner relayed a history of injury on 9/3/15 and no other accidents. She reported a client grabbed her hair, swung her around, scratched her on the right side of her neck and threw her against a wall. Petitioner landed on her left knee and complained of head, neck, and back pain. Dr. Chabot performed cervical spine x-rays with obliques and flexion/extension that revealed evidence of well-preserved disc space throughout the cervical spine, with only mild loss of lordosis. Petitioner had diffuse facet degeneration from C2-T1 and degeneration involving the C1-C2 articulation. Flexion/extension films revealed no evidence of instability. Oblique images showed evidence of mild right side C4-5 and C5-6 foraminal narrowing.

Dr. Chabot disagreed with the radiologist's interpretation of the CT myelogram. His review of the cervical MRI dated 2/2/15 showed advanced degeneration, disc bulging at C4-7, with little to no neural compression. He felt the imaging as read by Dr. Ruyle was overstated. Dr. Chabot compared the images dated 2/2/15 and 11/15/15, which did not show evidence of acute edema to suggest an acute injury. He noted Petitioner did not walk with a limp or have issues ambulating. Physical exam showed reduced range of motion in the cervical spine which was normal for her age, with no signs of radiculopathy. Neurologic exam was normal with the exception of positive Tinel's sign suggesting the presence of carpal tunnel and ulnar neuropathy. The lower extremity neurologic examination was normal. He stated Petitioner described symptoms that were consistent with carpal tunnel disease. Her low back complaints were primarily along the bra line and thoracolumbar junction and she denied radiation into her lower extremities. Petitioner's complaints to Dr. Chabot and her pain diagram describe pain symptoms localized to the mid and lower neck and cervicothoracic junction. Petitioner did not mark any pain involving the lumbar region. She did not indicate the presence of numbness or weakness extending from her neck into the arms or from her back into the legs. Petitioner did not complain to Dr. Chabot of weakness or symptoms typical of radiculopathy involving the arms or legs.

Dr. Chabot noted Petitioner was on narcotics for chronic knee and hip complaints. He diagnosed Petitioner with neck, thoracic, and lumbar strains associated with the 9/3/15 incident, with pre-existing multifaceted degeneration, C1-C2 joint degeneration, Grade I and II spondylolisthesis L5-S1, bilateral pars defect, spondylosis at L5, advances tissue degeneration, advanced degeneration involving the bilateral knees, chronic knee pain, chronic narcotic use, and moderate chronic knee arthritic complaints. Dr. Chabot felt the cervical, thoracic, and lumbar strains were related to the work injury. He did not feel additional medical treatment was necessary and Petitioner had reached MMI. The basis of Dr. Chabot's opinion was that Petitioner was working full duty, using medication, did not have physical exam findings to suggest she had persistent residual symptoms associated with an injury, and did not have findings on MRI to support an injury. He did not feel Petitioner was a surgical candidate for her cervical or lumbar spine. Petitioner was doing well with medication and did not exhibit radicular symptoms in the upper or lower extremities. Petitioner's examination was void of any persisting tissue inflammation to suggest she had ongoing residuals associated with her work injury and she had returned to her baseline. Dr. Chabot's opinion differed from Dr. Taylor's because Petitioner did not indicate any pain to her lower lumbar region or back pain radiating into her lower extremities, and her physical examination lacked any evidence of spasm or tissue irritation. Petitioner had excellent range of motion and no neurologic changes to the lower extremities. Moreover, Dr. Taylor suggested Petitioner had changes in muscle strength or evidence of a drop

foot. Dr. Chabot did not note any neurologic changes or muscle weakness involving the lower extremities. Dr. Phillips, a certified neurologist, found no evidence of neurologic changes involving the lower extremities. Dr. Phillips also performed an electrodiagnostic study which failed to evidence active radiculopathy or nerve damage involving the lower extremities.

On cross-examination, Dr. Chabot opined the September 2015 event may have caused a temporary exacerbation of the pre-existing condition of Petitioner's cervical and lumbar spine. He believed she had reached MMI on 9/17/17 because that was the time when the temporary exacerbation ended. Dr. Chabot believed all the prior treatment he reviewed was reasonable and necessary to address Petitioner's complaints associated with the September 2015 incident. Dr. Chabot was aware Petitioner had a history of neck complaints in 2014 that required treatment, including injections and facet rhizotomies, over a long period, but admitted he did not have full detail on that. He admitted it could be helpful to have the medical records prior to 9/3/15 to determine what Petitioner's baseline was. He opined Petitioner would continue to have complaints involving her cervical and lumbar spine and continue frequent use of pain medication. He admitted he did not review any records from Dr. Gornet prior to the 9/16/15 report. He admitted his report provided no details about a July 2014 date of injury and the only records he reviewed prior to 9/3/15 involved Petitioner's left knee and a cervical MRI dated 2/2/15.

CONCLUSIONS OF LAW

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

Based on the evidence and Petitioner's medical records, the Arbitrator finds that Petitioner's condition of ill-being in her cervical spine is causally connected to her injury that occurred on 7/6/14. The Arbitrator finds that Petitioner's subsequent work accident of 9/3/15 was an intervening incident that broke the chain of causation with respect to Petitioner's cervical condition, and the Arbitrator awards additional benefits accordingly in Case No. 15-WC-029432. The Arbitrator further finds that Petitioner's current condition of ill-being in her cervical spine is not causally related to her subsequent accident that occurred on 5/12/17 but was a temporary aggravation and a continuation of her injury that occurred on 9/3/15.

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. Indus. Comm'n*, 260 Ill.App.3d 92, 631 N.E.2d 724 (4th Dist. 1994); *International Harvester v. Indus. Comm'n*, 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).

The law holds that accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it is a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 672-673 (2003). [Emphasis added]. "Petitioner need only show that some act or phase of the employment was a causative

factor of the resulting injury." *Fierke v. Indus. Comm'n*, 309 Ill. App. 3d 1037, 723 N.E.2d 846 (2000). 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 Arbitrator notes there are no medical records or evidence of medical treatment for Petitioner's cervical spine prior to 7/6/14. Petitioner was working full duty as a CNA without any evidence of cervical pain or difficulties. Petitioner consistently received medical treatment for her cervical condition for one year following the accident until she sustained additional cervical injuries on 9/3/15.

There is no dispute Petitioner had pre-existing cervical conditions prior to 7/6/14; however, there is no evidence that her condition was symptomatic prior to her accident. Following Petitioner's accident on 7/6/14, she experienced complained of burning and stabbing neck pain and headaches. Petitioner consistently reported the accident to her treatment providers. She developed burning pain when turning her head to the left, constant pain in the back of her neck that radiated to her mid-back, and decreased range of motion. She was initially assessed with a cervical sprain/strain that required her to be placed off work from 7/15/14 through 8/19/14. Petitioner was prescribed medication and physical therapy prior to treating with Dr. Gornet on 9/11/14. Dr. Gornet's physical examination revealed neck pain into both trapezius, particularly in the right shoulder, and radiculopathy in the right arm and hand. He noted mild decreased range of motion in flexion/extension which exacerbated her symptoms. Dr. Gornet appreciated an annual tear and disc protrusions on the cervical MRI dated 8/14/14. Petitioner underwent epidural steroid injections at C5-6, Tramadol, anti-inflammatories, and muscle relaxants. Petitioner's symptoms failed to improve and Dr. Gornet opined that some of her symptoms were originating from her cervical spine and some as a result of her right shoulder injury. Dr. Gornet opined that a recent cervical MRI revealed low grade central herniations at C5-6 and C6-7, which he believed accounted for the predominant symptoms in Petitioner's neck and headaches. He believed there was also some suggestion of foraminal stenosis at C4-5 on the right which was playing a role in her symptoms. He stated that since Petitioner's predominant symptoms were significant axial neck pain, the best option would be to treat that area first. He stated that the cervical injections failed, and he recommended a cervical CT myelogram and a possible disc replacement surgery at C5-6 and C6-7, and possible treatment at C4-5.

Dr. Gornet interpreted the myelogram and CT post myelogram to show facet arthritis at multiple levels including fairly significant foraminal stenosis secondary to facet changes at C4-5, and right-sided facet changes at C5-6 and C6-7. He suspected an aggravation of Petitioner's underlying facet changes and foraminal stenosis and a possible disc injury with central disc protrusions at C5-6 and C6-7. Dr. Gornet noted that Petitioner's right arm pain almost completely resolved following injections, but she continued to have left shoulder symptoms which was consistent with foraminal stenosis.

Petitioner underwent a right C5-6 epidural steroid injection, a left C4-5, C5-6, and C6-7 radiofrequency ablation, and a right C4 through C7 radiofrequency ablation. Dr. Gornet noted Petitioner responded well to the injection and ablations, with resolution of her arm pain, but she had persistent right shoulder pain. On 7/20/15, Dr. Gornet referred Petitioner to Dr. Paletta for continued treatment of her right shoulder. At that time, he considered future injections and rhizotomies and made no further recommendation for surgery. Petitioner did not receive additional treatment for her cervical spine following her last visit with Dr. Gornet on 7/20/15 until her second accident on 9/3/15. She continued to work full duty, including overtime during that period.

Where the issue involves whether an intervening accident broke the chain of causation between a work-related injury and an ensuing disability or injury, Illinois law states, work-related or not, it is irrelevant whether a subsequent incident may have aggravated the claimant's condition. *Id.* 354 Ill.App.3d at 786. Further, under an independent intervening cause analysis, compensability for an ultimate injury or disability is based on a finding that the employee's condition was caused by an event that would not have occurred "but for" the original injury. *PAR Elec. v. Ill. Workers' Comp. Comm'n*, 2018 IL App (3d) 170656WC, P56, 118 N.E.3d 681, 694, 2018 Ill. App. LEXIS 775, 427 Ill. Dec. 480, 493 citing *International Harvester Co. v. Industrial Comm'n*, 46 Ill. 2d 238, 245, 263 N.E.2d 49 (1970) The "but for" rationale has been extended 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.* 118 N.E.3d at 698 citing *International Harvester Co.*, 46 Ill. 2d at 245. Further, an employer is relieved of liability only if the intervening cause completely breaks the causal chain between the original work-related injury and the ensuing condition of ill-being. *Id.*, 118 N.E.3d at 694, citing, *Global Products v. Illinois Workers' Compensation Comm'n*, 392 Ill. App. 3d 408, 411, 911 N.E.2d 1042, 331 Ill. Dec. 812 (2009).

The "but for" rationale is not appropriate in the instant case. There is ample evidence that Petitioner's subsequent injury on 9/3/15 would have been injurious despite the injuries she sustained on 7/6/14. Petitioner testified that her second accident of 9/3/15 was more violent than her accident on 7/6/14 and she associated her symptoms with the second accident. Although Dr. Gornet had not released Petitioner at MMI prior to 9/3/15, he allowed her to work full duty including overtime two days per week and no treatment was recommended or scheduled after her last visit on 7/20/15 through the date of her second accident. On 7/20/15, Dr. Gornet noted that the injections almost completely resolved Petitioner's arm symptoms and he opined that additional conservative treatment might be appropriate; however, he did not recommend the disc replacement surgery at C5-6 and C6-7, and possible treatment at C4-5 that he previously suggested because the injections were successful. Petitioner's treatment from 7/20/15 through her second accident on 9/3/15 focused on her right shoulder injury with Dr. Paletta.

The records reflect that Petitioner's cervical symptoms increased and changed following the 9/3/15 incident, resulting in additional treatment and the inability to work for over a two-month period. Petitioner returned to Dr. Gornet on 9/16/15 with complaints of increasing neck pain, headaches, pain in both trapezius, upper back, the base of her neck, and pain into both shoulders. Physical examination revealed no focal neurologic deficits. A cervical x-ray revealed mutilevel facet changes and foraminal stenosis, particularly on the right. Dr. Gornet believed the

September 2015 incident aggravated her underlying cervical spine condition making her more symptomatic. He recommended conservative care, including heat, gentle traction, and massage to her neck and upper back. He took Petitioner off work and prescribed Meloxicam and Cyclobenzaprine. He stated if her symptoms increased in severity short term, he would consider oral steroids and/or Tramadol. He opined her current level of symptoms and need for treatment were causally related to the recent injury of 9/3/15. The pain diagram completed by Petitioner indicated stabbing, aching neck pain, aching pain from her neck down to her mid-back, and burning and aching mid-back pain. Dr. Gornet kept Petitioner off work from 9/16/15 through 11/16/15, at which time he ordered additional diagnostic studies that revealed an annular tear and disc pathology at C6-7 and C3-4 on the left side, with some facet changes at multiple levels on the right side. He noted right foraminal stenosis at C4-5 and C5-6.

Dr. Taylor opined that both work accidents in July 2014 and September 2015 aggravated Petitioner's pre-existing cervical pathology causing her to become symptomatic. His opinions were based on a solid understanding of the mechanism of each injury, his review of extensive diagnostic tests, the presentation of Petitioner's symptoms and her response to conservative care, and his understanding of the medical literature regarding the diagnosis and treatment of tandem stenosis. He testified tandem stenosis means Petitioner has a spinal cord that is smaller than it should be, and relatively minor degenerative changes can cause significant pathology because of the small size of the canal.

Dr. Chabot believed the September 2015 event may have caused a temporary exacerbation of Petitioner's pre-existing cervical condition and that she reached MMI on 9/17/17, two years after the September 2015 incident. The Arbitrator finds the evidence does not support Dr. Chabot's opinion of a two-year "temporary" exacerbation as Petitioner's condition has not returned to baseline. In *Lipscomb v. Horizons Rehabilitation, Inc.*,93 IWCC 0788, the Commission defined a temporary exacerbation as "an event that results in an increase in symptoms for a temporary period. Once that period ends, the physical condition of the injured worker *returns to the status quo ante.* There is no permanent material change in the health of the injured worker." Here, Dr. Taylor and Dr. Gornet report an increase in Petitioner's symptoms in the months and years after her injuries.

The Arbitrator further notes that Dr. Chabot had an incomplete understanding of Petitioner's pre-September 2015 physical condition. He knew virtually nothing about the mechanism of the July 2014 injury or the pertinent details about her symptoms and treatment following that event. He did not review medical records of Dr. Settlemoir, Dr. Gornet, Dr. Boutwell, Dr. Tananka, or Dr. Paletta dated prior to 9/3/15. He only reviewed the cervical MRI dated 2/2/15 and records involving an un-related left knee injury. Dr. Chabot admitted it could be helpful to have these prior records to help determine Petitioner's "baseline" level. Thus, Dr. Chabot cannot credibly claim to understand what Petitioner's pre-September 2015 "baseline" was without having reviewed these records.

The Arbitrator finds Petitioner's testimony to be credible and forthright, and there was no evidence of malingering. She continues to work full duty, without restrictions, despite her ongoing symptoms and physical difficulties. She testified that her income supports her family and she would be unable to pay her bills if she stopped working. She continues to take pain

medication and there is no evidence of any re-injury or aggravation aside from the undisputed work accidents.

Therefore, the Arbitrator finds that Petitioner's condition of ill-being in her cervical spine is causally connected to her injury that occurred on 7/6/14. The Arbitrator finds that Petitioner's subsequent work accident of 9/3/15 was an intervening incident that broke the chain of causation with respect to Petitioner's cervical condition, and the Arbitrator awards additional benefits accordingly in Case No. 15-WC-029432. The Arbitrator further finds that Petitioner's current condition of ill-being in her cervical spine is not causally related to her subsequent accident that occurred on 5/12/17 but was a temporary aggravation and a continuation of her injury that occurred on 9/3/15.

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

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

Based upon the above findings as to causal connection, the Arbitrator finds Petitioner is entitled to the reasonable and necessary medical care. Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's group exhibit 10 for the period 7/6/14 through 9/2/15, pursuant to the medical fee schedule or PPO agreement (whichever is less), as provided in §8(a) and §8.2 of the Act. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits and hold Petitioner harmless from any claims arising from the expenses for which it receives credit. The parties stipulate that Respondent shall receive credit for any medical bills paid through its group medical plan, under Section 8(j) of the Act, and Respondent shall hold Petitioner harmless for any claims made by the group medical plan for which it receives credit.

Based on the Arbitrator's finding that Petitioner's subsequent work accident of 9/3/15 was an intervening incident that broke the chain of causation with respect to her cervical condition, the Arbitrator awards additional benefits accordingly in Case No. 15-WC-029432 and denies Petitioner's claim for prospective medical care herein.

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 (Ill. 1990). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (Ill., 1990) citing *Ford Motor Co. v. Indus. Comm'n*, 126 Ill. App. 3d 739, 743, 467 N.E.2d 1018, 1021 (1984).

Based on the above findings as to causal connection, the Arbitrator finds Petitioner is entitled to temporary total disability benefits. Respondent shall therefore pay temporary total disability benefits for the period 7/15/14 through 8/19/14, representing 5-1/7th weeks.

Respondent is entitled to a credit for all extended benefits paid from 7/7/14 through 7/19/14 and 7/21/14 through 8/19/14.

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

Arbitrator Linda J. Cantrell

DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC029432
Case Name	Bonnie F Holland v. State of Illinois – Warren G Murray Developmental Center
Consolidated Cases	14WC033308; 17WC037186;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0395
Number of Pages of Decision	28
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Nathan Lanter
Respondent Attorney	Natalie Shasteen

DATE FILED: 10/13/2022

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Bonnie Holland,

Petitioner,

vs. NO: 15WC 29432

State of Illinois/Warren G. Murray
Developmental 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 temporary total disability, causal connection, medical expenses, prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 24, 2022, is hereby affirmed and adopted.

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

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.

October 13, 2022

MP:yl
o 10/6/22
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	15WC029432
Case Name	HOLLAND, BONNIE F. v. STATE OF ILLINOIS/WARREN G. MURRAY DEVELOPMENTAL CENTER
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	25
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Nathan Lanter
Respondent Attorney	Natalie Shasteen

DATE FILED: 2/24/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 23, 2022 0.71%

/s/ Linda Cantrell, Arbitrator
Signature

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

February 24, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Bonnie F. Holland
Employee/Petitioner

v.

State of Illinois/Warren G. Murray Developmental Center
Employer/Respondent

Case # **15** WC **029432**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin**, on **12/21/21**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **9/3/2015**, 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 the accident ***was*** given to Respondent.

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

In the year preceding the injury, Petitioner earned $**47,003.93**; the average weekly wage was $**903.92**.

On the date of accident, Petitioner was **49** 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 $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**all extended benefits paid from 9/4/15 through 11/18/15**, for a total credit of **$extended benefits paid.**

Respondent is entitled to a credit of $**all amounts paid through its medical group plan**, under Section 8(j) of the Act.

ORDER

Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's group exhibit 10 that were incurred on and after 9/3/15, pursuant to the medical fee schedule or PPO agreement (whichever is less), as provided in §8(a) and §8.2 of the Act. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits and hold Petitioner harmless from any claims arising from the expenses for which it receives credit. The parties stipulate that Respondent shall receive credit for any medical bills paid through its group medical plan, under Section 8(j) of the Act, and Respondent shall hold Petitioner harmless for any claims made by the group medical plan for which it receives credit.

The Arbitrator finds Petitioner has not reached maximum medical improvement and is entitled to receive the additional care recommended by Dr. Taylor. Respondent shall authorize and pay for prospective medical treatment, including, but not limited to, preoperative testing to include a CT myelogram and updated three Tesla MRIs of the cervical and lumbar spine and a DEXA scan due to Petitioner's risk of osteopenia/osteoporosis, as well as a C4-C7 ACDF with possible delayed stage C2-T1 posterior fusion, and an L4-S1 anterior posterior lumbar fusion, along with post-operative treatment until Petitioner is placed at maximum medical improvement.

Respondent shall pay temporary total disability benefits for the period **9/4/15 through 9/7/15, 9/16/15 through 11/19/15, 5/12/17 through 5/15/17, and 6/21/17**, representing **10-4/7th** weeks. Respondent is entitled to a credit for all extended benefits paid from 9/4/15 through 11/18/15.

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

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

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

FEBRUARY 24, 2022

Arbitrator Linda J. Cantrell

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

BONNIE F. HOLLAND,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 15-WC-029432
	)	
STATE OF ILLINOIS/WARREN G. MURRAY DEVELOPMENTAL CENTER,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Herrin on December 21, 2021 pursuant to Section 19(b) of the Act. On October 1, 2014, Petitioner filed an Application for Adjustment of Claim alleging injuries to her "neck, left upper extremity, man as a whole, and other body parts" as a result of being "injured during the course and scope of her employment" on July 6, 2014. (Case No. 14-WC-033308). On September 9, 2015, Petitioner filed an Application for Adjustment of Claim alleging injuries to her "neck, back, both knees, both upper extremities, both lower extremities, and MAW" as a result of being "injured during the course and scope of her employment" on September 3, 2015. (Case No. 15-WC-029432). On December 19, 2017, Petitioner filed an Application for Adjustment of Claim alleging injuries to her "head, neck, MAW, and other body parts" as a result of being "injured when a resident grabbed her and threw her down" on May 12, 2017. (Case No. 17-WC-037186).

The parties stipulate that all three accidents arose out of and in the course of Petitioner's employment with Respondent. The parties further stipulate that this Section 19(b) proceeding is limited to Petitioner's cervical and lumbar spine and any disputed issues with respect to Petitioner's right shoulder are reserved.

The issues in dispute in Case No. 15-WC-029432 are causal connection, medical expenses, temporary total disability benefits, and prospective medical treatment. The Arbitrator has simultaneously issued separate Decisions pursuant to Section 19(b) of the Act in Case Nos. 14-WC-033308 and 17-WC-037186.

TESTIMONY

Petitioner was 49 years old, married, with one dependent child at the time of accident. In July 2014, Petitioner was working full duty as a Mental Health Tech II. In September 2015 and May 2017 her job title was Mental Health Tech III. Her job duties in both positions involved taking care of the well-being of mentally challenged adults.

In the ten years prior to July 2014, Petitioner did not suffer any injuries to her neck, right shoulder, head, or low back. She did not have any pain radiating from her neck into her arms or numbness in her hands prior to July 2014. In the days, week, and months before July 2014 she was not experiencing any significant pain in her low back. She was not under a doctor's care for treatment for her neck, shoulders, low back, or arms at the time of her July 2014 accident. Petitioner was able to fully perform her job duties without any difficulty. Prior to September 2015, Petitioner did not experience any significant pain in her low back.

Petitioner testified that on 7/6/14 she intervened in an altercation between residents when one of the residents grabbed her by the hair and yanked her around. Petitioner fell to the ground and hit her right shoulder on the wall. Petitioner stated she immediately experienced a little bit of pain in her neck and shoulder. She reported her injury to her supervisor and completed an incident report the same day.

Petitioner initially sought treatment a St. Mary's Hospital and followed up with her primary care physician Dr. Settlemoir for complaints of pain in her neck, right shoulder, and numbness in her right hand. Petitioner underwent MRIs and physical therapy for her neck and right shoulder. She underwent injections recommended by Dr. Gornet in September and October 2014, and April 2015. Dr. Gornet referred Petitioner to Dr. Tanaka for her shoulder. Petitioner was referred to Dr. Paletta for her shoulder after Dr. Tanaka moved. She underwent facet rhizotomies by Dr. Blake. Petitioner testified that the injections into her neck and shoulders and the rhizotomies provided temporary relief.

Petitioner was kept off work from 7/15/14 through 8/19/14. When Petitioner saw Dr. Gornet he noted she was already working under a 5-pound weight limit and he increased her restriction to 10 pounds. Dr. Gornet eventually allowed Petitioner to return to work full duty, with no overtime. On 7/30/15, Dr. Gornet allowed Petitioner to return to work full duty, with limited overtime of two days per week.

On 9/3/15, Petitioner sustained a second work accident when a resident grabbed her by the hair and yanked her around. Petitioner's head and shoulder hit a door frame. Petitioner's supervisor grabbed the resident and Petitioner and the resident went to the ground while the resident was still holding onto Petitioner's hair. The resident weighed over 300 pounds and was taller than Petitioner. Petitioner testified that this injury was very bad and worse than the July 2014 injury. Petitioner completed an incident report and was taken to St. Mary's Hospital Emergency Room.

On 9/16/15, Petitioner returned to Dr. Gornet with increased neck pain, headaches, bilateral trapezius pain, upper back pain, and pain into both buttocks and hips. Petitioner

underwent MRIs of her neck and low back and Dr. Gornet recommended surgery. Petitioner sought a second opinion with Dr. Taylor which was paid for by Respondent.

Petitioner testified that following the September 2015 injury, she was kept off work by Dr. Galanos from 9/4/15 through 9/7/15. Dr. Gornet kept her off work from 9/16/15 through 11/19/15, at which time she returned to full duty work. Dr. Taylor referred Petitioner to Dr. Hurford for nerve blocks which she received.

Petitioner testified that on 5/12/17 her hair was grabbed and pulled by a resident and a co-worker got the resident to let go. Petitioner reported the injury to her supervisor and sought treatment at St. Mary's Hospital and followed up with Dr. Taylor.

Petitioner testified she most recently saw Dr. Taylor on 7/30/19 and underwent the conservative care he recommended. Petitioner testified that Dr. Taylor recommends surgery on her neck and low back which she desires to undergo.

Petitioner testified she still experiences neck pain that radiates into her right arm and sometimes into her left arm. She experiences occasional numbness in her right hand and fingers. Despite her symptoms, Petitioner continues to work full duty. She was promoted to a Mental Health Tech V, which is a less restrictive position. Petitioner's income supports her family. She continues to have low back pain and numbness in her left leg and foot that causes her to frequently trip when walking. She has difficulty sitting for more than a couple of hours and lifting causes pain. Petitioner testified that prior to the hearing she reviewed Dr. Taylor's 7/30/19 report and stated it is consistent with her current cervical and lumbar symptoms.

Petitioner agreed she was kept off work from 5/12/17 through 5/15/17 and was kept off work following one of the injections administered by Dr. Hurford. She testified that her neck has not been 100% pain free since 7/6/14 and her back has not been 100% pain free since 9/3/15.

On cross-examination, Petitioner testified she has been working full duty since 11/19/15 at her request. She is currently taking Hydrocodone prescribed by her primary care physician for neck, hip, and back pain. Petitioner received treatment from Dr. Gornet following the 2014 and 2015 accidents and he diagnosed an annular tear at C3-4 on the left side and multiple levels of degeneration on the right side. Petitioner stated that Dr. Gornet also recommended lumbar surgery which caused her to seek a second opinion.

Petitioner testified, as she sat for the hearing, she had a burning pain in her neck and a burning, stabbing pain in her back. Her back pain is in the middle part of her back and sometimes radiates up to her neck. Petitioner testified that a Mental Health Tech II and III have similar job duties which includes showering patients, dealing with patient behavior, getting patients ready for their daily routines, and wheelchair transfers. Petitioner became a Mental Health Tech V a few weeks after the May 2017 incident. As a Mental Health Tech V, she is an activity therapy person and performs activities with the residents, including taking them on outings and preparing paperwork for the building to which she is assigned. Petitioner testifies she is required to load residents onto a bus or van for outings and she uses a lift if a resident is wheelchair dependent. She occasionally works as a Mental Health Tech II.

Petitioner testified that other than one appointment with Dr. Taylor in 2019, she has not treated since 2017, other than taking pain medication. She is not currently receiving physical therapy or injections and she does not wear any type of brace. Petitioner testified she is able to do her job satisfactorily, but she has a lot of pain. Working as a Mental Health Tech V is a lot easier. She currently works full time, Tuesday through Saturday, and works some overtime as a Mental Health Tech II.

On re-direct, Petitioner testified that when she saw Dr. Chabot she completed an intake form, which is a spine questionnaire. (RX6). On the questionnaire, Petitioner indicated dates of injury of 9/3/15 and another date of injury in May 2017. She reported that her current symptoms were neck and mid-back pain. She testified she associates her mid-back pain with the back pain from her September 2015 injury, when the very large 300-pound woman grabbed her hair, because that injury was worse compared to the other two. She stated she has not received the recommended surgeries or additional treatment because Dr. Taylor does not accept her group health insurance and Respondent has denied her worker's compensation claims.

MEDICAL HISTORY

On 7/7/14, Petitioner presented to St. Mary's Hospital's emergency room where she provided a history of a resident grabbing her and pulling her hair. (PX1). Petitioner complained of burning and stabbing neck pain and headaches. Petitioner was not taking narcotic pain medication at that time. (PX1 p. 9). X-rays of Petitioner's right shoulder and cervical spine showed degenerative changes with no acute injuries.

On 7/15/14, Petitioner followed up with her primary care physician Dr. Hyet Settlemoir. (PX2). Petitioner reported that a resident grabbed her by her hair, pulled her to the floor, and jerked her body. (PX2 p. 384). Petitioner reported having a headache since the incident, burning pain when turning her head to the left, and constant pain in the back of her neck that radiated to her mid-back. She rated her pain 10/10. Physical exam revealed tenderness on palpation and reduced cervical range of motion. She was assessed with a neck sprain/strain. Dr. Settlemoir ordered cervical spine and right shoulder x-rays that revealed a normal cervical spine and mild degenerative changes of the acromioclavicular joint of the right shoulder. (PX1 p. 20-21, PX2 p. 390-391). Dr. Settlemoir prescribed Vicodin, Flexeril, and Ibuprofen and ordered Petitioner off work until 7/22/14.

On 7/21/14, Petitioner returned to Dr. Settlemoir with improved pain, but persistent neck pain and moderately reduced range of motion. (PX2 p. 339). Diagnosis remained the same and she was kept off work until 8/1/14. (PX2 p. 400). Dr. Settlemoir recommended continued use of NSAIDS and to follow up in two weeks.

On 7/31/14, Petitioner returned to Dr. Settlemoir with continued headaches and burning pain in her neck, stabbing pain between her shoulder blades, and pain in her right shoulder. (PX2 p. 405). He ordered Petitioner to continue medications and kept her off work until 8/7/14.

On 8/5/14, Petitioner saw her primary care provider, nurse practitioner, Debbie Malone, who noted Petitioner's symptoms, which included persistent neck and right shoulder pain, began

on 7/6/14 after she was pulled to the floor by her hair and kicked by a resident at work. NP Malone noted intermittent numbness in Petitioner's right hand since the injury. She kept Petitioner off work for two weeks and ordered a cervical and right shoulder MRI. (PX2 p. 409). The cervical MRI was performed on 8/14/14 and was normal. (PX2 p. 427). The right shoulder MRI revealed tendinopathy of the distal supraspinatous tendon with a small intrasubstance tear. (PX2 p. 428).

On 8/18/14, Petitioner returned to NP Malone who assessed neck pain and a traumatic tear of supraspinatus tendon of the right shoulder. She noted Petitioner's neck pain was 4-5/10 and her right shoulder pain was 6-8/10. NP Malone noted Petitioner continued to have occasional numbness in her right upper extremity. She noted Petitioner had an appointment with orthopedist Dr. Matthew Gornet on 9/11/14. Physical therapy was prescribed and Petitioner was place on a 5-pound lifting restriction. (PX1 p. 53).

On 9/5/14, Petitioner presented to St. Mary's Hospital for physical therapy. (PX1 p. 49). It was noted Petitioner had been working light duty, her neck and shoulder symptoms were worse, and she was sleeping in a recliner due to her symptoms. (PX1 p. 53). Physical exam showed tenderness to palpation in her trapezius and cervical spine. She was diagnosed with neck pain and a right rotator cuff tear. Petitioner underwent physical therapy for her neck and right shoulder through 10/3/14. (PX1 p. 87-129).

On 9/11/14, Petitioner was examined by Dr. Gornet and stated she was taking Hydrocodone for her symptoms. (PX3 p. 435). The pain diagram showed burning and stabbing pain in her neck, mid-back, and right shoulder, and stabbing pain and numbness down her right arm into her hand. (PX3 p. 433). Dr. Gornet noted Petitioner's symptoms included neck pain, headaches, pain into both trapezius, both shoulders, particularly the right shoulder and down her right arm into the hand with numbness and tingling. Dr. Gornet noted Petitioner was working light duty with a 5-pound lifting limit. Her symptoms remained constant and worse with arm activity, including bending and lifting. Dr. Gornet noted Petitioner was having predominantly right arm symptoms, including numbness and tingling, but was also having some left-sided symptoms. Physical exam revealed neck pain into both trapezius, particularly in the right shoulder, and radiculopathy in the right arm and hand. Dr. Gornet noted mild decreased range of motion in flexion/extension which exacerbated her symptoms. He reviewed the cervical MRI film dated 8/14/14 and although he believed it to be of poor quality, he noted an annular tear and several disc protrusions. Dr. Gornet recommended injections at C4-5 and C5-6 on the right to be performed by Dr. Boutwell. He referred Petitioner to Dr. Miho Tanaka for a right shoulder evaluation. He increased Petitioner's work restrictions to 10-pounds, with no overhead work. Dr. Gornet opined that Petitioner's symptoms in their level of magnitude and severity were causally connected to her recent work injury.

On 9/29/14, Dr. Kaylea Boutwell administered a right C5-6 epidural steroid injection. On 10/1/14, Dr. Gornet allowed Petitioner to return to full duty work with no overtime. On 10/13/14, Dr. Boutwell administered another right C5-6 epidural steroid injection. (PX5 p. 482).

On 11/10/14, Petitioner reported to Dr. Gornet that her pain continued to affect her quality of life. (PX3 p. 440). He noted no lasting relief from conservative care, including

Tramadol, anti-inflammatories, and muscle relaxants. Physical exam still showed a mild decrease in biceps on the right at 4/5. He noted Dr. Tanaka recommended a MR arthrogram of the right shoulder and he recommended a new cervical MRI with foraminal view. He continued to believe Petitioner's symptoms and need for treatment were causally connected to her 7/6/14 accident. He continued Petitioner on full duty work.

On 2/2/15, Petitioner returned to Dr. Gornet who noted Dr. Tanaka communicated with him that Petitioner had objective shoulder pathology consistent with her symptoms after reviewing the right shoulder MR arthrogram. (RX3 p. 441). Dr. Gornet believed some of Petitioner's shoulder pain was also coming from her neck injury. He believed the recent cervical MRI revealed low grade central herniations at C5-6 and C6-7, which accounted for the predominant symptoms in Petitioner's neck and headaches. He believed there was also some suggestion of foraminal stenosis at C4-5 on the right which was playing a role in her symptoms. He stated that since Petitioner's predominant symptoms were significant axial neck pain, the best option would be to treat that area first. He noted that the cervical injections failed, and he recommended a cervical CT myelogram and possible disc replacement surgery at C5-6 and C6-7, and possible treatment at C4-5.

On 4/2/15, Petitioner returned to Dr. Gornet with persistent axial neck pain and pain into her shoulder. (PX3 p. 443). She underwent a cervical myelogram and CT post myelogram prior to the exam. (PX6 p. 490-491). Dr. Gornet stated the myelogram revealed some facet arthritis at multiple levels including fairly significant foraminal stenosis secondary to facet changes at C4-5. He also believed the study revealed some right-sided facet changes at C5-6 and C6-7. He suspected an aggravation of underlying facet changes and foraminal stenosis. He believed Petitioner may have suffered a disc injury with central disc protrusions at C5-6 and C6-7. Dr. Gornet recommended facet rhizotomies at C4-5, C5-6, and C6-7 as opposed to surgery. Petitioner indicated a lot of her arm pain had resolved since the injection to the right side. Dr. Gornet noted Petitioner continued to have right shoulder symptoms and was now having left shoulder symptoms which was consistent with foraminal stenosis. He recommended a steroid injection at C4-5 on the left as well as facet rhizotomies. He allowed Petitioner to continue to work full duty with no overtime.

On 4/27/15, Dr. Boutwell administered a right C5-6 epidural steroid injection. (PX5 p. 483). On 5/11/15, Dr. Boutwell performed a left C4-5, C5-6, and C6-7 radiofrequency ablation. (PX5 p. 484). On 6/15/15, Dr. Boutwell performed a right C4 through C7 radiofrequency ablation. (PX5 p. 485).

On 7/20/15, Dr. Gornet noted Petitioner responded well to the facet rhizotomies and other injections but was still having right shoulder pain. (PX3 p. 448). Petitioner's arm pain resolved. He noted that Dr. Tanaka moved and he referred her to Dr. Paletta for continued right shoulder care. Dr. Gornet considered additional injections and rhizotomies. He allowed Petitioner to continue working full duty with no overtime. (PX3 p. 447).

On 7/23/15, Petitioner was examined by Dr. Paletta. (PX4 p. 474). He noted Petitioner had undergone treatment for her neck including injections and ablations, which provided some relief. He noted her treatment with Dr. Tanaka, which included a shoulder injection and physical

therapy which did not provide relief. Dr. Paletta reviewed the right shoulder MRI dated 2/2/15 and assessed AC joint pain and chronic subacromial bursitis in the setting of a partial thickness bursal-sided rotator cuff tear. (PX4 p. 476). He believed the majority of her symptoms appeared to be related to the AC joint. He recommended an ultrasound or a fluoroscopically guided injection to the AC joint for diagnostic and therapeutic purposes. He allowed Petitioner to work full duty.

On 7/29/15, Dr. Boutwell administered a right AC joint injection under ultrasound. (PX5 p. 486). On 7/30/15, Petitioner contacted Dr. Gornet's office and requested she be allowed to work at least two days of overtime per week. (PX3 p. 450). Dr. Gornet complied.

Following the 9/3/15 accident, Petitioner was immediately taken by ambulance to St. Mary's Hospital. (PX1 p. 132). A history of injury was provided, and Petitioner complained of headache, neck pain, knee pain, and back pain. (PX1 p. 179). The clinical history was assault and back pain. (PX1 p. 136). Petitioner underwent a CT scan of her cervical spine and head, and x-rays of her thoracic spine and left knee. (PX1 p. 136-137). The cervical CT scan revealed multilevel endplate and facet joint degenerative changes most prominent at C4-5 and C5-6. The thoracic spine x-ray was normal. She was prescribed pain medication, including Hydrocodone, and discharged.

On 9/4/15, Petitioner returned to St. Mary's Hospital emergency department with complaints of dizziness, nauseous, and "seeing spots". (PX2 p. 179-181). Her symptoms resolved at the hospital and she was provided an off-work slip from 9/4/15 through 9/7/15.

On 9/16/15, Petitioner returned to Dr. Gornet and provided a history of being grabbed by the hair by a 300-pound resident that shook her and hit her head on a concrete wall on 9/3/15. (PX3 p. 452). Dr. Gornet noted increasing neck pain, headaches, pain in both trapezius, upper back, the base of her neck, and pain into both shoulders. He also noted Petitioner had low back pain into both buttocks and hips. Petitioner denied any significant arm or leg pain. Physical examination revealed no focal neurologic deficits. A lumbar x-ray revealed an isthmic type spondylolisthesis with grade 1 translation at L5-S1. A cervical x-ray revealed mutilevel facet changes and foraminal stenosis, particularly on the right. Dr. Gornet believed the September 2015 incident aggravated her underlying cervical spine condition making her more symptomatic and possibly causing a new disc injury. He recommended conservative care, including heat, gentle traction, and massage to her neck and upper back. He took Petitioner off work and prescribed Meloxicam and Cyclobenzaprine. He stated if her symptoms increased in severity short term, he would consider oral steroids and/or Tramadol. He opined her current level of symptoms and need for treatment were causally related to the recent injury of 9/3/15. (PX3 p. 453). The pain diagram completed by Petitioner indicated stabbing, aching neck pain, aching pain from her neck down to her mid-back, burning and aching mid-back pain, and aching in both hips and buttocks. (PX3 p. 454). On the intake questionnaire, Petitioner stated pain in her back and neck as the reason for her visit. (PX3 p. 455). Dr. Gornet kept Petitioner off work from 9/16/15 through 11/16/15. (PX3, p. 461).

Petitioner attended physical therapy at Salem Township Hospital from 10/19/15 through 11/11/15. (PX9). Cervical and lumbar pain was noted. (PX9 p. 905). Petitioner attended nine

therapy sessions and the discharge note indicates she felt stronger and more flexible but her cervical and lumbar pain remained 8/10 most of the time. Petitioner was not able to tolerate most exercises due to pain and her therapy goals were not met. (PX9 p. 915). The therapist noted Petitioner had an antalgic gait and was guarding her neck area.

Petitioner underwent cervical and lumbar MRIs and returned to Dr. Gornet on 11/16/15. (PX3, p. 460). Dr. Gornet diagnosed an annular tear and disc pathology at C6-7 and C3-4 on the left side, with some facet changes at multiple levels on the right side. He saw no significant nerve compression, but she did have right foraminal stenosis at C4-5 and C5-6. Dr. Gornet did not comment on the lumbar MRI which revealed severe bilateral stenosis but no canal stenosis. He noted Petitioner's pain continued and she had not reached MMI. He prescribed Meloxicam and Cyclobenzaprine and ordered her to return in three months. He kept her off work from 11/16/15 through 11/18/15 and released her to return to full duty work without restrictions on 11/19/15. (PX3 p. 462).

On 2/2/16, Petitioner was examined by Dr. Bret Taylor for a second opinion. (PX7). The appointment was paid for by Respondent. Petitioner complained of neck pain, back pain, and migraines. She described bilateral arm numbness and pain in her mid and low back. She had leg pain she described as frequent. Dr. Taylor took a detailed history of injury on 7/4/15 and a second injury in September 2015. He performed a physical examination and reviewed Petitioner's prior medical records, including diagnostic studies. Mild bilateral paraverterbral muscle spasms were noted, along with changes over the right elbow consistent with ulnar nerve transposition and right hand weakness. Dr. Taylor diagnosed congenital stenosis in the cervical and lumbar spine with marked degenerative changes. (PX7 p. 552). He believed Petitioner's symptoms were consistent with tandem stenosis. He ordered additional studies, including EMGs of the upper and lower extremities and a whole-body bone scan with lumbar SPECT. He also recommended a left AFO brace for Petitioner's leg weakness and history of tripping. Dr. Taylor further recommended BHI and MMPI testing to rule out psychological overlay.

On 8/16/16, Petitioner returned to Dr. Taylor who noted Petitioner continued to work full duty and was having increased numbness in both of her feet. (PX7 p. 634). He noted she was having increased back and neck pain and headaches that were different than her pre-injury migraine headaches. Physical exam revealed an antalgic gait and cervical and lumbar abnormalities. He reviewed the lower extremity EMG completed by Dr. Daniel Phillips on 8/16/16 and believed it showed chronic bilateral L5 radiculopathy as well as tibial neuropathy across the tarsal tunnels. (PX7 p. 635, 639-644). Dr. Phillips noted normal strength in both legs, symmetrical reflexes, and no evidence of foot drop. Dr. Taylor recommended an upper extremity EMG, a whole-body bone scan and lumbar SPECT CT scan, and a left AFO brace for foot drop. He asked the tests to be approved in an expedited fashion as delay in evaluation and treatment would negatively affect her overall prognosis. He allowed Petitioner to continue working full duty.

On 11/1/16, Petitioner returned to Dr. Taylor, who reviewed the completed upper extremity EMG study and noted Petitioner was increasingly symptomatic. (PX7 p. 645). Dr. Taylor noted Petitioner was working full duty but was tripping more frequently on her left side. The upper extremity EMG performed by Dr. Phillips on 11/1/16 showed chronic ulnar

neuropathy. (PX7 p. 645, 647-653). Dr. Taylor noted Petitioner was treating with Dr. Bonner for her left knee and was awaiting a left knee replacement. Dr. Taylor again recommended a whole-body bone scan, lumbar SPECT scan, and a left AFO brace.

On 11/2/16, Petitioner underwent a nuclear medicine bone scan at St. Mary's Hospital that revealed degenerative changes involving the L5-S1 level. (PX2 p. 219). The clinical history was back pain. On 12/5/16, Petitioner returned to Dr. Taylor who noted she was symptomatically unchanged. He reviewed the test results with Petitioner and believed a final attempt with nonoperative care with a pain specialist was appropriate. (PX 11 p. 1000-1001).

On 12/12/16, Petitioner saw Dr. Patricia Hurford at Dr. Taylor's referral. (PX8). Petitioner provided a history of her work accidents. Dr. Hurford noted Petitioner had pain that occurred daily from morning to night that interrupted her sleep. The pain was primarily in the right upper trapezius region to the mid back, with a burning, stabbing sensation, and occasional numbness affecting both upper extremities, with the right and left side equally affected. Dr. Hurford performed a physical exam and reviewed cervical x-rays. Her impression was two work-related injuries that affected the cervical region and evidence of overlying cervical myofascial symptoms, chronic pain symptoms, and sensory complaints, with no objective evidence of radiculopathy or myelopathy. (PX8 p. 822). Dr. Hurford wanted to put together a more comprehensive treatment plan after reviewing Petitioner's prior diagnostic studies. In the meantime, she recommended home exercises and did not restrict Petitioner's work activities.

On 12/20/16, Dr. Hurford reviewed Petitioner's diagnostic studies that showed Grade I-II spondylolisthesis in the lumbar spine, with bilateral pars defect at L5, multi-level degenerative changes in the cervical spine with diffuse disc bulging, and right greater than left foraminal narrowing. Results of the nuclear medicine bone scan demonstrated degenerative changes a L5-S1. Petitioner rated her pain 9/10. On exam, Petitioner was noted to have persistent left greater than right-sided neck pain, with headaches that were different from her migraines. Dr. Hurford's impression included persistent cervical pain symptoms with radiculitis, with no objective evidence of radiculopathy, and cervicogenic headaches. (PX8 p. 826). Dr. Hurford recommended an increase of Duloxetione and medial branch blocks for diagnostic purposes on the left at levels C2, C3, C4, and C5. Dr. Hurford did not limit Petitioner's work activities.

On 1/31/17, Petitioner underwent left C2, C3, C4, and C5 medial branch blocks under fluoroscopic guidance administered by Dr. Hurford. (PX8 p. 828). Petitioner's pain rating before the procedure was 8/10 and post-injection it was 0/10. On 2/14/17, Petitioner returned to Dr. Hurford who noted the relief provided by the medial branch blocks. (PX8 p. 829). She also noted that despite this improvement, Petitioner requested no further interventional procedures. Dr. Hurford referred Petitioner back to physical therapy for myofascial treatment and scapular postural strengthening. Petitioner was prescribed a trial of Trazodone.

On 2/23/17, Petitioner returned to St. Mary's Hospital for physical therapy for chronic neck and back pain. (PX2 p. 231). Petitioner attended nine therapy sessions through 3/23/17. (PX2 p. 229-327).

On 3/30/17, Petitioner returned to Dr. Hurford who noted Petitioner continued to have severe headaches and neck pain and was now reporting migraine symptoms after physical therapy. Her sleep was being disrupted. Dr. Hurford's impression was severe cervicalgia and cervicogenic headaches, and myofascial symptoms following a cervical strain injury with primarily cervical complaints. (PX8 p. 836). Petitioner did not want to undergo radiofrequency ablations and wanted a surgical follow-up. Dr. Hurford referred Petitioner back to Dr. Taylor.

On 5/3/17, Petitioner returned to Dr. Taylor who noted Petitioner's symptoms improved for one day following the medial branch blocks but returned to baseline. She denied radiation into her upper extremities. No radiation was noted to her lower extremities. She stated she occasionally wears the AFO brace. Mylopathic and Spurling tests were negative. Dr. Taylor noted an antalgic gait and diagnosed critical cervical stenosis, cervical facet arthropathy, cervicogenic headaches, lumbar spondylolisthesis at L5-S1, and lumbar radiculopathy at L4-5. (PX7 p. 655). He discussed with Petitioner what RFAs had to offer and Petitioner wanted to avoid surgery if possible. Petitioner decided to undergo the ablations. Dr. Taylor believed Petitioner was ultimately a surgical candidate, including a C4-C7 ACDF with possible delayed stage C2-T1 posterior fusion, and an L4-S1 anterior posterior lumbar fusion.

On 5/12/17, Petitioner returned to St. Mary's Hospital emergency room following an altercation at work where a resident grabbed her hair and pulled her to the floor. (PX2 p. 328). Petitioner reported pain in her head, right neck, back, and left shoulder. A cervical CT scan showed multilevel degenerative disc disease with endplate and facet hypertrophy and mild narrowing of the neural foramina. Lumbar imaging revealed spondylosis at L5 with Grade II spondylolisthesis of L5 in relation to S1 and severe disc degeneration at L5-S1. The assessment was injury due to an altercation, neck pain, low back pain without sciatica, and intractable headache. (PX2 p. 337). Petitioner was kept off work from 5/12/17 through 5/15/17.

On 6/21/17, Petitioner returned to Dr. Hurford to proceed with the radiofrequency ablations. (PX8, p. 855). Petitioner rated her neck pain 9/10, with left slightly worse than the right. Dr. Hurford noted Petitioner used Hydrocodone as-needed for severe pain. Her impression was persistent significant and severe cervicalgia after a work-related injury, cervical spondylosis and degenerative disc changes, and cervicogenic and migraine headache disorder. Dr. Hurford recommended the RFA procedure and prescribed Hydrocodone. No work restrictions were given with the exception of being off work for 24 hours post injection.

On 7/11/17, Petitioner underwent the RFA administered by Dr. Hurford. (PX8 p. 872). Petitioner's pain rating before the procedure was 10/10, post-injection it was 0/10. On 7/31/17, Dr. Hurford noted the RFA provided pain relief until one and one-half weeks ago when the pain returned. (PX8 p. 882). Petitioner was having left-greater-than-right-sided neck pain. She again rated her pain 9/10. Dr. Hurford recommended increased Duloxetine, Tylenol for sleep disorder, and physical therapy for a TENS unit.

On 9/5/17, Petitioner returned to Dr. Hurford, who noted Petitioner was having increased axial symptoms without radiation. (PX8 p. 890). The TENS unit had not been approved by Respondent. Petitioner reported some improvement with increased use of Duloxetine and Tylenol. Dr. Hurford's impression remained the same and she recommended a short course of

oral corticosteroids, topical Lidocaine, a TENS unit via physical therapy, and no work restrictions. (PX8 p. 892). On 9/26/17, Dr. Hurford referred Petitioner back to Dr. Taylor.

On 10/20/17, Petitioner returned to Dr. Taylor who noted Petitioner was dissatisfied with her condition and her persistent symptoms were worsening. (PX7 p. 664). He recommended the cervical and lumbar surgeries described on 5/3/17.

On 2/2/18, Petitioner was examined by Dr. Chabot pursuant to Section 12 of the Act. (RX4). Petitioner complained of burning/stabbing neck pain along the posterior aspect of her neck. She stated her right hand greater than left occasionally fell asleep and her symptoms were nocturnal. Petitioner has not been diagnosed with carpal tunnel syndrome. She complained of low and mid back pain with sitting and pain along the bra line at the thoracolumbar junction. No radiation into her lower extremities was noted. A neurologic exam of Petitioner's upper extremities showed positive palmar pressure testing involving the bilateral wrists with aggravation of carpal-tunnel symptoms; positive Tinel's signs of the left wrist and negative on the right, and positive testing along the right cubital tunnel. Neurologic exam was otherwise normal and lower extremity exams were unremarkable. Dr. Chabot did not believe additional medical treatment was necessary or related to the work incidents. Petitioner had chronic degenerative conditions that would continue to cause symptoms. He noted that Dr. Taylor's recommendation for surgical intervention to the L-spine based on significant neural deficits in the lower extremities were not confirmed by Dr. Phillips, a neurologist, who performed a physical examination and nerve study. The nerve study showed no evidence of active radiculopathy.

On 7/30/19, Petitioner returned to Dr. Taylor who noted Petitioner continued to work full duty and was persistently symptomatic. (PX7 p. 706). He noted she underwent a total knee replacement with Dr. Bonutti stemming from another worker's compensation claim. Petitioner was prescribed Hydrocodone by Dr. Varanasy. Dr. Taylor noted Petitioner's third work-related injury caused a temporary increase in her neck pain which had since returned to her pre-third injury baseline level. Petitioner reported working at a new position and she lost her AFO brace in a house file. She was taking Hydrocodone on rare occasions. (PX7 p. 706-707). Her pain questionnaire was positive for neck and lumbar spine pain and radicular symptoms. (PX7 p. 707). Dr. performed a physical exam of Petitioner's cervical and lumbar spine and reviewed x-rays taken that day. His impression was cervical degenerative disc disease, cervical congenital stenosis, cervical radiculopathy, lumbar spondylolisthesis at L5-S1, lumbar congenital stenosis, and lumbar degenerative disc disease. (PX7 p. 709-710). He noted Petitioner's pain went into her upper back, and she had weakness in her left upper arm. She continued to have problems with balance and tripping. She had frequent headaches. Her neck disability index was 44, neck pain was a scale seven, and her Japanese Orthopedic Association (JOA) score for myelopathy was moderate. She had lumbar spine symptoms that included 60% back pain and 40% leg pain. (PX11 p. 1007). Her leg pain was 25% in the right leg and 70% in the left leg. She had pain in her left buttock, back of her thigh, and weakness in her left ankle and foot. Her symptoms were worse with sitting and standing. She was able to stand and walk 15 to 30 minutes. He again recommended the surgical procedures he described on 5/3/17. (PX7 p. 710).

Dr. Bret Taylor testified by way of deposition on 3/3/20. (PX11). Dr. Taylor is an orthopedic surgeon. His testimony was consistent with his medical records. His history of Petitioner's July 2014 injury included details of a resident grabbing Petitioner's hair with both hands, pulling her down a hall, with the assault lasting three to four minutes before assistance arrived. Dr. Taylor stated Petitioner's neck and right shoulder were the most symptomatic following her accident and conservative treatment did not provide lasting relief. Dr. Taylor noted a history of the September 2015 injury that involved a tall, 300-pound person grabbing Petitioner by the hair with both hands and swinging her into a wall, then falling backwards and pulling Petitioner on top of her. Petitioner described this attack as more violent. Her primary complaints following that accident were persistent symptoms in her neck, back, and headaches which were different than the baseline headaches she had prior to the incident. She also reported bilateral arm numbness and pain, numbness and pain in her mid and low back, and leg symptoms that included tripping while walking on flat surfaces. Dr. Taylor diagnosed cervical congenital stenosis, pre-existing cervical degenerative disc disease, facetogenic pain causing headaches, and incidental findings of cervical hemangiomas. He also diagnosed lumbar congenital stenosis, pre-existing degenerative disc disease, and L5-S1 isthmic spondylolisthesis.

Dr. Taylor was not aware of Petitioner having cervical or lumbar complaints in the days, weeks, and months before July 2014, or that she had any lumbar pain in the days, weeks, and months before her September 2015 accident. He opined that Petitioner's work accident in 2014 resulted in a permanent aggravation of her pre-existing cervical condition and additional treatment was necessary to cure and relieve her symptoms. He opined the September 2015 event further aggravated both her cervical condition that never went away and aggravated her pre-existing lumbar spine causing it to become symptomatic. He opined that Petitioner's need for lumbar spine treatment was a result of the 2015 work incident.

Dr. Taylor testified that Petitioner has exhausted conservative treatment and the cervical and lumbar surgeries are reasonable and necessary. He opined Petitioner has not reached MMI and if she does not receive the recommended surgeries her prognosis is poor to guarded. He continues to recommend an anterior cervical fusion from C4 to C7, a possible delayed staged posterior procedure from C2 to T1, and an anterior/posterior L4 to S1 fusion. His preoperative testing would include a CT myelogram and updated three Tesla MRIs of the cervical and lumbar spine and a DEXA scan due to Petitioner's risk of osteopenia/osteoporosis. He has not seen Petitioner since 7/30/19.

Dr. Taylor disagreed with Dr. Chabot's opinion that the diagnostic tests (cervical MRIs, cervical myelogram, and CT post myelogram) showed only minimal disc bulging. Dr. Taylor's review of the studies was more consistent with a herniation. He stated Petitioner's diagnosis of tandem spinal stenosis means she has a spinal canal that is smaller than it should be. She can have relatively minor degenerative changes that causes significant clinical pathology because she has a canal that is too small. He explained that when the pre-existing static effects of arthritis are combined with trauma where there are dynamic effects, flexion and extension, it can aggravate the degenerative condition. Petitioner also has additional pathology of isthmic spondylolisthesis L5-S1. Dr. Taylor opined that Petitioner's mechanism of injury to her cervical spine could aggravate her pre-existing condition. The forced dynamic movement of a person's head and neck into flexion/extension movements increases the compression of the neural elements and can

injure those neural elements and cause permanent structural damage and permanent aggravation resulting in symptomatology.

Dr. Taylor also disagreed with Dr. Chabot's opinion that Petitioner was not a surgical candidate for her cervical or lumbar complaints because Petitioner did not have radicular complaints in her legs or arm. Dr Taylor opined the medical literature disagreed with Dr. Chabot. He stated that cervical EMGs have a very high false negative rate and just because the EMG studies are negative does not mean Petitioner does not have cervical pathology. Dr. Taylor stated that Petitioner has tandem spinal stenosis which carries a certain prognosis. Individuals with tandem spinal stenosis and myelopathy do not do well absent surgery which halts the progression of myelopathy. Without surgery, the myelopathy worsens for over 90% of patients either catastrophically or gradually. Dr. Taylor testified that patients, like Petitioner, with congenital stenosis in the lumbar spine, isthmic spondylolisthesis, and radiculopathy, having a foot drop and needing an AFO brace will benefit from surgery to stabilize their condition. He stated that surgery will not correct Petitioner's foot drop but will stop its progression and prevent it from occurring in her opposite leg.

On cross-examination, Dr. Taylor opined the work incidents of 2014 and 2015 permanently aggravated Petitioner's pre-existing cervical and lumbar tandem stenosis, pre-existing cervical and lumbar degenerative disc disease, and pre-existing lumbar isthmic spondylolisthesis at L5-S1. He believed Petitioner had suffered a permanent acute injury to the neural elements when the dynamic event of having her head grabbed and pulled back and forth aggravated her pre-existing static stenosis which she had because she had congenital stenosis and arthritis. This creates a cascade of events that can include cell death that results in permanent neurologic damage, dysfunction, and pain. Dr. Taylor cited medical literature in his records that support these opinions. To objectively test those injured nerves, Dr. Taylor uses a patient's history, physical exam, and diagnostic tests. He stated that Petitioner had cervical myelopathy based on the JOA scale that was moderate. She also had chronic radiculopathy and a foot drop which is causally connected to her lumbar spine pathology. He testified that Petitioner is a very classic example of a person with tandem stenosis. On physical exam, he found a combination of both radiculopathy and myelopathy. He diagnosed Petitioner with myelopathy on 2/2/16 and his working diagnosis was tandem stenosis and the combination of upper extremity pathology, cervical pathology, lumbar radiculopathy, and lumbar pathology in the form of isthmic spondylolisthesis and congenital stenosis.

Dr. Taylor testified that people with cervical myelopathy have a number of symptoms, including difficulty with their gait and they can trip and fall. Not all symptoms of cervical myelopathy involve the upper extremities. He testified that in his experience, myelopathy from tandem stenosis usually arises out of some trauma and it a clinical diagnosis that is not see on imaging studies. He stated that Petitioner's JOA score shows her symptoms were worsening over time. Petitioner's myelopathy was not so severe that all the tests were positive and some of her testing was negative on physical exam.

Dr. Michael Chabot testified by way of deposition on 9/28/18. (RX5). Dr. Chabot is a board-certified orthopedic surgeon with a subspecialty in spine surgery. Dr. Chabot's testimony was consistent with his reports. He reviewed medical records dating back to 2014 and beyond,

multiple diagnostics, and performed a physical examination on Petitioner. He stated that Petitioner relayed a history of injury on 9/3/15 and no other accidents. She reported a client grabbed her hair, swung her around, scratched her on the right side of her neck and threw her against a wall. Petitioner landed on her left knee and complained of head, neck, and back pain. Dr. Chabot performed cervical spine x-rays with obliques and flexion/extension that revealed evidence of well-preserved disc space throughout the cervical spine, with only mild loss of lordosis. Petitioner had diffuse facet degeneration from C2-T1 and degeneration involving the C1-C2 articulation. Flexion/extension films revealed no evidence of instability. Oblique images showed evidence of mild right side C4-5 and C5-6 foraminal narrowing.

Dr. Chabot disagreed with the radiologist's interpretation of the CT myelogram. His review of the cervical MRI dated 2/2/15 showed advanced degeneration, disc bulging at C4-7, with little to no neural compression. He felt the imaging as read by Dr. Ruyle was overstated. Dr. Chabot compared the images dated 2/2/15 and 11/15/15, which did not show evidence of acute edema to suggest an acute injury. He noted Petitioner did not walk with a limp or have issues ambulating. Physical exam showed reduced range of motion in the cervical spine which was normal for her age, with no signs of radiculopathy. Neurologic exam was normal with the exception of positive Tinel's sign suggesting the presence of carpal tunnel and ulnar neuropathy. The lower extremity neurologic examination was normal. He stated Petitioner described symptoms that were consistent with carpal tunnel disease. Her low back complaints were primarily along the bra line and thoracolumbar junction and she denied radiation into her lower extremities. Petitioner's complaints to Dr. Chabot and her pain diagram describe pain symptoms localized to the mid and lower neck and cervicothoracic junction. Petitioner did not mark any pain involving the lumbar region. She did not indicate the presence of numbness or weakness extending from her neck into the arms or from her back into the legs. Petitioner did not complain to Dr. Chabot of weakness or symptoms typical of radiculopathy involving the arms or legs.

Dr. Chabot noted Petitioner was on narcotics for chronic knee and hip complaints. He diagnosed Petitioner with neck, thoracic, and lumbar strains associated with the 9/3/15 incident, with pre-existing multifaceted degeneration, C1-C2 joint degeneration, Grade I and II spondylolisthesis L5-S1, bilateral pars defect, spondylosis at L5, advances tissue degeneration, advanced degeneration involving the bilateral knees, chronic knee pain, chronic narcotic use, and moderate chronic knee arthritic complaints. Dr. Chabot felt the cervical, thoracic, and lumbar strains were related to the work injury. He did not feel additional medical treatment was necessary and Petitioner had reached MMI. The basis of Dr. Chabot's opinion was that Petitioner was working full duty, using medication, did not have physical exam findings to suggest she had persistent residual symptoms associated with an injury, and did not have findings on MRI to support an injury. He did not feel Petitioner was a surgical candidate for her cervical or lumbar spine. Petitioner was doing well with medication and did not exhibit radicular symptoms in the upper or lower extremities. Petitioner's examination was void of any persisting tissue inflammation to suggest she had ongoing residuals associated with her work injury and she had returned to her baseline. Dr. Chabot's opinion differed from Dr. Taylor's because Petitioner did not indicate any pain to her lower lumbar region or back pain radiating into her lower extremities, and her physical examination lacked any evidence of spasm or tissue irritation. Petitioner had excellent range of motion and no neurologic changes to the lower extremities. Moreover, Dr. Taylor suggested Petitioner had changes in muscle strength or evidence of a drop

foot. Dr. Chabot did not note any neurologic changes or muscle weakness involving the lower extremities. Dr. Phillips, a certified neurologist, found no evidence of neurologic changes involving the lower extremities. Dr. Phillips also performed an electrodiagnostic study which failed to evidence active radiculopathy or nerve damage involving the lower extremities.

On cross-examination, Dr. Chabot opined the September 2015 event may have caused a temporary exacerbation of the pre-existing condition of Petitioner's cervical and lumbar spine. He believed she had reached MMI on 9/17/17 because that was the time when the temporary exacerbation ended. Dr. Chabot believed all the prior treatment he reviewed was reasonable and necessary to address Petitioner's complaints associated with the September 2015 incident. Dr. Chabot was aware Petitioner had a history of neck complaints in 2014 that required treatment, including injections and facet rhizotomies, over a long period, but admitted he did not have full detail on that. He admitted it could be helpful to have the medical records prior to 9/3/15 to determine what Petitioner's baseline was. He opined Petitioner would continue to have complaints involving her cervical and lumbar spine and continue frequent use of pain medication. He admitted he did not review any records from Dr. Gornet prior to the 9/16/15 report. He admitted his report provided no details about a July 2014 date of injury and the only records he reviewed prior to 9/3/15 involved Petitioner's left knee and a cervical MRI dated 2/2/15.

CONCLUSIONS OF LAW

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

Based on the evidence and Petitioner's medical records, the Arbitrator finds Petitioner's current condition of ill-being in her cervical and lumbar spine is causally connected to her injury that occurred on 9/3/15. In Case No. 14-WC-033308, the Arbitrator found that Petitioner's accident of 9/3/15 was an intervening incident that broke the chain of causation with respect to Petitioner's cervical condition sustained on 7/6/14.

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. Indus. Comm'n*, 260 Ill.App.3d 92, 631 N.E.2d 724 (4th Dist. 1994); *International Harvester v. Indus. Comm'n*, 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).

The law holds that accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it is a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 672-673 (2003). [Emphasis added]. "Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Indus. Comm'n*, 309 Ill. App. 3d 1037, 723 N.E.2d 846 (2000). 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).

With respect to Petitioner's cervical spine, there is no dispute Petitioner had pre-existing cervical conditions prior to her accidents on 7/6/14 and 9/3/15. Following Petitioner's accident on 7/6/14, she was treated conservatively with medication, physical therapy, steroid injections, and radiofrequency ablations. On 7/20/15, Dr. Gornet noted Petitioner responded well to the injection and ablations, with resolution of her arm pain, but she had persistent right shoulder pain. He referred Petitioner to Dr. Paletta for continued treatment of her right shoulder. At that time, he considered future injections and rhizotomies and made no further recommendation for surgery. Petitioner did not receive additional treatment for her cervical spine following her last visit with Dr. Gornet on 7/20/15 until her second accident on 9/3/15. She continued to work full duty, including overtime during that period.

Where the issue involves whether an intervening accident broke the chain of causation between a work-related injury and an ensuing disability or injury, Illinois law states, work-related or not, it is irrelevant whether a subsequent incident may have aggravated the claimant's condition. *Id.* 354 Ill.App.3d at 786. Further, under an independent intervening cause analysis, compensability for an ultimate injury or disability is based on a finding that the employee's condition was caused by an event that would not have occurred "but for" the original injury. *PAR Elec. v. Ill. Workers' Comp. Comm'n*, 2018 IL App (3d) 170656WC, P56, 118 N.E.3d 681, 694, 2018 Ill. App. LEXIS 775, 427 Ill. Dec. 480, 493 citing *International Harvester Co. v. Industrial Comm'n*, 46 Ill. 2d 238, 245, 263 N.E.2d 49 (1970) The "but for" rationale has been extended 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.* 118 N.E.3d at 698 citing *International Harvester Co.*, 46 Ill. 2d at 245. Further, an employer is relieved of liability only if the intervening cause completely breaks the causal chain between the original work-related injury and the ensuing condition of ill-being. *Id.*, 118 N.E.3d at 694, citing, *Global Products v. Illinois Workers' Compensation Comm'n*, 392 Ill. App. 3d 408, 411, 911 N.E.2d 1042, 331 Ill. Dec. 812 (2009).

The "but for" rationale is not appropriate in the instant case. There is ample evidence that Petitioner's subsequent injury on 9/3/15 would have been injurious despite the injuries she sustained on 7/6/14. Petitioner testified that her second accident of 9/3/15 was more violent than her accident on 7/6/14 and she associated her symptoms with the second accident. Although Dr. Gornet had not released Petitioner at MMI prior to 9/3/15, he allowed her to work full duty including overtime two days per week and no treatment was recommended or scheduled after her last visit on 7/20/15 through the date of her second accident. On 7/20/15, Dr. Gornet noted that the injections and ablations almost completely resolved Petitioner's arm symptoms and he opined that additional conservative treatment might be appropriate; however, he did not recommend the disc replacement surgery at C5-6 and C6-7, and possible treatment at C4-5 that he previously suggested because the injections improved her symptoms. Petitioner's treatment from 7/20/15 through her second accident on 9/3/15 focused on her right shoulder injury with Dr. Paletta.

The records reflect that Petitioner's cervical symptoms increased and changed following the 9/3/15 incident, resulting in additional treatment and the inability to work for over a two-month period. Petitioner returned to Dr. Gornet on 9/16/15 with complaints of increasing neck pain, headaches, pain in both trapezius, upper back, the base of her neck, and pain into both shoulders. Physical examination revealed no focal neurologic deficits. A cervical x-ray revealed mutilevel facet changes and foraminal stenosis, particularly on the right. Dr. Gornet believed the September 2015 incident aggravated her underlying cervical spine condition making her more symptomatic. He recommended conservative care, including heat, gentle traction, and massage to her neck and upper back. He took Petitioner off work and prescribed Meloxicam and Cyclobenzaprine. He stated if her symptoms increased in severity short term, he would consider oral steroids and/or Tramadol. He opined her current level of symptoms and need for treatment were causally related to the recent injury of 9/3/15. The pain diagram completed by Petitioner indicated stabbing, aching neck pain, aching pain from her neck down to her mid-back, and burning and aching mid-back pain. Dr. Gornet kept Petitioner off work from 9/16/15 through 11/16/15, at which time he ordered additional diagnostic studies that revealed an annular tear and disc pathology at C6-7 and C3-4 on the left side, with some facet changes at multiple levels on the right side. He noted right foraminal stenosis at C4-5 and C5-6.

Dr. Taylor opined that both work accidents in July 2014 and September 2015 aggravated Petitioner's pre-existing cervical pathology causing her to become symptomatic. His opinions were based on a solid understanding of the mechanism of each injury, his review of extensive diagnostic tests, the presentation of Petitioner's symptoms and her response to conservative care, and his understanding of the medical literature regarding the diagnosis and treatment of tandem stenosis. He testified tandem stenosis means Petitioner has a spinal cord that is smaller than it should be, and relatively minor degenerative changes can cause significant pathology because of the small size of the canal.

Dr. Chabot believed the September 2015 event may have caused a temporary exacerbation of Petitioner's pre-existing cervical condition and that she reached MMI on 9/17/17, two years after the September 2015 incident. The Arbitrator finds the evidence does not support Dr. Chabot's opinion of a two-year "temporary" exacerbation as Petitioner's condition has not returned to baseline. In *Lipscomb v. Horizons Rehabilitation, Inc.*,93 IWCC 0788, the Commission defined a temporary exacerbation as "an event that results in an increase in symptoms for a temporary period. Once that period ends, the physical condition of the injured worker *returns to the status quo ante.* There is no permanent material change in the health of the injured worker." Here, Dr. Taylor and Dr. Gornet report an increase in Petitioner's symptoms in the months and years after her injuries.

The Arbitrator further notes that Dr. Chabot had an incomplete understanding of Petitioner's pre-September 2015 physical condition. He knew virtually nothing about the mechanism of the July 2014 injury or the pertinent details about her symptoms and treatment following that event. He did not review medical records of Dr. Settlemoir, Dr. Gornet, Dr. Boutwell, Dr. Tananka, or Dr. Paletta dated prior to 9/3/15. He only reviewed the cervical MRI dated 2/2/15 and records involving an un-related left knee injury. Dr. Chabot admitted it could be helpful to have these prior records to help determine Petitioner's "baseline" level. Thus, Dr.

Chabot cannot credibly claim to understand what Petitioner's pre-September 2015 "baseline" was without having reviewed these records.

With respect to Petitioner's lumbar spine, there is no evidence she experienced any significant pain in her low back or treated for a low back condition prior to September 2015. Petitioner was under Dr. Gornet's care for a cervical injury sustained on 7/6/14 and was working full duty, including two days of overtime per week, until her accident on 9/3/15. Petitioner treated with numerous physicians from 7/6/14 through 9/2/15 and never complained of low back pain and the medical records do not indicate Petitioner treated for low back pain will under their care prior to 9/3/15.

Following the 9/3/15 accident, Petitioner was immediately taken to the emergency room where she reported back pain. The clinical history was assault and back pain. A thoracic spine x-ray was normal. There were no diagnostic studies performed of Petitioner's lumbar spine until she followed up with Dr. Gornet on 9/16/15. Petitioner reported to Dr. Gornet that she was grabbed by the hair by a 300-pound resident that shook her and hit her head on a concrete wall. Petitioner described the incident as violent. Petitioner stated on the intake questionnaire that she had pain in her back and neck. Dr. Gornet noted Petitioner had low back pain into both buttocks and hips, which was consistent with Petitioner's pain diagram. A lumbar x-ray revealed an isthmic type spondylolisthesis with grade I translation at L5-S1. Dr. Gornet placed Petitioner off work, ordered physical therapy, and prescribed Meloxicam and Cyclobenzaprine. He opined her current level of symptoms and need for treatment were causally related to the recent injury of 9/3/15.

Petitioner attended physical therapy from 10/19/15 through 11/11/15 for cervical and lumbar pain. The discharge note indicates she felt stronger and more flexible but her cervical and lumbar pain remained 8/10 most of the time. Petitioner was not able to tolerate most exercises due to pain and her therapy goals were not met. The therapist noted Petitioner had an antalgic gait.

Dr. Gornet ordered a lumbar MRI on 11/16/15 that revealed severe bilateral stenosis but no canal stenosis. Petitioner began treating with Dr. Taylor on 2/2/16 for complaints of neck and back pain, and migraines. She described low back pain with frequent leg pain. Dr. Taylor reviewed Petitioner's prior treatment records, including diagnostic studies, and diagnosed congenital stenosis in the cervical and lumbar spine with marked degenerative changes. He believed Petitioner's symptoms were consistent with tandem stenosis. He ordered additional studies, including an EMG of Petitioner's lower extremities and a whole-body bone scan with lumbar SPECT. He also recommended a left AFO brace for Petitioner's leg weakness and history of tripping. Dr. Taylor further recommended BHI and MMPI testing to rule out psychological overlay.

On 8/16/16, Dr. Taylor noted Petitioner had increased numbness in both of her feet. Physical exam revealed an antalgic gait and lumbar abnormalities. He reviewed the lower extremity EMG completed by Dr. Daniel Phillips on 8/16/16 and believed it showed chronic bilateral L5 radiculopathy as well as tibial neuropathy across the tarsal tunnels. However, Dr. Phillips noted normal strength in both legs, symmetrical reflexes, and no evidence of foot drop.

On 11/2/16, Petitioner underwent a nuclear medicine bone scan that revealed degenerative changes involving the L5-S1 level. Dr. Taylor referred Petitioner to Dr. Hurford who noted objective findings of Grade I-II spondylolisthesis in the lumbar spine, with degenerative changes at L5-S1. Dr. Hurford focused on Petitioner's cervical condition and did not address her lumbar spine.

Petitioner underwent physical therapy for chronic neck and back pain from 2/23/17 through 3/23/17. On 5/3/17, Dr. Taylor noted an antalgic gait and diagnosed lumbar spondylolisthesis at L5-S1 and lumbar radiculopathy at L4-5. He continued to refer Petitioner to Dr. Hurford for conservative treatment for her cervical spine and noted Petitioner was a candidate for an L4-S1 anterior posterior lumbar fusion. On 5/12/17, Petitioner sustained a third work-related injury that resulted in back pain, among other injuries. Lumbar imaging on that date revealed spondylosis at L5 with Grade II spondylolisthesis of L5 in relation to S1 and severe disc degeneration at L5-S1. She was assessed with low back pain without sciatica. Over the following four months, Petitioner's treatment primarily focused on her cervical spine, including radiofrequency ablations, Hydrocodone, Duloxetine, Tylenol, oral corticosteroids, and topical Lidocaine. On 10/20/17, Dr. Taylor noted Petitioner's symptoms were worsening and he continued to recommend lumbar surgery.

On 2/2/18, Petitioner reported to Section 12 examiner Dr. Chabot she had low and mid back pain with sitting. No radiation into her lower extremities was noted. Neurologic exam was otherwise normal and lower extremity exams were unremarkable. He noted that Dr. Taylor's recommendation for surgical intervention to the lumbar spine based on significant neural deficits in the lower extremities were not confirmed by Dr. Phillips, a neurologist, who performed a physical examination and nerve study that showed no evidence of active radiculopathy.

On 7/30/19, Dr. Taylor noted Petitioner's pain questionnaire was positive for lumbar spine pain and radicular symptoms. Based on physical examination and x-rays taken that day, Dr. Taylor diagnosed lumbar spondylolisthesis at L5-S1, lumbar congenital stenosis, and lumbar degenerative disc disease. He noted Petitioner continued to have problems with balance and tripping. She had lumbar spine symptoms that included 60% back pain and 40% leg pain. Her leg pain was 25% in the right leg and 70% in the left leg. She had pain in her left buttock, back of her thigh, and weakness in her left ankle and foot. Her symptoms were worse with sitting and standing. She was able to stand and walk 15 to 30 minutes. He again recommended the surgical procedures he described on 5/3/17.

Dr. Taylor opined that the September 2015 event aggravated Petitioner's pre-existing lumbar condition causing it to become symptomatic and require treatment. He testified that Petitioner has exhausted conservative treatment and the lumbar surgery is reasonable and necessary. He opined Petitioner has not reached MMI and if she does not receive the recommended surgeries her prognosis is poor to guarded. Again, Dr. Taylor reiterated that individuals with tandem spinal stenosis and myelopathy do not do well absent surgery which halts the progression of myelopathy. He testified that patients, like Petitioner, with congenital stenosis in the lumbar spine, isthmic spondylolisthesis, and radiculopathy, having a foot drop and needing an AFO brace will benefit from surgery to stabilize their condition. He stated that

surgery will not correct Petitioner's foot drop but will stop its progression and prevent it from occurring in her opposite leg.

Dr. Chabot noted that Petitioner's complaints were primarily along the bra line and thoracolumbar junction and she denied radiation into her lower extremities. He opined that the September 2015 event may have caused a temporary exacerbation of the pre-existing condition of Petitioner's lumbar spine. He believed she had reached MMI on 9/17/17 because that was the time when the temporary exacerbation ended. Dr. Chabot believed all the prior treatment he reviewed was reasonable and necessary to address Petitioner's complaints associated with the September 2015 incident. He admitted it could be helpful to have the medical records prior to 9/3/15 to determine what Petitioner's baseline was. He opined Petitioner would continue to have complaints involving her lumbar spine and continue frequent use of pain medication.

The Arbitrator finds Petitioner's testimony to be credible and forthright, and there was no evidence of malingering. She continues to work full duty, without restrictions, despite her ongoing symptoms and physical difficulties. She testified that her income supports her family and she would be unable to pay her bills if she stopped working. She continues to take pain medication and there is no evidence of any re-injury or aggravation aside from the undisputed work accidents.

Therefore, the Arbitrator finds that Petitioner's current condition of ill-being in her cervical and lumbar spine is causally connected to her injury that occurred on 9/3/15.

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

Based upon the above findings as to causal connection, the Arbitrator finds Petitioner is entitled to the reasonable and necessary medical care. Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's group exhibit 10 that were incurred on and after 9/3/15, pursuant to the medical fee schedule or PPO agreement (whichever is less), as provided in §8(a) and §8.2 of the Act. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits and hold Petitioner harmless from any claims arising from the expenses for which it receives credit. The parties stipulate that Respondent shall receive credit for any medical bills paid through its group medical plan, under Section 8(j) of the Act, and Respondent shall hold Petitioner harmless for any claims made by the group medical plan for which it receives credit.

The Arbitrator finds Petitioner has not reached maximum medical improvement and is entitled to receive the additional care recommended by Dr. Taylor. Respondent shall authorize and pay for prospective medical treatment, including, but not limited to, preoperative testing to include a CT myelogram and updated three Tesla MRIs of the cervical and lumbar spine and a DEXA scan due to Petitioner's risk of osteopenia/osteoporosis, as well as a C4-C7 ACDF with possible delayed stage C2-T1 posterior fusion, and an L4-S1 anterior posterior lumbar fusion, along with post-operative treatment until Petitioner is placed at maximum medical improvement.

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 (Ill. 1990). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (Ill., 1990) citing *Ford Motor Co. v. Indus. Comm'n*, 126 Ill. App. 3d 739, 743, 467 N.E.2d 1018, 1021 (1984).

Based on the above findings as to causal connection, the Arbitrator finds Petitioner is entitled to temporary total disability benefits. Respondent shall therefore pay temporary total disability benefits for the period 9/4/15 through 9/7/15, 9/16/15 through 11/19/15, 5/12/17 through 5/15/17, and 6/21/17, representing 10-4/7th weeks. Respondent is entitled to a credit for all extended benefits paid from 9/4/15 through 11/18/15.

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

Arbitrator Linda J. Cantrell

DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC037186
Case Name	Bonnie Holland v. State of Illinois – Warren G Murray Developmental Center
Consolidated Cases	14WC033308; 15WC029432;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0396
Number of Pages of Decision	22
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Nathan Lanter
Respondent Attorney	Natalie Shasteen

DATE FILED: 10/13/2022

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLAMSON

☒ 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

Bonnie Holland,

Petitioner,

vs. NO: 17WC 37186

State of Illinois/Warren G. Murray
Developmental 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 temporary total disability, causal connection, medical expenses, and prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 24, 2022, is hereby affirmed and adopted.

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

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

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.

October 13, 2022
MP:yl
o 10/6/22
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	17WC037186
Case Name	HOLLAND, BONNIE F. v. STATE OF ILLINOIS/WARREN G. MURRAY DEVELOPMENTAL CENTER
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Nathan Lanter
Respondent Attorney	Natalie Shasteen

DATE FILED: 2/24/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 23, 2022 0.71%

/s/Linda Cantrell, Arbitrator

Signature

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

February 24, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Bonnie F. Holland
Employee/Petitioner

v.

State of Illinois/Warren G. Murray Developmental Center
Employer/Respondent

Case # **17** WC **037186**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin**, on **12/21/21**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **5/12/2017**, 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 the 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 $**47,003.93**; the average weekly wage was $**903.92**.

On the date of accident, Petitioner was **51** 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** for TTD, $**0** for TPD, $**0** for maintenance, and $**all extended benefits paid**, for a total credit of **$extended benefits paid.**

Respondent is entitled to a credit of $**all amounts paid through its medical group plan**, under Section 8(j) of the Act.

ORDER

Based on the Arbitrator's finding that Petitioner's current condition of ill-being in her cervical and lumbar spine is not causally related to her subsequent accident that occurred on 5/12/17, but remains related to her accident on 9/3/15, and the Arbitrator having awarded Petitioner medical expenses, temporary total disability benefits, and prospective medical care, including surgery, in Case No. 15-WC-029432, 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.

FEBRUARY 24, 2022

Arbitrator Linda J. Cantrell

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

BONNIE F. HOLLAND,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 17-WC-037186
	)	
STATE OF ILLINOIS/WARREN G. MURRAY DEVELOPMENTAL CENTER,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Herrin on December 21, 2021 pursuant to Section 19(b) of the Act. On October 1, 2014, Petitioner filed an Application for Adjustment of Claim alleging injuries to her "neck, left upper extremity, man as a whole, and other body parts" as a result of being "injured during the course and scope of her employment" on July 6, 2014. (Case No. 14-WC-033308). On September 9, 2015, Petitioner filed an Application for Adjustment of Claim alleging injuries to her "neck, back, both knees, both upper extremities, both lower extremities, and MAW" as a result of being "injured during the course and scope of her employment" on September 3, 2015. (Case No. 15-WC-029432). On December 19, 2017, Petitioner filed an Application for Adjustment of Claim alleging injuries to her "head, neck, MAW, and other body parts" as a result of being "injured when a resident grabbed her and threw her down" on May 12, 2017. (Case No. 17-WC-037186).

The parties stipulate that all three accidents arose out of and in the course of Petitioner's employment with Respondent. The parties further stipulate that this Section 19(b) proceeding is limited to Petitioner's cervical and lumbar spine and any disputed issues with respect to Petitioner's right shoulder are reserved.

The issues in dispute in Case No. 17-WC-037186 are causal connection, medical expenses, temporary total disability benefits, and prospective medical treatment. The Arbitrator has simultaneously issued separate Decisions pursuant to Section 19(b) of the Act in Case Nos. 14-WC-033308 and 15-WC-029432.

TESTIMONY

Petitioner was 51 years old, married, with one dependent child at the time of accident. In July 2014, Petitioner was working full duty as a Mental Health Tech II. In September 2015 and May 2017 her job title was Mental Health Tech III. Her job duties in both positions involved taking care of the well-being of mentally challenged adults.

In the ten years prior to July 2014, Petitioner did not suffer any injuries to her neck, right shoulder, head, or low back. She did not have any pain radiating from her neck into her arms or numbness in her hands prior to July 2014. In the days, week, and months before July 2014 she was not experiencing any significant pain in her low back. She was not under a doctor's care for treatment for her neck, shoulders, low back, or arms at the time of her July 2014 accident. Petitioner was able to fully perform her job duties without any difficulty. Prior to September 2015, Petitioner did not experience any significant pain in her low back.

Petitioner testified that on 7/6/14 she intervened in an altercation between residents when one of the residents grabbed her by the hair and yanked her around. Petitioner fell to the ground and hit her right shoulder on the wall. Petitioner stated she immediately experienced a little bit of pain in her neck and shoulder. She reported her injury to her supervisor and completed an incident report the same day.

Petitioner initially sought treatment a St. Mary's Hospital and followed up with her primary care physician Dr. Settlemoir for complaints of pain in her neck, right shoulder, and numbness in her right hand. Petitioner underwent MRIs and physical therapy for her neck and right shoulder. She underwent injections recommended by Dr. Gornet in September and October 2014, and April 2015. Dr. Gornet referred Petitioner to Dr. Tanaka for her shoulder. Petitioner was referred to Dr. Paletta for her shoulder after Dr. Tanaka moved. She underwent facet rhizotomies by Dr. Blake. Petitioner testified that the injections into her neck and shoulders and the rhizotomies provided temporary relief.

Petitioner was kept off work from 7/15/14 through 8/19/14. When Petitioner saw Dr. Gornet he noted she was already working under a 5-pound weight limit and he increased her restriction to 10 pounds. Dr. Gornet eventually allowed Petitioner to return to work full duty, with no overtime. On 7/30/15, Dr. Gornet allowed Petitioner to return to work full duty, with limited overtime of two days per week.

On 9/3/15, Petitioner sustained a second work accident when a resident grabbed her by the hair and yanked her around. Petitioner's head and shoulder hit a door frame. Petitioner's supervisor grabbed the resident and Petitioner and the resident went to the ground while the resident was still holding onto Petitioner's hair. The resident weighed over 300 pounds and was taller than Petitioner. Petitioner testified that this injury was very bad and worse than the July 2014 injury. Petitioner completed an incident report and was taken to St. Mary's Hospital Emergency Room.

On 9/16/15, Petitioner returned to Dr. Gornet with increased neck pain, headaches, bilateral trapezius pain, upper back pain, and pain into both buttocks and hips. Petitioner

underwent MRIs of her neck and low back and Dr. Gornet recommended surgery. Petitioner sought a second opinion with Dr. Taylor which was paid for by Respondent.

Petitioner testified that following the September 2015 injury, she was kept off work by Dr. Galanos from 9/4/15 through 9/7/15. Dr. Gornet kept her off work from 9/16/15 through 11/19/15, at which time she returned to full duty work. Dr. Taylor referred Petitioner to Dr. Hurford for nerve blocks which she received.

Petitioner testified that on 5/12/17 her hair was grabbed and pulled by a resident and a co-worker got the resident to let go. Petitioner reported the injury to her supervisor and sought treatment at St. Mary's Hospital and followed up with Dr. Taylor.

Petitioner testified she most recently saw Dr. Taylor on 7/30/19 and underwent the conservative care he recommended. Petitioner testified that Dr. Taylor recommends surgery on her neck and low back which she desires to undergo.

Petitioner testified she still experiences neck pain that radiates into her right arm and sometimes into her left arm. She experiences occasional numbness in her right hand and fingers. Despite her symptoms, Petitioner continues to work full duty. She was promoted to a Mental Health Tech V, which is a less restrictive position. Petitioner's income supports her family. She continues to have low back pain and numbness in her left leg and foot that causes her to frequently trip when walking. She has difficulty sitting for more than a couple of hours and lifting causes pain. Petitioner testified that prior to the hearing she reviewed Dr. Taylor's 7/30/19 report and stated it is consistent with her current cervical and lumbar symptoms.

Petitioner agreed she was kept off work from 5/12/17 through 5/15/17 and was kept off work following one of the injections administered by Dr. Hurford. She testified that her neck has not been 100% pain free since 7/6/14 and her back has not been 100% pain free since 9/3/15.

On cross-examination, Petitioner testified she has been working full duty since 11/19/15 at her request. She is currently taking Hydrocodone prescribed by her primary care physician for neck, hip, and back pain. Petitioner received treatment from Dr. Gornet following the 2014 and 2015 accidents and he diagnosed an annular tear at C3-4 on the left side and multiple levels of degeneration on the right side. Petitioner stated that Dr. Gornet also recommended lumbar surgery which caused her to seek a second opinion.

Petitioner testified, as she sat for the hearing, she had a burning pain in her neck and a burning, stabbing pain in her back. Her back pain is in the middle part of her back and sometimes radiates up to her neck. Petitioner testified that a Mental Health Tech II and III have similar job duties which includes showering patients, dealing with patient behavior, getting patients ready for their daily routines, and wheelchair transfers. Petitioner became a Mental Health Tech V a few weeks after the May 2017 incident. As a Mental Health Tech V, she is an activity therapy person and performs activities with the residents, including taking them on outings and preparing paperwork for the building to which she is assigned. Petitioner testifies she is required to load residents onto a bus or van for outings and she uses a lift if a resident is wheelchair dependent. She occasionally works as a Mental Health Tech II.

Petitioner testified that other than one appointment with Dr. Taylor in 2019, she has not treated since 2017, other than taking pain medication. She is not currently receiving physical therapy or injections and she does not wear any type of brace. Petitioner testified she is able to do her job satisfactorily, but she has a lot of pain. Working as a Mental Health Tech V is a lot easier. She currently works full time, Tuesday through Saturday, and works some overtime as a Mental Health Tech II.

On re-direct, Petitioner testified that when she saw Dr. Chabot she completed an intake form, which is a spine questionnaire. (RX6). On the questionnaire, Petitioner indicated dates of injury of 9/3/15 and another date of injury in May 2017. She reported that her current symptoms were neck and mid-back pain. She testified she associates her mid-back pain with the back pain from her September 2015 injury, when the very large 300-pound woman grabbed her hair, because that injury was worse compared to the other two. She stated she has not received the recommended surgeries or additional treatment because Dr. Taylor does not accept her group health insurance and Respondent has denied her worker's compensation claims.

MEDICAL HISTORY

On 7/7/14, Petitioner presented to St. Mary's Hospital's emergency room where she provided a history of a resident grabbing her and pulling her hair. (PX1). Petitioner complained of burning and stabbing neck pain and headaches. Petitioner was not taking narcotic pain medication at that time. (PX1 p. 9). X-rays of Petitioner's right shoulder and cervical spine showed degenerative changes with no acute injuries.

On 7/15/14, Petitioner followed up with her primary care physician Dr. Hyet Settlemoir. (PX2). Petitioner reported that a resident grabbed her by her hair, pulled her to the floor, and jerked her body. (PX2 p. 384). Petitioner reported having a headache since the incident, burning pain when turning her head to the left, and constant pain in the back of her neck that radiated to her mid-back. She rated her pain 10/10. Physical exam revealed tenderness on palpation and reduced cervical range of motion. She was assessed with a neck sprain/strain. Dr. Settlemoir ordered cervical spine and right shoulder x-rays that revealed a normal cervical spine and mild degenerative changes of the acromioclavicular joint of the right shoulder. (PX1 p. 20-21, PX2 p. 390-391). Dr. Settlemoir prescribed Vicodin, Flexeril, and Ibuprofen and ordered Petitioner off work until 7/22/14.

On 7/21/14, Petitioner returned to Dr. Settlemoir with improved pain, but persistent neck pain and moderately reduced range of motion. (PX2 p. 339). Diagnosis remained the same and she was kept off work until 8/1/14. (PX2 p. 400). Dr. Settlemoir recommended continued use of NSAIDS and to follow up in two weeks.

On 7/31/14, Petitioner returned to Dr. Settlemoir with continued headaches and burning pain in her neck, stabbing pain between her shoulder blades, and pain in her right shoulder. (PX2 p. 405). He ordered Petitioner to continue medications and kept her off work until 8/7/14.

On 8/5/14, Petitioner saw her primary care provider, nurse practitioner, Debbie Malone, who noted Petitioner's symptoms, which included persistent neck and right shoulder pain, began

on 7/6/14 after she was pulled to the floor by her hair and kicked by a resident at work. NP Malone noted intermittent numbness in Petitioner's right hand since the injury. She kept Petitioner off work for two weeks and ordered a cervical and right shoulder MRI. (PX2 p. 409). The cervical MRI was performed on 8/14/14 and was normal. (PX2 p. 427). The right shoulder MRI revealed tendinopathy of the distal supraspinatous tendon with a small intrasubstance tear. (PX2 p. 428).

On 8/18/14, Petitioner returned to NP Malone who assessed neck pain and a traumatic tear of supraspinatus tendon of the right shoulder. She noted Petitioner's neck pain was 4-5/10 and her right shoulder pain was 6-8/10. NP Malone noted Petitioner continued to have occasional numbness in her right upper extremity. She noted Petitioner had an appointment with orthopedist Dr. Matthew Gornet on 9/11/14. Physical therapy was prescribed and Petitioner was place on a 5-pound lifting restriction. (PX1 p. 53).

On 9/5/14, Petitioner presented to St. Mary's Hospital for physical therapy. (PX1 p. 49). It was noted Petitioner had been working light duty, her neck and shoulder symptoms were worse, and she was sleeping in a recliner due to her symptoms. (PX1 p. 53). Physical exam showed tenderness to palpation in her trapezius and cervical spine. She was diagnosed with neck pain and a right rotator cuff tear. Petitioner underwent physical therapy for her neck and right shoulder through 10/3/14. (PX1 p. 87-129).

On 9/11/14, Petitioner was examined by Dr. Gornet and stated she was taking Hydrocodone for her symptoms. (PX3 p. 435). The pain diagram showed burning and stabbing pain in her neck, mid-back, and right shoulder, and stabbing pain and numbness down her right arm into her hand. (PX3 p. 433). Dr. Gornet noted Petitioner's symptoms included neck pain, headaches, pain into both trapezius, both shoulders, particularly the right shoulder and down her right arm into the hand with numbness and tingling. Dr. Gornet noted Petitioner was working light duty with a 5-pound lifting limit. Her symptoms remained constant and worse with arm activity, including bending and lifting. Dr. Gornet noted Petitioner was having predominantly right arm symptoms, including numbness and tingling, but was also having some left-sided symptoms. Physical exam revealed neck pain into both trapezius, particularly in the right shoulder, and radiculopathy in the right arm and hand. Dr. Gornet noted mild decreased range of motion in flexion/extension which exacerbated her symptoms. He reviewed the cervical MRI film dated 8/14/14 and although he believed it to be of poor quality, he noted an annular tear and several disc protrusions. Dr. Gornet recommended injections at C4-5 and C5-6 on the right to be performed by Dr. Boutwell. He referred Petitioner to Dr. Miho Tanaka for a right shoulder evaluation. He increased Petitioner's work restrictions to 10-pounds, with no overhead work. Dr. Gornet opined that Petitioner's symptoms in their level of magnitude and severity were causally connected to her recent work injury.

On 9/29/14, Dr. Kaylea Boutwell administered a right C5-6 epidural steroid injection. On 10/1/14, Dr. Gornet allowed Petitioner to return to full duty work with no overtime. On 10/13/14, Dr. Boutwell administered another right C5-6 epidural steroid injection. (PX5 p. 482).

On 11/10/14, Petitioner reported to Dr. Gornet that her pain continued to affect her quality of life. (PX3 p. 440). He noted no lasting relief from conservative care, including

Tramadol, anti-inflammatories, and muscle relaxants. Physical exam still showed a mild decrease in biceps on the right at 4/5. He noted Dr. Tanaka recommended a MR arthrogram of the right shoulder and he recommended a new cervical MRI with foraminal view. He continued to believe Petitioner's symptoms and need for treatment were causally connected to her 7/6/14 accident. He continued Petitioner on full duty work.

On 2/2/15, Petitioner returned to Dr. Gornet who noted Dr. Tanaka communicated with him that Petitioner had objective shoulder pathology consistent with her symptoms after reviewing the right shoulder MR arthrogram. (RX3 p. 441). Dr. Gornet believed some of Petitioner's shoulder pain was also coming from her neck injury. He believed the recent cervical MRI revealed low grade central herniations at C5-6 and C6-7, which accounted for the predominant symptoms in Petitioner's neck and headaches. He believed there was also some suggestion of foraminal stenosis at C4-5 on the right which was playing a role in her symptoms. He stated that since Petitioner's predominant symptoms were significant axial neck pain, the best option would be to treat that area first. He noted that the cervical injections failed, and he recommended a cervical CT myelogram and possible disc replacement surgery at C5-6 and C6-7, and possible treatment at C4-5.

On 4/2/15, Petitioner returned to Dr. Gornet with persistent axial neck pain and pain into her shoulder. (PX3 p. 443). She underwent a cervical myelogram and CT post myelogram prior to the exam. (PX6 p. 490-491). Dr. Gornet stated the myelogram revealed some facet arthritis at multiple levels including fairly significant foraminal stenosis secondary to facet changes at C4-5. He also believed the study revealed some right-sided facet changes at C5-6 and C6-7. He suspected an aggravation of underlying facet changes and foraminal stenosis. He believed Petitioner may have suffered a disc injury with central disc protrusions at C5-6 and C6-7. Dr. Gornet recommended facet rhizotomies at C4-5, C5-6, and C6-7 as opposed to surgery. Petitioner indicated a lot of her arm pain had resolved since the injection to the right side. Dr. Gornet noted Petitioner continued to have right shoulder symptoms and was now having left shoulder symptoms which was consistent with foraminal stenosis. He recommended a steroid injection at C4-5 on the left as well as facet rhizotomies. He allowed Petitioner to continue to work full duty with no overtime.

On 4/27/15, Dr. Boutwell administered a right C5-6 epidural steroid injection. (PX5 p. 483). On 5/11/15, Dr. Boutwell performed a left C4-5, C5-6, and C6-7 radiofrequency ablation. (PX5 p. 484). On 6/15/15, Dr. Boutwell performed a right C4 through C7 radiofrequency ablation. (PX5 p. 485).

On 7/20/15, Dr. Gornet noted Petitioner responded well to the facet rhizotomies and other injections but was still having right shoulder pain. (PX3 p. 448). Petitioner's arm pain resolved. He noted that Dr. Tanaka moved and he referred her to Dr. Paletta for continued right shoulder care. Dr. Gornet considered additional injections and rhizotomies. He allowed Petitioner to continue working full duty with no overtime. (PX3 p. 447).

On 7/23/15, Petitioner was examined by Dr. Paletta. (PX4 p. 474). He noted Petitioner had undergone treatment for her neck including injections and ablations, which provided some relief. He noted her treatment with Dr. Tanaka, which included a shoulder injection and physical

therapy which did not provide relief. Dr. Paletta reviewed the right shoulder MRI dated 2/2/15 and assessed AC joint pain and chronic subacromial bursitis in the setting of a partial thickness bursal-sided rotator cuff tear. (PX4 p. 476). He believed the majority of her symptoms appeared to be related to the AC joint. He recommended an ultrasound or a fluoroscopically guided injection to the AC joint for diagnostic and therapeutic purposes. He allowed Petitioner to work full duty.

On 7/29/15, Dr. Boutwell administered a right AC joint injection under ultrasound. (PX5 p. 486). On 7/30/15, Petitioner contacted Dr. Gornet's office and requested she be allowed to work at least two days of overtime per week. (PX3 p. 450). Dr. Gornet complied.

Following the 9/3/15 accident, Petitioner was immediately taken by ambulance to St. Mary's Hospital. (PX1 p. 132). A history of injury was provided, and Petitioner complained of headache, neck pain, knee pain, and back pain. (PX1 p. 179). The clinical history was assault and back pain. (PX1 p. 136). Petitioner underwent a CT scan of her cervical spine and head, and x-rays of her thoracic spine and left knee. (PX1 p. 136-137). The cervical CT scan revealed multilevel endplate and facet joint degenerative changes most prominent at C4-5 and C5-6. The thoracic spine x-ray was normal. She was prescribed pain medication, including Hydrocodone, and discharged.

On 9/4/15, Petitioner returned to St. Mary's Hospital emergency department with complaints of dizziness, nauseous, and "seeing spots". (PX2 p. 179-181). Her symptoms resolved at the hospital and she was provided an off-work slip from 9/4/15 through 9/7/15.

On 9/16/15, Petitioner returned to Dr. Gornet and provided a history of being grabbed by the hair by a 300-pound resident that shook her and hit her head on a concrete wall on 9/3/15. (PX3 p. 452). Dr. Gornet noted increasing neck pain, headaches, pain in both trapezius, upper back, the base of her neck, and pain into both shoulders. He also noted Petitioner had low back pain into both buttocks and hips. Petitioner denied any significant arm or leg pain. Physical examination revealed no focal neurologic deficits. A lumbar x-ray revealed an isthmic type spondylolisthesis with grade 1 translation at L5-S1. A cervical x-ray revealed mutilevel facet changes and foraminal stenosis, particularly on the right. Dr. Gornet believed the September 2015 incident aggravated her underlying cervical spine condition making her more symptomatic and possibly causing a new disc injury. He recommended conservative care, including heat, gentle traction, and massage to her neck and upper back. He took Petitioner off work and prescribed Meloxicam and Cyclobenzaprine. He stated if her symptoms increased in severity short term, he would consider oral steroids and/or Tramadol. He opined her current level of symptoms and need for treatment were causally related to the recent injury of 9/3/15. (PX3 p. 453). The pain diagram completed by Petitioner indicated stabbing, aching neck pain, aching pain from her neck down to her mid-back, burning and aching mid-back pain, and aching in both hips and buttocks. (PX3 p. 454). On the intake questionnaire, Petitioner stated pain in her back and neck as the reason for her visit. (PX3 p. 455). Dr. Gornet kept Petitioner off work from 9/16/15 through 11/16/15. (PX3, p. 461).

Petitioner attended physical therapy at Salem Township Hospital from 10/19/15 through 11/11/15. (PX9). Cervical and lumbar pain was noted. (PX9 p. 905). Petitioner attended nine

therapy sessions and the discharge note indicates she felt stronger and more flexible but her cervical and lumbar pain remained 8/10 most of the time. Petitioner was not able to tolerate most exercises due to pain and her therapy goals were not met. (PX9 p. 915). The therapist noted Petitioner had an antalgic gait and was guarding her neck area.

Petitioner underwent cervical and lumbar MRIs and returned to Dr. Gornet on 11/16/15. (PX3, p. 460). Dr. Gornet diagnosed an annular tear and disc pathology at C6-7 and C3-4 on the left side, with some facet changes at multiple levels on the right side. He saw no significant nerve compression, but she did have right foraminal stenosis at C4-5 and C5-6. Dr. Gornet did not comment on the lumbar MRI which revealed severe bilateral stenosis but no canal stenosis. He noted Petitioner's pain continued and she had not reached MMI. He prescribed Meloxicam and Cyclobenzaprine and ordered her to return in three months. He kept her off work from 11/16/15 through 11/18/15 and released her to return to full duty work without restrictions on 11/19/15. (PX3 p. 462).

On 2/2/16, Petitioner was examined by Dr. Bret Taylor for a second opinion. (PX7). The appointment was paid for by Respondent. Petitioner complained of neck pain, back pain, and migraines. She described bilateral arm numbness and pain in her mid and low back. She had leg pain she described as frequent. Dr. Taylor took a detailed history of injury on 7/4/15 and a second injury in September 2015. He performed a physical examination and reviewed Petitioner's prior medical records, including diagnostic studies. Mild bilateral paraverterbral muscle spasms were noted, along with changes over the right elbow consistent with ulnar nerve transposition and right hand weakness. Dr. Taylor diagnosed congenital stenosis in the cervical and lumbar spine with marked degenerative changes. (PX7 p. 552). He believed Petitioner's symptoms were consistent with tandem stenosis. He ordered additional studies, including EMGs of the upper and lower extremities and a whole-body bone scan with lumbar SPECT. He also recommended a left AFO brace for Petitioner's leg weakness and history of tripping. Dr. Taylor further recommended BHI and MMPI testing to rule out psychological overlay.

On 8/16/16, Petitioner returned to Dr. Taylor who noted Petitioner continued to work full duty and was having increased numbness in both of her feet. (PX7 p. 634). He noted she was having increased back and neck pain and headaches that were different than her pre-injury migraine headaches. Physical exam revealed an antalgic gait and cervical and lumbar abnormalities. He reviewed the lower extremity EMG completed by Dr. Daniel Phillips on 8/16/16 and believed it showed chronic bilateral L5 radiculopathy as well as tibial neuropathy across the tarsal tunnels. (PX7 p. 635, 639-644). Dr. Phillips noted normal strength in both legs, symmetrical reflexes, and no evidence of foot drop. Dr. Taylor recommended an upper extremity EMG, a whole-body bone scan and lumbar SPECT CT scan, and a left AFO brace for foot drop. He asked the tests to be approved in an expedited fashion as delay in evaluation and treatment would negatively affect her overall prognosis. He allowed Petitioner to continue working full duty.

On 11/1/16, Petitioner returned to Dr. Taylor, who reviewed the completed upper extremity EMG study and noted Petitioner was increasingly symptomatic. (PX7 p. 645). Dr. Taylor noted Petitioner was working full duty but was tripping more frequently on her left side. The upper extremity EMG performed by Dr. Phillips on 11/1/16 showed chronic ulnar

neuropathy. (PX7 p. 645, 647-653). Dr. Taylor noted Petitioner was treating with Dr. Bonner for her left knee and was awaiting a left knee replacement. Dr. Taylor again recommended a whole-body bone scan, lumbar SPECT scan, and a left AFO brace.

On 11/2/16, Petitioner underwent a nuclear medicine bone scan at St. Mary's Hospital that revealed degenerative changes involving the L5-S1 level. (PX2 p. 219). The clinical history was back pain. On 12/5/16, Petitioner returned to Dr. Taylor who noted she was symptomatically unchanged. He reviewed the test results with Petitioner and believed a final attempt with nonoperative care with a pain specialist was appropriate. (PX 11 p. 1000-1001).

On 12/12/16, Petitioner saw Dr. Patricia Hurford at Dr. Taylor's referral. (PX8). Petitioner provided a history of her work accidents. Dr. Hurford noted Petitioner had pain that occurred daily from morning to night that interrupted her sleep. The pain was primarily in the right upper trapezius region to the mid back, with a burning, stabbing sensation, and occasional numbness affecting both upper extremities, with the right and left side equally affected. Dr. Hurford performed a physical exam and reviewed cervical x-rays. Her impression was two work-related injuries that affected the cervical region and evidence of overlying cervical myofascial symptoms, chronic pain symptoms, and sensory complaints, with no objective evidence of radiculopathy or myelopathy. (PX8 p. 822). Dr. Hurford wanted to put together a more comprehensive treatment plan after reviewing Petitioner's prior diagnostic studies. In the meantime, she recommended home exercises and did not restrict Petitioner's work activities.

On 12/20/16, Dr. Hurford reviewed Petitioner's diagnostic studies that showed Grade I-II spondylolisthesis in the lumbar spine, with bilateral pars defect at L5, multi-level degenerative changes in the cervical spine with diffuse disc bulging, and right greater than left foraminal narrowing. Results of the nuclear medicine bone scan demonstrated degenerative changes a L5-S1. Petitioner rated her pain 9/10. On exam, Petitioner was noted to have persistent left greater than right-sided neck pain, with headaches that were different from her migraines. Dr. Hurford's impression included persistent cervical pain symptoms with radiculitis, with no objective evidence of radiculopathy, and cervicogenic headaches. (PX8 p. 826). Dr. Hurford recommended an increase of Duloxetione and medial branch blocks for diagnostic purposes on the left at levels C2, C3, C4, and C5. Dr. Hurford did not limit Petitioner's work activities.

On 1/31/17, Petitioner underwent left C2, C3, C4, and C5 medial branch blocks under fluoroscopic guidance administered by Dr. Hurford. (PX8 p. 828). Petitioner's pain rating before the procedure was 8/10 and post-injection it was 0/10. On 2/14/17, Petitioner returned to Dr. Hurford who noted the relief provided by the medial branch blocks. (PX8 p. 829). She also noted that despite this improvement, Petitioner requested no further interventional procedures. Dr. Hurford referred Petitioner back to physical therapy for myofascial treatment and scapular postural strengthening. Petitioner was prescribed a trial of Trazodone.

On 2/23/17, Petitioner returned to St. Mary's Hospital for physical therapy for chronic neck and back pain. (PX2 p. 231). Petitioner attended nine therapy sessions through 3/23/17. (PX2 p. 229-327).

On 3/30/17, Petitioner returned to Dr. Hurford who noted Petitioner continued to have severe headaches and neck pain and was now reporting migraine symptoms after physical therapy. Her sleep was being disrupted. Dr. Hurford's impression was severe cervicalgia and cervicogenic headaches, and myofascial symptoms following a cervical strain injury with primarily cervical complaints. (PX8 p. 836). Petitioner did not want to undergo radiofrequency ablations and wanted a surgical follow-up. Dr. Hurford referred Petitioner back to Dr. Taylor.

On 5/3/17, Petitioner returned to Dr. Taylor who noted Petitioner's symptoms improved for one day following the medial branch blocks but returned to baseline. She denied radiation into her upper extremities. No radiation was noted to her lower extremities. She stated she occasionally wears the AFO brace. Mylopathic and Spurling tests were negative. Dr. Taylor noted an antalgic gait and diagnosed critical cervical stenosis, cervical facet arthropathy, cervicogenic headaches, lumbar spondylolisthesis at L5-S1, and lumbar radiculopathy at L4-5. (PX7 p. 655). He discussed with Petitioner what RFAs had to offer and Petitioner wanted to avoid surgery if possible. Petitioner decided to undergo the ablations. Dr. Taylor believed Petitioner was ultimately a surgical candidate, including a C4-C7 ACDF with possible delayed stage C2-T1 posterior fusion, and an L4-S1 anterior posterior lumbar fusion.

On 5/12/17, Petitioner returned to St. Mary's Hospital emergency room following an altercation at work where a resident grabbed her hair and pulled her to the floor. (PX2 p. 328). Petitioner reported pain in her head, right neck, back, and left shoulder. A cervical CT scan showed multilevel degenerative disc disease with endplate and facet hypertrophy and mild narrowing of the neural foramina. Lumbar imaging revealed spondylosis at L5 with Grade II spondylolisthesis of L5 in relation to S1 and severe disc degeneration at L5-S1. The assessment was injury due to an altercation, neck pain, low back pain without sciatica, and intractable headache. (PX2 p. 337). Petitioner was kept off work from 5/12/17 through 5/15/17.

On 6/21/17, Petitioner returned to Dr. Hurford to proceed with the radiofrequency ablations. (PX8, p. 855). Petitioner rated her neck pain 9/10, with left slightly worse than the right. Dr. Hurford noted Petitioner used Hydrocodone as-needed for severe pain. Her impression was persistent significant and severe cervicalgia after a work-related injury, cervical spondylosis and degenerative disc changes, and cervicogenic and migraine headache disorder. Dr. Hurford recommended the RFA procedure and prescribed Hydrocodone. No work restrictions were given with the exception of being off work for 24 hours post injection.

On 7/11/17, Petitioner underwent the RFA administered by Dr. Hurford. (PX8 p. 872). Petitioner's pain rating before the procedure was 10/10, post-injection it was 0/10. On 7/31/17, Dr. Hurford noted the RFA provided pain relief until one and one-half weeks ago when the pain returned. (PX8 p. 882). Petitioner was having left-greater-than-right-sided neck pain. She again rated her pain 9/10. Dr. Hurford recommended increased Duloxetine, Tylenol for sleep disorder, and physical therapy for a TENS unit.

On 9/5/17, Petitioner returned to Dr. Hurford, who noted Petitioner was having increased axial symptoms without radiation. (PX8 p. 890). The TENS unit had not been approved by Respondent. Petitioner reported some improvement with increased use of Duloxetine and Tylenol. Dr. Hurford's impression remained the same and she recommended a short course of

oral corticosteroids, topical Lidocaine, a TENS unit via physical therapy, and no work restrictions. (PX8 p. 892). On 9/26/17, Dr. Hurford referred Petitioner back to Dr. Taylor.

On 10/20/17, Petitioner returned to Dr. Taylor who noted Petitioner was dissatisfied with her condition and her persistent symptoms were worsening. (PX7 p. 664). He recommended the cervical and lumbar surgeries described on 5/3/17.

On 2/2/18, Petitioner was examined by Dr. Chabot pursuant to Section 12 of the Act. (RX4). Petitioner complained of burning/stabbing neck pain along the posterior aspect of her neck. She stated her right hand greater than left occasionally fell asleep and her symptoms were nocturnal. Petitioner has not been diagnosed with carpal tunnel syndrome. She complained of low and mid back pain with sitting and pain along the bra line at the thoracolumbar junction. No radiation into her lower extremities was noted. A neurologic exam of Petitioner's upper extremities showed positive palmar pressure testing involving the bilateral wrists with aggravation of carpal-tunnel symptoms; positive Tinel's signs of the left wrist and negative on the right, and positive testing along the right cubital tunnel. Neurologic exam was otherwise normal and lower extremity exams were unremarkable. Dr. Chabot did not believe additional medical treatment was necessary or related to the work incidents. Petitioner had chronic degenerative conditions that would continue to cause symptoms. He noted that Dr. Taylor's recommendation for surgical intervention to the L-spine based on significant neural deficits in the lower extremities were not confirmed by Dr. Phillips, a neurologist, who performed a physical examination and nerve study. The nerve study showed no evidence of active radiculopathy.

On 7/30/19, Petitioner returned to Dr. Taylor who noted Petitioner continued to work full duty and was persistently symptomatic. (PX7 p. 706). He noted she underwent a total knee replacement with Dr. Bonutti stemming from another worker's compensation claim. Petitioner was prescribed Hydrocodone by Dr. Varanasy. Dr. Taylor noted Petitioner's third work-related injury caused a temporary increase in her neck pain which had since returned to her pre-third injury baseline level. Petitioner reported working at a new position and she lost her AFO brace in a house file. She was taking Hydrocodone on rare occasions. (PX7 p. 706-707). Her pain questionnaire was positive for neck and lumbar spine pain and radicular symptoms. (PX7 p. 707). Dr. performed a physical exam of Petitioner's cervical and lumbar spine and reviewed x-rays taken that day. His impression was cervical degenerative disc disease, cervical congenital stenosis, cervical radiculopathy, lumbar spondylolisthesis at L5-S1, lumbar congenital stenosis, and lumbar degenerative disc disease. (PX7 p. 709-710). He noted Petitioner's pain went into her upper back, and she had weakness in her left upper arm. She continued to have problems with balance and tripping. She had frequent headaches. Her neck disability index was 44, neck pain was a scale seven, and her Japanese Orthopedic Association (JOA) score for myelopathy was moderate. She had lumbar spine symptoms that included 60% back pain and 40% leg pain. (PX11 p. 1007). Her leg pain was 25% in the right leg and 70% in the left leg. She had pain in her left buttock, back of her thigh, and weakness in her left ankle and foot. Her symptoms were worse with sitting and standing. She was able to stand and walk 15 to 30 minutes. He again recommended the surgical procedures he described on 5/3/17. (PX7 p. 710).

Dr. Bret Taylor testified by way of deposition on 3/3/20. (PX11). Dr. Taylor is an orthopedic surgeon. His testimony was consistent with his medical records. His history of Petitioner's July 2014 injury included details of a resident grabbing Petitioner's hair with both hands, pulling her down a hall, with the assault lasting three to four minutes before assistance arrived. Dr. Taylor stated Petitioner's neck and right shoulder were the most symptomatic following her accident and conservative treatment did not provide lasting relief. Dr. Taylor noted a history of the September 2015 injury that involved a tall, 300-pound person grabbing Petitioner by the hair with both hands and swinging her into a wall, then falling backwards and pulling Petitioner on top of her. Petitioner described this attack as more violent. Her primary complaints following that accident were persistent symptoms in her neck, back, and headaches which were different than the baseline headaches she had prior to the incident. She also reported bilateral arm numbness and pain, numbness and pain in her mid and low back, and leg symptoms that included tripping while walking on flat surfaces. Dr. Taylor diagnosed cervical congenital stenosis, pre-existing cervical degenerative disc disease, facetogenic pain causing headaches, and incidental findings of cervical hemangiomas. He also diagnosed lumbar congenital stenosis, pre-existing degenerative disc disease, and L5-S1 isthmic spondylolisthesis.

Dr. Taylor was not aware of Petitioner having cervical or lumbar complaints in the days, weeks, and months before July 2014, or that she had any lumbar pain in the days, weeks, and months before her September 2015 accident. He opined that Petitioner's work accident in 2014 resulted in a permanent aggravation of her pre-existing cervical condition and additional treatment was necessary to cure and relieve her symptoms. He opined the September 2015 event further aggravated both her cervical condition that never went away and aggravated her pre-existing lumbar spine causing it to become symptomatic. He opined that Petitioner's need for lumbar spine treatment was a result of the 2015 work incident.

Dr. Taylor testified that Petitioner has exhausted conservative treatment and the cervical and lumbar surgeries are reasonable and necessary. He opined Petitioner has not reached MMI and if she does not receive the recommended surgeries her prognosis is poor to guarded. He continues to recommend an anterior cervical fusion from C4 to C7, a possible delayed staged posterior procedure from C2 to T1, and an anterior/posterior L4 to S1 fusion. His preoperative testing would include a CT myelogram and updated three Tesla MRIs of the cervical and lumbar spine and a DEXA scan due to Petitioner's risk of osteopenia/osteoporosis. He has not seen Petitioner since 7/30/19.

Dr. Taylor disagreed with Dr. Chabot's opinion that the diagnostic tests (cervical MRIs, cervical myelogram, and CT post myelogram) showed only minimal disc bulging. Dr. Taylor's review of the studies was more consistent with a herniation. He stated Petitioner's diagnosis of tandem spinal stenosis means she has a spinal canal that is smaller than it should be. She can have relatively minor degenerative changes that causes significant clinical pathology because she has a canal that is too small. He explained that when the pre-existing static effects of arthritis are combined with trauma where there are dynamic effects, flexion and extension, it can aggravate the degenerative condition. Petitioner also has additional pathology of isthmic spondylolisthesis L5-S1. Dr. Taylor opined that Petitioner's mechanism of injury to her cervical spine could aggravate her pre-existing condition. The forced dynamic movement of a person's head and neck into flexion/extension movements increases the compression of the neural elements and can

injure those neural elements and cause permanent structural damage and permanent aggravation resulting in symptomatology.

Dr. Taylor also disagreed with Dr. Chabot's opinion that Petitioner was not a surgical candidate for her cervical or lumbar complaints because Petitioner did not have radicular complaints in her legs or arm. Dr Taylor opined the medical literature disagreed with Dr. Chabot. He stated that cervical EMGs have a very high false negative rate and just because the EMG studies are negative does not mean Petitioner does not have cervical pathology. Dr. Taylor stated that Petitioner has tandem spinal stenosis which carries a certain prognosis. Individuals with tandem spinal stenosis and myelopathy do not do well absent surgery which halts the progression of myelopathy. Without surgery, the myelopathy worsens for over 90% of patients either catastrophically or gradually. Dr. Taylor testified that patients, like Petitioner, with congenital stenosis in the lumbar spine, isthmic spondylolisthesis, and radiculopathy, having a foot drop and needing an AFO brace will benefit from surgery to stabilize their condition. He stated that surgery will not correct Petitioner's foot drop but will stop its progression and prevent it from occurring in her opposite leg.

On cross-examination, Dr. Taylor opined the work incidents of 2014 and 2015 permanently aggravated Petitioner's pre-existing cervical and lumbar tandem stenosis, pre-existing cervical and lumbar degenerative disc disease, and pre-existing lumbar isthmic spondylolisthesis at L5-S1. He believed Petitioner had suffered a permanent acute injury to the neural elements when the dynamic event of having her head grabbed and pulled back and forth aggravated her pre-existing static stenosis which she had because she had congenital stenosis and arthritis. This creates a cascade of events that can include cell death that results in permanent neurologic damage, dysfunction, and pain. Dr. Taylor cited medical literature in his records that support these opinions. To objectively test those injured nerves, Dr. Taylor uses a patient's history, physical exam, and diagnostic tests. He stated that Petitioner had cervical myelopathy based on the JOA scale that was moderate. She also had chronic radiculopathy and a foot drop which is causally connected to her lumbar spine pathology. He testified that Petitioner is a very classic example of a person with tandem stenosis. On physical exam, he found a combination of both radiculopathy and myelopathy. He diagnosed Petitioner with myelopathy on 2/2/16 and his working diagnosis was tandem stenosis and the combination of upper extremity pathology, cervical pathology, lumbar radiculopathy, and lumbar pathology in the form of isthmic spondylolisthesis and congenital stenosis.

Dr. Taylor testified that people with cervical myelopathy have a number of symptoms, including difficulty with their gait and they can trip and fall. Not all symptoms of cervical myelopathy involve the upper extremities. He testified that in his experience, myelopathy from tandem stenosis usually arises out of some trauma and it a clinical diagnosis that is not see on imaging studies. He stated that Petitioner's JOA score shows her symptoms were worsening over time. Petitioner's myelopathy was not so severe that all the tests were positive and some of her testing was negative on physical exam.

Dr. Michael Chabot testified by way of deposition on 9/28/18. (RX5). Dr. Chabot is a board-certified orthopedic surgeon with a subspecialty in spine surgery. Dr. Chabot's testimony was consistent with his reports. He reviewed medical records dating back to 2014 and beyond,

multiple diagnostics, and performed a physical examination on Petitioner. He stated that Petitioner relayed a history of injury on 9/3/15 and no other accidents. She reported a client grabbed her hair, swung her around, scratched her on the right side of her neck and threw her against a wall. Petitioner landed on her left knee and complained of head, neck, and back pain. Dr. Chabot performed cervical spine x-rays with obliques and flexion/extension that revealed evidence of well-preserved disc space throughout the cervical spine, with only mild loss of lordosis. Petitioner had diffuse facet degeneration from C2-T1 and degeneration involving the C1-C2 articulation. Flexion/extension films revealed no evidence of instability. Oblique images showed evidence of mild right side C4-5 and C5-6 foraminal narrowing.

Dr. Chabot disagreed with the radiologist's interpretation of the CT myelogram. His review of the cervical MRI dated 2/2/15 showed advanced degeneration, disc bulging at C4-7, with little to no neural compression. He felt the imaging as read by Dr. Ruyle was overstated. Dr. Chabot compared the images dated 2/2/15 and 11/15/15, which did not show evidence of acute edema to suggest an acute injury. He noted Petitioner did not walk with a limp or have issues ambulating. Physical exam showed reduced range of motion in the cervical spine which was normal for her age, with no signs of radiculopathy. Neurologic exam was normal with the exception of positive Tinel's sign suggesting the presence of carpal tunnel and ulnar neuropathy. The lower extremity neurologic examination was normal. He stated Petitioner described symptoms that were consistent with carpal tunnel disease. Her low back complaints were primarily along the bra line and thoracolumbar junction and she denied radiation into her lower extremities. Petitioner's complaints to Dr. Chabot and her pain diagram describe pain symptoms localized to the mid and lower neck and cervicothoracic junction. Petitioner did not mark any pain involving the lumbar region. She did not indicate the presence of numbness or weakness extending from her neck into the arms or from her back into the legs. Petitioner did not complain to Dr. Chabot of weakness or symptoms typical of radiculopathy involving the arms or legs.

Dr. Chabot noted Petitioner was on narcotics for chronic knee and hip complaints. He diagnosed Petitioner with neck, thoracic, and lumbar strains associated with the 9/3/15 incident, with pre-existing multifaceted degeneration, C1-C2 joint degeneration, Grade I and II spondylolisthesis L5-S1, bilateral pars defect, spondylosis at L5, advances tissue degeneration, advanced degeneration involving the bilateral knees, chronic knee pain, chronic narcotic use, and moderate chronic knee arthritic complaints. Dr. Chabot felt the cervical, thoracic, and lumbar strains were related to the work injury. He did not feel additional medical treatment was necessary and Petitioner had reached MMI. The basis of Dr. Chabot's opinion was that Petitioner was working full duty, using medication, did not have physical exam findings to suggest she had persistent residual symptoms associated with an injury, and did not have findings on MRI to support an injury. He did not feel Petitioner was a surgical candidate for her cervical or lumbar spine. Petitioner was doing well with medication and did not exhibit radicular symptoms in the upper or lower extremities. Petitioner's examination was void of any persisting tissue inflammation to suggest she had ongoing residuals associated with her work injury and she had returned to her baseline. Dr. Chabot's opinion differed from Dr. Taylor's because Petitioner did not indicate any pain to her lower lumbar region or back pain radiating into her lower extremities, and her physical examination lacked any evidence of spasm or tissue irritation. Petitioner had excellent range of motion and no neurologic changes to the lower extremities. Moreover, Dr. Taylor suggested Petitioner had changes in muscle strength or evidence of a drop

foot. Dr. Chabot did not note any neurologic changes or muscle weakness involving the lower extremities. Dr. Phillips, a certified neurologist, found no evidence of neurologic changes involving the lower extremities. Dr. Phillips also performed an electrodiagnostic study which failed to evidence active radiculopathy or nerve damage involving the lower extremities.

On cross-examination, Dr. Chabot opined the September 2015 event may have caused a temporary exacerbation of the pre-existing condition of Petitioner's cervical and lumbar spine. He believed she had reached MMI on 9/17/17 because that was the time when the temporary exacerbation ended. Dr. Chabot believed all the prior treatment he reviewed was reasonable and necessary to address Petitioner's complaints associated with the September 2015 incident. Dr. Chabot was aware Petitioner had a history of neck complaints in 2014 that required treatment, including injections and facet rhizotomies, over a long period, but admitted he did not have full detail on that. He admitted it could be helpful to have the medical records prior to 9/3/15 to determine what Petitioner's baseline was. He opined Petitioner would continue to have complaints involving her cervical and lumbar spine and continue frequent use of pain medication. He admitted he did not review any records from Dr. Gornet prior to the 9/16/15 report. He admitted his report provided no details about a July 2014 date of injury and the only records he reviewed prior to 9/3/15 involved Petitioner's left knee and a cervical MRI dated 2/2/15.

CONCLUSIONS OF LAW

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

Following Petitioner's work accident on 5/12/17, she reported to the emergency room with pain in her head, right neck, back, and left shoulder. A cervical CT scan showed multilevel degenerative disc disease with endplate and facet hypertrophy and mild narrowing of the neural foramina. Lumbar imaging revealed spondylosis at L5 with Grade II spondylolisthesis of L5 in relation to S1 and severe disc degeneration at L5-S1. The assessment was injury due to an altercation, neck pain, low back pain without sciatica, and intractable headache. Petitioner was kept off work from 5/12/17 through 5/15/17.

Petitioner continued treatment with Dr. Hurford from 6/21/17 through 9/26/17 for her cervical condition at the referral of Dr. Taylor. Petitioner underwent radiofrequency ablations and numerous medications that failed to alleviate her symptoms. Dr. Hurford referred Petitioner back to Dr. Taylor for additional treatment. Petitioner followed up with Dr. Taylor on 10/20/17 and noted Petitioner's symptoms were worsening despite conservative treatment. He continued to recommend cervical and lumbar surgery described on 5/3/17.

Dr. Taylor opined that Petitioner's need for cervical and lumbar spine treatment was a result of the 2015 work incident and that her third work-related injury caused a temporary increase in her pain which had since returned to her pre-third injury baseline level.

Based on the evidence and Petitioner's medical records, the Arbitrator finds that Petitioner's current condition of ill-being in her cervical and lumbar spine is not causally related

to her subsequent accident that occurred on 5/12/17 but was a temporary aggravation and a continuation of her injury that occurred on 9/3/15.

Issue (J): **Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for 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 finding that Petitioner's current condition of ill-being in her cervical and lumbar spine is not causally related to her subsequent accident that occurred on 5/12/17, but remains related to her accident on 9/3/15, and the Arbitrator having awarded Petitioner medical expenses, temporary total disability benefits, and prospective medical care, including surgery, in Case No. 15-WC-029432, the Arbitrator does not award further benefits herein.

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

Based on the Arbitrator's finding that Petitioner's current condition of ill-being in her cervical and lumbar spine is not causally related to her subsequent accident that occurred on 5/12/17, but remains related to her accident on 9/3/15, and the Arbitrator having awarded Petitioner medical expenses, temporary total disability benefits, and prospective medical care, including surgery, in Case No. 15-WC-029432, the Arbitrator does not award further benefits herein.

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

Arbitrator Linda J. Cantrell DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC003542
Case Name	David Andrews v. State of Illinois - Menard Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0397
Number of Pages of Decision	9
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Aaron Wright

DATE FILED: 10/13/2022

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DAVID ANDREWS,
Petitioner,

vs. NO: 19 WC 003542

STATE OF ILLINOIS/ MENARD CORRECTIONAL CENTER,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 24, 2022 is hereby affirmed and adopted.

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

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

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.

October 13, 2022
o: 10/06/22
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC003542
Case Name	ANDREWS, DAVID v. STATE OF ILLINOIS/MENARD CORRECTIONAL CENTER.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Aaron Wright

DATE FILED: 2/24/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 23, 2022 0.71%

/s/Linda Cantrell, Arbitrator

Signature

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

February 24, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

DAVID ANDREWS
Employee/Petitioner

v.

STATE OF ILLINOIS/MENARD CORRECTIONAL CENTER
Employer/Respondent

Case # **19** WC **003542**

Consolidated cases: _____

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin**, on **December 20, 2021**. By stipulation, the parties agree:

On the date of accident, **12/8/18**, 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 $**60,509.45**, and the average weekly wage was $**1,163.64**.

At the time of injury, Petitioner was **27** years of age, ***single*** with **0** dependent children.

Necessary medical services and temporary compensation benefits have been **or will be** provided by Respondent.

Respondent shall be given a credit of $**all paid** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**all paid, including any extended benefits paid**. Respondent shall receive a credit for all medical bills paid through its group medical plan under Section 8(j) of the Act and shall hold Petitioner harmless for any claims made for which it receives such credit.

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 $**698.18**/week for a further period of **162.5** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused permanent partial disability to the extent of **17.5%** loss of body as a whole for injuries to Petitioner's cervical spine and **15%** loss of body as a whole for injuries to Petitioner's left shoulder.

Rspondent shall pay Petitioner compensation that has accrued from 10/14/19 through 12/20/21 related to Petitioner's cervical spine, and 3/22/21 through 12/20/21 related to Petitioner's left shoulder, and shall pay the remainder of the award, if any, in weekly payments.

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

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

FEBRUARY 24, 2022

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
Nature and Extent Only

DAVID ANDREWS,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 19-WC-003542
	)	
STATE OF ILLINOIS/MENARD CORRECTIONAL CENTER,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Herrin on December 20, 2021. The parties stipulated that on December 8, 2018 Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent and that Petitioner's current condition of ill-being is causally connected to his injury. The only issue in dispute is the nature and extent of Petitioner's injuries. All other issues have been stipulated.

TESTIMONY

Petitioner was 27 years old, single, with no dependent children at the time of accident. He has been employed by Respondent as a Correctional Officer at its Menard facility for five years. Petitioner testified that on 12/8/18 he broke up a fight among inmates who attacked him. Petitioner sustained injuries to his neck, left shoulder, and chipped a tooth. He had constant "splitting" headaches causing him to tilt his head to the left to alleviate his symptoms. He underwent injections and a C6-7 disc replacement by Dr. Gornet. He stated that surgery and postoperative therapy improved his symptoms. Petitioner underwent physical therapy and surgery for his left shoulder injury by Dr. Paletta. His surgical repair failed and he lost all range of motion, constant pain, and no strength. Petitioner stated he underwent a second left shoulder surgery by Dr. Bradley that improved his symptoms.

Petitioner returned to work without restrictions. He testified that looking up and down for prolonged periods causes neck pain. He takes Tylenol or Ibuprofen a couple of times per week to manage his symptoms. His hobby of working on cars has been adversely affected due to his neck condition. Petitioner testified he has morning stiffness in his shoulder, loss of strength and range of motion, and pain with overhead activities. He has difficulty performing many tasks, including working on cars, working around the house, and lifting weights. He has changed his exercise routine and performs mostly cardio because he cannot lift weights like he did prior to his injury.

Overhead activity such as hanging curtains increases his shoulder pain. Petitioner testified he deer hunts with a crossbow, but he did not hunt this past shotgun season.

MEDICAL HISTORY

Petitioner immediately reported to the emergency room at Carbondale Memorial Hospital following the accident. He provided a history of accident and it was noted he could not raise his left arm above shoulder level. (PX3, p. 1). X-rays were normal. Petitioner was diagnosed with a shoulder injury.

On 12/10/18, Petitioner presented to SIH Urgent Care. (PX4). Petitioner reported the accident and complained of left shoulder and neck pain mostly on the left with minor tenderness over the right elbow. Physical examination showed tenderness over the midline cervical spine with tenderness over the left trapezius. There was pain with lateral rotation to the left and pain with hyperextension. Petitioner reported tenderness over all aspects of his left shoulder along with findings of positive orthopedic tests. He was diagnosed with cervicalgia and left shoulder strain. He was placed on work restrictions of no lifting over 10 pounds, no overhead work, limited pushing and pulling, and sedentary duties. Nurse Practitioner Sullivan recommended physical therapy and an MRI arthrogram of the left shoulder. Petitioner participated in physical therapy at Rehab Unlimited with little improvement. (PX6).

On 1/7/19, Petitioner was examined by Dr. George Paletta who noted Petitioner's accident and current restrictions. Physical examination showed positive orthopedic tests and range of motion limited by pain. Dr. Paletta's impression was possible SLAP tear versus partial thickness rotator cuff tear. He also recommended an MRI arthrogram of the shoulder to better evaluate the soft tissue structures. He continued Petitioner's work restrictions. Dr. Paletta opined that Petitioner's shoulder condition was causally related to his work accident.

The MRI arthrogram was completed on 1/16/19 that revealed a full thickness tear of the supraspinatus involving the anterior aspect of the tendon and was moderately sized at 15-16 mm. (PX7, p. 9). Dr. Paletta recommended either subacromial injections and physical therapy or surgery. Dr. Paletta referred Petitioner to Dr. Matthew Gornet for ongoing cervical pain and his shoulder treatment was placed on hold. Petitioner was examined by Dr. Gornet on 1/29/19 for complaints of neck pain and headaches at the base of his neck to both trapezius. Dr. Gornet ordered a cervical MRI that revealed pathology at several levels, including, a herniation on the left at C6-7, along with a central angular tear at C4-5 and C6-7. Dr. Gornet recommended injections. (PX9, p. 6). Dr. Gornet opined that Petitioner's cervical condition was causally related to his work accident.

On 2/9/19, Dr. Helen Blake performed an injection at C6-7 and on 3/5/19 she performed an injection at C4-5. The injection provided temporary relief. (PX9, p. 7). On 4/5/19, Dr. Gornet performed a disc replacement at C6-7. (PX9, p. 10). Intraoperative findings showed a central annular tear with a small disc herniation at C6-7. (PX9, p. 11). On 4/22/19, Petitioner his neck pain, headaches, and left arm were dramatically improved. Dr. Gornet placed Petitioner on light duty on 7/15/19. On 10/14/19, Dr. Gornet released Petitioner at MMI with no restrictions.

On 7/22/19, Dr. Paletta noted Petitioner's cervical symptoms improved with surgery. (PX7, p. 11). On 9/3/19, Petitioner underwent left shoulder diagnostic arthroscopy and subacromial decompression and bursectomy. (PX7, p. 14). Intraoperative findings showed a high-grade virtually full thickness tear of the supraspinatus. On 9/16/19, Petitioner reported he was doing well overall. Dr. Paletta anticipated Petitioner would return to full duty work between four and four and a half months postop. On 12/18/19, Dr. Paletta noted Petitioner was doing extremely well and expected to release Petitioner to full duty work at his next visit. At Petitioner's next visit he had evidence of post-operative adhesive capsulitis and he was not released from care. On 2/28/20, Petitioner reported improvement overall and physical examination showed significantly improved range of motion. Dr. Paletta ordered light duty restriction until 3/3/20 at which point he could return to full duty work. Dr. Paletta placed Petitioner at MMI on 6/3/20 with no restrictions.

Petitioner sought a second opinion with Dr. Matthew Bradley on 7/16/20. (PX15). Dr. Bradley noted Petitioner's postoperative symptoms included stiffness and pain in the shoulder. He diagnosed post-operative capsulitis and ordered aggressive physical therapy which caused a significant increase in pain. On 5/14/20, a left shoulder MRI showed a recurrent tear of the supraspinatus. (PX15, p. 1, PX8). Dr. Bradley's examination again showed positive orthopedic tests with pain and resistance of rotator cuff testing that reproduced his chief complaint. (PX15, p. 1). Dr. Bradley reviewed the new MRI and believed it showed recurrent tear to the supraspinatus with extra vision of gadolinium into the tear. He believed the recurrent tear was related to the significant amount of capsulitis formed postoperatively and the therapy attempting to resolve the capsulitis.

On 8/7/20, Petitioner underwent a left revision rotator cuff repair subacromial decompression and manipulation under anesthesia. (PX15, p. 3). Following surgery, Petitioner was again referred for physical therapy which improved his condition. On 12/16/20, Petitioner reported significant improvement and he was excited to return to work. On 3/22/21, Dr. Bradley recorded Petitioner had been working full duty without restrictions and was having no difficulty with his work duties and activities of daily living.

CONCLUSIONS OF LAW

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment:** Neither part submitted an AMA rating. Therefore, the Arbitrator places no weight on this factor.

(ii) **Occupation:** Petitioner returned to full duty work as a Correctional Officer at Respondent's Menard facility. The Arbitrator places greater weight on this factor.

(iii) **Age:** Petitioner was 27 years of age at the time of his injury. 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,* 16I.W.C.C. 0137 (2016) (wherein the Commission concluded that greater weight should have been given to the fact that Petitioner was younger that [46 years of age] and would have to work with his disability for an extended period of time). The Arbitrator places greater weight on this factor.

(iv) **Earning Capacity:** There was no evidence of reduced earning capacity contained in the record. Petitioner returned to his pre-accident position with Respondent. The Arbitrator places some weight on this factor.

(v) **Disability:** As a result of his accidental injuries, Petitioner sustained injuries to his cervical spine and left shoulder requiring a disc replacement at C6-7 and two shoulder surgeries consisting of a diagnostic arthroscopy, with subacromial decompression and bursectomy, and a revision rotator cuff repair and subacromial decompression. Despite the improvement resulting from surgery, Petitioner still has neck pain when looking up or down for extended periods of time. He takes Tylenol or Ibuprofen a couple of times per week to manage his symptoms. His hobby of working on cars has been adversely affected due to his neck condition. Petitioner testified he has morning stiffness in his shoulder, loss of strength and range of motion, and pain with overhead activities. He has difficulty performing many tasks, including working on cars, working around the house, and lifting weights. He has changed his exercise routine and performs mostly cardio because he cannot lift weights like he did prior to his injuries. Petitioner has returned to full duty work without restrictions. The Arbitrator places greater weight on this factor.

Based on the foregoing, the Arbitrator finds Petitioner sustained permanent partial disability to the extent of 17.5% loss of body as a whole for injuries to his cervical spine and 15% loss of body as a whole for injuries to his left shoulder, pursuant to Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 10/14/19 through 12/20/21 related to Petitioner's cervical spine, and 3/22/21 through 12/20/21 related to Petitioner's left shoulder, and shall pay the remainder of the award, if any, in weekly payments.

Linda J. Cantrell, Arbitrator

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC011543
Case Name	INSURANCE COMPLIANCE v. PEOTONE BOWL
Consolidated Cases	
Proceeding Type	Petition for Penalties
Decision Type	Commission Decision
Commission Decision Number	22IWCC0398
Number of Pages of Decision	7
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Joseph Blewitt
Respondent Attorney	

DATE FILED: 10/13/2022

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LA SALLE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Illinois Department of Insurance,
Insurance Compliance Division,

Petitioner,

vs. No: 22 WC 11543

Gary Jurres, Individually and
as President of Jurres Inc. d/b/a
Peotone Bowl,

Respondent.

DECISION AND OPINION REGARDING INSURANCE NON-COMPLIANCE

Petitioner, the Illinois Department of Insurance, Insurance Compliance Department brings this action, by and through the Office of the Illinois Attorney General, against the above-captioned Respondent, alleging violations of section 4(a) of the Illinois Workers' Compensation Act for failure to procure mandatory workers' compensation insurance. Petitioner alleges that Respondent knowingly and willfully lacked workers' compensation insurance for 4,597 days. A hearing was held before Commissioner Carolyn M. Doherty in Chicago, Illinois on September 14, 2022. Petitioner was represented by the Office of the Illinois Attorney General. Respondent did not appear in person or through counsel. A record was taken.

Petitioner seeks the maximum fine allowed under the Act, $500.00 per day for each of the 4,597 days, from July 31, 2009, through March 31, 2022 (excepting the month of April 2020), when Respondent's business, Jurres, Inc., d/b/a Peotone Bowl, did business and failed to provide coverage for its employees. Petitioner seeks a total award of $2,298,500.00.

The Commission, after considering the record in its entirety and being advised of the applicable law, finds that Respondent knowingly and willfully violated section 4(a) of the Act and section 9100.100 of the Rules Governing Practice before the Illinois Workers' Compensation

Commission (Rules) during the period in question. As a result, Respondent shall be held liable for non-compliance with the Act and shall pay a penalty in accordance with section 4(d) of the Act. For the following reasons, the Commission assesses a civil penalty against Respondent under section 4 of the Act in the sum of $2,298,500.00.

I. Findings of Facts

Megan Drew, an investigator for Petitioner, testified that she opened an investigation of Peotone Bowl in February 2021 due to the prospect of an underlying case involving the Injured Workers' Benefit Fund. Tr. 6. According to Ms. Drew, Respondent operated a bowling alley, based on her review of records from the Illinois Secretary of State and of the Peotone Bowl website. Tr. 9-10. Petitioner also introduced an annual corporate report filed with the Illinois Secretary of State for 2019 signed by Gary Jurres, indicating that he was the president, secretary, director and registered agent of Jurres, Inc. PX4. The annual report also listed the primary address of the corporation as 210 North Second Street in Peotone, Illinois. PX4. Ms. Drew testified that she identified this address as the Peotone Bowl based on searches performed on both Accurint and Google. Tr. 8-9. She also testified that based on her investigation and review of the Peotone Bowl website, Peotone Bowl was providing services to the general public, served food and liquor, and used an automatic ball return machine. Tr. 14.

Ms. Drew testified that she mailed Peotone Bowl a Notice of Non-Compliance and a Notice of Insurance Compliance Hearing, as well as attempting to contact the business by telephone on between two and six occasions regarding settlement of the matter. Tr. 6-7. Petitioner submitted a Notice of Insurance Compliance Hearing stating that the Commission's records indicated that Peotone Bowl was not in compliance with the requirements of section 4(a) for the period from May 18, 2008 to the present. PX1. The notice provided the time, date, and place of the hearing to be held by Commissioner Carolyn M. Doherty. PX1. The notice includes an affidavit from Ms. Drew indicating service by mail on July 20, 2022. PX1. Ms. Drew also identified a certified mail receipt sent to Peotone Bowl and attached to her certified Notice of Insurance Compliance Hearing. Tr. 8. The receipt bears the signature of Lou Ann Jurres, whom Ms. Drew testified was the wife of Respondent. Tr. 9; PX2.

Petitioner submitted records from the Illinois Department of Employment Security reflecting that Jurres, Inc. reported having employees from July 2009 through March 2022, excepting the month of April 2020. PX3.

Petitioner also submitted an April 11, 2022 sworn certification signed by Maria Sarli-Dehlin of the Commission's Office of Self-Insurance, stating that no certificate of approval to self-insure was issued by the Commission to Jurres Inc., d/b/a Peotone Bowl from May 18, 2008 to the present. PX6.

Petitioner further submitted an April 14, 2022 certification from Topaz Bertino the National Council of Compliance Insurance (NCCI). The NCCI certified that it is the agent designated by the Commission for the purpose of collecting proof of insurance coverage information on Illinois employers and that a search of its records did not show any policy information showing proof of workers' compensation insurance was filed for Jurres Inc., d/b/a

Peotone Bowl during the period from October 17, 2008 through April 11, 2022. PX5. An exhibit attached to the NCCI certification also indicates that the employer had a policy effective October 16, 2007, which was cancelled effective May 18, 2008. PX5.

II. Conclusions of Law

At the outset, the Commission considers whether Respondent's business is subject to the Act. Pursuant to Section 3 of the Act, certain employers and their employees are automatically subject to the provisions of the Act if they engage in specific businesses, including: "[e]stablishments open to the general public wherein alcoholic beverages are sold to the general public for consumption on the premises," "[a]ny business or enterprise serving food to the public for consumption on the premises wherein any employee as a substantial part of the employee's work uses handcutting instruments or slicing machines or other devices for the cutting of meat or other food or wherein any employee is in the hazard of being scalded or burned by hot grease, hot water, hot foods, or other hot fluids, substances or objects," "[a]ny business or enterprise in which electric, gasoline or other power driven equipment is used in the operation thereof," and "[a]ny business or enterprise *** in which services are rendered to the public at large, provided that this paragraph shall not apply to such business or enterprise unless the annual payroll during the year next preceding the date of injury shall be in excess of $1,000." 820 ILCS 305/3(12),(14),(15), (17) (West 2008).

The Commission finds that Respondent's business falls within sections 3(12) and 3(15) of the Act. Ms. Drew's unrebutted testimony establishes that Respondent sold alcoholic beverages to the general public and operated electric ball-returning equipment.[1]

Pursuant to section 4(a) of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance. See 820 ILCS 305/4(a) (West 2008). Section 9100.90(a) of our Rules similarly provides that any employer subject to section 3 of the Act shall insure payment of compensation required by section 4(a) of the Act "by obtaining approval from the Commission to operate as a self-insurer or by insuring its entire liability to pay the compensation in some insurance carrier authorized, licensed or permitted to do such insurance business in Illinois." 50 Ill. Adm. Code 9100.90(a) (1986). Section 9100.90(d)(3)(E) of our Rules similarly provides that a certification from a Commission employee "that an employer has not been certified as a self-insurer shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D) (1986). Section 9100.90(d)(3)(D) of our Rules provides that "[a] certification from an employee of the National Council on Compensation Insurance stating that no policy information page has been filed in accordance with Section 9100.20 shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D) (1986).

In this case, Petitioner submitted an April 11, 2022 certified finding from the Department of Self-Insurance that no certificate of approval to self-insure was issued to Jurres Inc., d/b/a

[1]Regarding section 3(14) of the Act, Ms. Drew testified that Peotone Bowl sold food, but did not testify regarding the use of handcutting and slicing machines, or the risk of being scalded or burned. Ms. Drew further observed that Peotone Bowl rendered services to the public but did not testify regarding an underlying injury date from which the appropriate payroll period might be determined for the purposes of section 3(17) of the Act.

Peotone Bowl for the period from May 18, 2008 through the present. Petitioner also submitted the NCCI certification that Jurres Inc., d/b/a Peotone Bowl filed no policy information showing proof of workers' compensation insurance at any time from October 17, 2008, through April 11, 2022. Petitioner submitted Illinois Department of Employment Security records indicating that Jurres Inc. reported having employees from July 2009 through March 2022, excepting the month of April 2020. Respondent did not attend the hearing and thus presented no evidence indicating that the business of which he is president, secretary, and director provided workers' compensation insurance of any kind during this period. Based on this record, the Commission concludes that Petitioner proved that Jurres Inc., d/b/a Peotone Bowl failed to comply with the legal obligations imposed by section 4(a) of the Act from July 2009 through March 2022, excepting the month of April 2020.

Regarding the issue of penalties for failure to maintain workers' compensation insurance coverage, Section 4(d) of the Act states:

> "Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and willful failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this Section ***, the Commission may assess a civil penalty of up to $500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. The minimum penalty under this Section shall be the sum of $10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this Section. The liability for the assessed penalty shall be against the named employer first, and if the named employer refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty." 820 ILCS 305/4(d) (West 2008).

Section 9100.90(b) of the Rules similarly provides that penalties may be assessed for non-compliance after a reasonable notice and hearing. 50 Ill. Adm. Code 9100.90(b) (1986). Section 9100.90(c) of the Rules describes the proper notice of non-compliance to be served upon the employer and provides that the employer may request an informal conference to resolve the matter. 50 Ill. Adm. Code 9100.90(c) (1986). Section 9100.90(d) of the Rules describes the manner of notice and service for an insurance compliance hearing and the procedure for conducting the hearing. 50 Ill. Adm. Code 9100.90(d) (1986).

In this case, Ms. Drew testified that she mailed Peotone Bowl a Notice of Non-Compliance. Respondent did not request an informal conference in this matter. Ms. Drew also testified that she mailed the Notice of Insurance Compliance Hearing. Petitioner also submitted the notice for the September 14, 2022 insurance compliance hearing, in the form prescribed by our Rules, including

the attached affidavit of service executed by Ms. Drew. The insurance compliance hearing allowed the Petitioner to introduce evidence and testimony, and afforded Respondent the opportunity to do the same, had Respondent chosen to attend personally or through counsel. Accordingly, the Commission concludes that reasonable and proper notice and hearing was provided to Respondent.

On the merits, the Commission has considered the following factors in assessing penalties against an uninsured employer: (1) the length of time the employer had been violating the Act; (2) the number of workers' compensation claims brought against the employer; (3) whether the employer had been made aware of his conduct in the past; (4) the number of employees working for the employer; (5) the employer's ability to secure and pay for workers' compensation coverage; (6) whether the employer had alleged mitigating circumstances; and (7) the employer's ability to pay the assessed amount. See, *e.g.*, *State of Illinois v. Murphy Container Service*, Ill. Workers' Comp. Comm'n, No. 03 INC 00155, 7 IWCC 1037 (Aug. 2, 2007).

The Commission finds that the period of time during which the Respondent violated the Act by failing to obtain workers' compensation insurance was significant. Respondent failed to have insurance for 4,597 days, from July 31, 2009, through March 31, 2022 (excepting the month of April 2020). During this period, Respondent's business employed as many as 14 employees. Based on Ms. Drew's testimony that she initiated the investigation due to a potential IWBF case, it may be reasonably inferred that one of those employees sustained a work injury. Moreover, having reviewed the record, the Commission finds no evidence as to Respondent's inability to secure and pay for workers' compensation coverage and no evidence of mitigating circumstances.

The Commission concludes that Respondent knowingly and willfully failed to comply with the Act. Based upon the significant period of time that Respondent failed to comply with the Act, the Commission assesses a penalty of $2,298,500.00 against Respondent, GARY JURRES, individually, and as president of JURRES, INC., doing business as PEOTONE BOWL.

IT IS THERFORE ORDERED BY THE COMMISSION that Respondent, GARY JURRES, individually, and as president of JURRES, INC., doing business as PEOTONE BOWL, is found to be an employer who was in non-compliance with the insurance provisions Section 4(a) of the Act and Section 9100.90 of the Commission Rules and is hereby ordered to pay the Commission a fine of $2,298,500.00. This amount represents 4,597 days of non-compliance with the Act at $500.00 per day.

IT IS FURTHER ORDERED BY THE COMMISSION that payment shall be made according to the following procedure: (1) payment of the penalty shall be made by certified check or money order made payable to the Illinois Workers' Compensation Commission; and (2) payment shall be mailed or presented within thirty (30) days of the final order of the Commission or the order of the court of review after final adjudication to:

Department of Insurance
Attn: Insurance Compliance
122 South Michigan Avenue, 19th floor
Chicago, Illinois 60603

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.

October 13, 2022
r: 9/14/22
CMD/kcb
045

/s/ Carolyn M. Doherty
Carolyn M. Doherty

/s/ Marc Parker
Marc Parker

/s/ Christopher A. Harris
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC020298
Case Name	INSURANCE COMPLIANCE v. C&C AUTO WRECKING AND TOWING
Consolidated Cases	
Proceeding Type	Petition for Penalties
Decision Type	Commission Decision
Commission Decision Number	22IWCC0399
Number of Pages of Decision	8
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Thomas Owen
Respondent Attorney	

DATE FILED: 10/14/2022

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LA SALLE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Illinois Department of Insurance,
Insurance Compliance Division,

Petitioner,

vs. No: 19 WC 20298

Tim Crouch, Individually and
as Owner of C & C Auto Wrecking
& Towing,

Respondent.

DECISION AND OPINION REGARDING INSURANCE NON-COMPLIANCE

Petitioner, the Illinois Department of Insurance, Insurance Compliance Department brings this action, by and through the Office of the Illinois Attorney General, against the above-captioned Respondent, alleging violations of section 4(a) of the Illinois Workers' Compensation Act for failure to procure mandatory workers' compensation insurance. Petitioner alleges that Respondent knowingly and willfully lacked workers' compensation insurance for 4,488 days. A hearing was held before Commissioner Carolyn M. Doherty in Ottawa, Illinois on September 14, 2022. Petitioner was represented by the Office of the Illinois Attorney General. Respondent did not appear in person or through counsel. A record was taken.

Petitioner seeks the maximum fine allowed under the Act, $500.00 per day for each of the 4,488 days, from July 20, 2005 until November 1, 2017, when Respondent did business and failed to provide coverage for his employees, for an award of $2,244,000.00. In addition, Petitioner seeks reimbursement for the liability incurred by the Injured Workers' Benefit Fund (IWBF) in claim in *Patterson v. C & C Auto Wrecking and Towing and the Injured Workers' Benefit Fund*,

Ill. Workers' Comp. Comm'n, No. 13 WC 31728 (Mar. 24, 2022).[1]

The Commission, after considering the record in its entirety and being advised of the applicable law, finds that Respondent knowingly and willfully violated section 4(a) of the Act and section 9100.100 of the Rules Governing Practice before the Illinois Workers' Compensation Commission (Rules) during the period in question. As a result, Respondent shall be held liable for non-compliance with the Act and shall pay a penalty in accordance with section 4(d) of the Act. For the following reasons, the Commission assesses a civil penalty against Respondent under section 4 of the Act in the sum of $$2,244,000.00. Pursuant to Section 9100.85(a)(1) of our Rules, the Commission is also entitled to obtain reimbursement from Respondent Crouch in the incurred amount representing the liability imposed on the Injured Workers' Benefit Fund in the *Patterson* case.

I. Findings of Facts

Megan Drew, an investigator for Petitioner, testified that her involvement in the investigation of Respondent and C & C Auto Wrecking and Towing (C & C) began in November 2018, but Richard Noble, her predecessor, had commenced the investigation in November 2017. Tr. 10-11. She also testified that, as part of her investigation, she sought to obtain records from the Illinois Secretary of State related to C & C, but no such records were returned. She stated that the lack of records indicated that that C &C was operating as a sole proprietorship or on a "doing business as" basis. Tr. 22.

Ms. Drew further testified that C & C is a 24-hour towing company that employs drivers and mechanics. Tr. 22. Ms. Drew later testified that her predecessor had observed at least three employees washing cars, fueling cars, and operating tow trucks at C & C's business location in Pontiac, Illinois. See Tr. 35. Ms. Drew identified, and the Commission took judicial notice of, the Commission's arbitration decision in *Patterson v. C & C Auto Wrecking and Towing and the Injured Workers' Benefit Fund*, Ill. Workers' Comp. Comm'n, No. 13 WC 31728 (Mar. 24, 2022). In the *Patterson* decision, the Arbitrator concluded that the parties were operating under the Act as employee and employer. The Arbitrator also concluded that C & C was a 24-hour towing company located in Pontiac, Illinois, with multiple employees, including drivers and mechanics. The Arbitrator ruled that C & C was in the business of carriage by land and in the use of motor vehicles with more than two employees, thus falling within the automatic coverage of section 3(3) of the Act. The Arbitrator additionally found that C & C was uninsured on the accident date of March 20, 2012. The Arbitrator awarded Patterson medical expenses, temporary total disability benefits, and permanent partial disability benefits. PX4.

Ms. Drew identified Petitioner's Exhibit 1 as a November 1, 2017 Notice of Non-Compliance served on Respondent. Tr. 1; PX1. The notice states that the Commission's records indicated that Respondent, individually and owner of C & C, was not in compliance with the requirements of section 4(a) for the period from July 20, 2005 through November 1, 2017. The notice includes an affidavit indicating personal service on Respondent by Mr. Noble on November 2, 2017. PX1.

[1] Counsel for Petitioner, as an officer of the court, represented during the hearing in this matter that his understanding was that the IWBF had "paid out as of this date." Tr. 6.

Ms. Drew identified Petitioner's Exhibit 2 as a November 1, 2017 Notice of Insurance Compliance Informal Conference hand-delivered to Respondent. Tr. 15; PX2. This notice indicated that an informal conference in this matter was set for 10 a.m. on December 20, 2017. Tr. 15; PX2. According to Ms. Drew, the informal conference was continued to January 17, 2018. See Tr. 17. She stated that Respondent did not appear for the informal conference but had obtained worker's compensation coverage effective December 18, 2017. Tr. 17. She added that this coverage had since lapsed. Tr. 18.

Ms. Drew identified Petitioner's Exhibit 3 as the Notice of Insurance Compliance mailed to Respondent, which provided the time, date, and location of the hearing in this matter. Tr. 18-19; PX3. The notice includes an affidavit of service indicating that it was sent to Respondent by certified mail on May 18, 2022. Petitioner's Exhibit 3 also includes the certified mail return receipt, bearing the signature of Amy Crouch, whom Ms. Drew testified was the wife of Respondent, the owner of C & C. Tr. 19; PX3. Ms. Drew also testified that the while the notice itself bears the address of C & C in Pontiac, Illinois, the certified mail receipt was sent to an address in Cullom, Illinois because the business address was not showing as a probable active address. Tr. 19-20. Ms. Drew further stated the receipt as returned indicated that the delivery address should be to a particular P.O. Box, but that Petitioner does not serve P.O. Boxes by certified mail. Tr. 19-20.

Ms. Drew additionally testified that she investigated whether Respondent was self-insured by making a certified document request to the Commission's Office of Self-Insurance. Tr. 26. She identified Petitioner's Exhibit 5 as a May 22, 2018 sworn certification signed by Maria Sarli-Dehlin of the Commission's Office of Self-Insurance, which states that no certificate of approval to self-insure was issued by the Commission to C & C from July 20, 2005 to November, 2017. Tr. 26-27; PX5. The certification also identifies Respondent as the owner of C & C. PX5.

Ms. Drew also requested insurance information from the National Council of Compliance Insurance (NCCI), which was submitted into evidence as Petitioner's Exhibit 6. Tr. 28; PX6. Topaz Bertino certified that the NCCI is the agent designated by the Commission for the purpose of collecting proof of insurance coverage information on Illinois employers and that neither Respondent nor C & C filed policy information showing proof of workers' compensation insurance at any time from July 20, 2005 to November, 2017. PX6.

Ms. Drew concluded that C & C did not have workers' compensation coverage during the period at issue in this matter. Tr. 30.

Ms. Drew further testified that she received a certification from the Illinois Department of Revenue, identified as Petitioner's Exhibit 7, that the department had processed no income and replacement tax returns for 2005 through 2017, which was consistent with the testimony during the arbitration in the *Patterson* case that the employer paid its employees with cash. Tr. 33-34; PX7.

II. Conclusions of Law

At the outset, the Commission considers whether Respondent's business is subject to the Act. Pursuant to Section 3 of the Act, certain employers and their employees are automatically subject to the provisions of the Act if they engage in specific businesses, including: "[c]arriage by land, water or aerial service and loading or unloading in connection therewith, including the distribution of any commodity by horsedrawn or motor vehicle where the employer employs more than 2 employees in the enterprise or business." 820 ILCS 305/3(3) (West 2004).

The Commission finds that Respondent's business falls within sections 3(3) of the Act. Ms. Drew further that C & C is a 24-hour towing company that employs drivers and mechanics. Her testimony is supported by the arbitration decision in *Patterson*, in which the Arbitrator also concluded that C & C was a 24-hour towing company located in Pontiac, Illinois, with multiple employees, including drivers and mechanics. The Arbitrator also ruled that C & C was in the business of carriage by land and in the use of motor vehicles with more than two employees, thus falling within the automatic coverage of section 3(3) of the Act. Accordingly, the Commission concludes that the Respondent's business engaged in work which automatically fell within to the provisions of the Act.

Pursuant to section 4(a) of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance. See 820 ILCS 305/4(a) (West 2004). Section 9100.90(a) of our Rules similarly provides that any employer subject to section 3 of the Act shall insure payment of compensation required by section 4(a) of the Act "by obtaining approval from the Commission to operate as a self-insurer or by insuring its entire liability to pay the compensation in some insurance carrier authorized, licensed or permitted to do such insurance business in Illinois." 50 Ill. Adm. Code 9100.90(a) (1986). Section 9100.90(d)(3)(E) of our Rules similarly provides that a certification from a Commission employee "that an employer has not been certified as a self-insurer shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D) (1986). Section 9100.90(d)(3)(D) of our Rules provides that "[a] certification from an employee of the National Council on Compensation Insurance stating that no policy information page has been filed in accordance with Section 9100.20 shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D) (1986).

In this case, Petitioner submitted a certified finding from the Department of Self-Insurance that no certificate of approval to self-insure was issued by the Commission to C & C from July 20, 2005 to November 1, 2017. Petitioner also submitted the NCCI certification that Respondent and C & C filed no policy information showing proof of workers' compensation insurance at any time from July 20, 2005 through November 1, 2017. Ms. Drew concluded that C & C did not have workers' compensation coverage during the period for which Petitioner is seeking relief. Respondent did not attend the hearing and thus presented no evidence indicating that they provided workers' compensation insurance of any kind during this period. Accordingly, the Commission concludes that Petitioner proved that Respondent failed to comply with the legal obligations imposed by section 4(a) of the Act from July 20, 2005 through November 1, 2017.

Regarding the issue of penalties for failure to maintain workers' compensation insurance coverage, Section 4(d) of the Act states:

> "Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and willful failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this Section ***, the Commission may assess a civil penalty of up to $500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. The minimum penalty under this Section shall be the sum of $10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this Section. The liability for the assessed penalty shall be against the named employer first, and if the named employer refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty." 820 ILCS 305/4(d) (West 2004).

Section 9100.90(b) of the Rules similarly provides that penalties may be assessed for non-compliance after a reasonable notice and hearing. 50 Ill. Adm. Code 9100.90(b) (1986). Section 9100.90(c) of the Rules describes the proper notice of non-compliance to be served upon the employer and provides that the employer may request an informal conference to resolve the matter. 50 Ill. Adm. Code 9100.90(c) (1986). Section 9100.90(d) of the Rules describes the manner of notice and service for an insurance compliance hearing and the procedure for conducting the hearing. 50 Ill. Adm. Code 9100.90(d) (1986).

In this case, Petitioner submitted into evidence the Notice of Non-Compliance personally served on Respondent, individually and as owner of C & C, in the form prescribed by our Rules and including an affidavit of service. Petitioner also submitted a Notice of Insurance Compliance Informal Conference hand-delivered to Respondent, though Ms. Drew testified the conference was not held. Petitioner also submitted the Notice of Insurance Compliance mailed to Respondent, in the form prescribed by our Rules, including an affidavit of service indicating that it was sent to Respondent by certified mail on May 18, 2022. Petitioner attached the certified mail return receipt. Although the notice of the hearing bears the address of C & C in Pontiac, Illinois, Ms. Drew's unrebutted testimony establishes that the certified mail receipt was sent to an address in Cullom, Illinois because the business address was not showing as a probable active address and that substituted service was made on Respondent's wife. The insurance compliance hearing allowed the Commission to introduce evidence and testimony, and afforded Respondent the opportunity to do the same, had he chosen to attend personally or through counsel. Accordingly, the Commission concludes that reasonable and proper notice and hearing was provided to Respondent.

On the merits, the Commission has considered the following factors in assessing penalties against an uninsured employer: (1) the length of time the employer had been violating the Act; (2) the number of workers' compensation claims brought against the employer; (3) whether the

employer had been made aware of his conduct in the past; (4) the number of employees working for the employer; (5) the employer's ability to secure and pay for workers' compensation coverage; (6) whether the employer had alleged mitigating circumstances; and (7) the employer's ability to pay the assessed amount. See, *e.g.*, *State of Illinois v. Murphy Container Service*, Ill. Workers' Comp. Comm'n, No. 03 INC 00155, 7 IWCC 1037 (Aug. 2, 2007).

The Commission finds that the period of time during which the Respondent violated the Act by failing to obtain workers' compensation insurance was significant. The Respondent failed to have insurance for 4,488 days, from July 20, 2005 through November 1, 2017. In the *Patterson* decision, the claimant's unrebutted testimony established that C & C employed up as many as 15 employees. One of Respondent's employees sustained a work injury. As Respondent failed to have workers' compensation insurance, the Injured Workers' Benefit Fund was found liable to Patterson as a result of the injury, though the fund has the right to recover benefits due and owing if the Respondent/Owner fails to pay those benefits. Respondent was notified of his non-compliance under the Act by Petitioner and obtained workers' compensation insurance, but let this coverage lapse, per Ms. Drew's testimony. Moreover, having reviewed the record, the Commission finds no evidence as to Respondent's inability to secure and pay for workers' compensation coverage and no evidence of mitigating circumstances.

The Commission concludes that Respondent knowingly and willfully failed to comply with the Act. Based on the significant period of time that Respondent failed to comply with the Act, the Commission assesses a penalty of $2,244,000.00 against Respondent Tim Crouch, individually and as owner C & C AUTO WRECKING AND TOWING. Pursuant to Section 9100.85(a)(1) of the Rules, the Commission is also entitled to obtain reimbursement from Respondent Crouch in the incurred amount representing the liability imposed on the Injured Workers' Benefit Fund in the *Patterson* case. Respondent Crouch is entitled to a credit for any the liability imposed on the Injured Workers' Benefit Fund that he has paid already in the *Patterson* case.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent Tim Crouch, individually and as owner C & C AUTO WRECKING AND TOWING, is found to be an employer who was in non-compliance with the insurance provisions Section 4(a) of the Act and Section 9100.90 of the Commission Rules and is hereby ordered to pay to the Illinois Workers' Compensation Commission the sum of $2,244,000.00 pursuant to Section 4(d) of the Act. Pursuant to Section 9100.85(a)(1) of the Rules, the Commission is also entitled to obtain reimbursement from Respondent Crouch in the incurred amount representing the liability imposed on the Injured Workers' Benefit Fund in the *Patterson* case. Respondent Crouch is entitled to a credit for any the liability imposed on the Injured Workers' Benefit Fund that he has paid already in the *Patterson* case.

IT IS FURTHER ORDERED BY THE COMMISSION that payment shall be made according to the following procedure: (1) payment of the penalty shall be made by certified check or money order made payable to the Illinois Workers' Compensation Commission; and (2) payment shall be mailed or presented within thirty (30) days of the final order of the Commission or the order of the court of review after final adjudication to:

Department of Insurance

Attn: Insurance Compliance
122 South Michigan Avenue, 19th floor
Chicago, Illinois 60603

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.

October 14, 2022
r: 9/14/22
CMD/kcb
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC007807
Case Name	Nicholas E Eilers v. Jay Henges Entereprises
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0400
Number of Pages of Decision	19
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	William Beatty
Respondent Attorney	Julie Pagano

DATE FILED: 10/14/2022

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

NICHOLAS EILERS,
Petitioner,

vs. NO: 18 WC 007807

JAY HENGES ENTERPRISES,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, temporary total disability, medical expenses, and permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 13, 2022 is hereby affirmed and adopted.

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

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

Bond for 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.

October 14, 2022
o: 10/06/22
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC007807
Case Name	EILERS, NICHOLAS E v. JAY HENGES ENTERPRISES
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	William Beatty
Respondent Attorney	Julie Pagano

DATE FILED: 4/13/2022

/s/ Jeanne AuBuchon, Arbitrator

Signature

INTEREST RATE WEEK OF APRIL 12, 2022 1.22%

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

Nicholas Eilers
Employee/Petitioner

v.

Jay Henges Enterprises
Employer/Respondent

Case # **18** WC **007807**

Consolidated cases: **None**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Collinsville**, on **Nov. 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 **December 30 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 $; the average weekly wage was $**1176.69**.

On the date of accident, Petitioner was **33** years of age, ***married*** with **1** dependent children.

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

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

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

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

ORDER

Respondent shall pay reasonable and necessary medical services as itemized in Petitioners Exhibit 5 as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $784.46/week for 18 and 4/7th weeks, commencing March 14, 2018 through July 22nd, 2018, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the sum of $**706.01**/week for a period of **58.05** weeks, because the injuries sustained caused **27%** loss of use of the left leg pursuant to §8(e)12 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. PuBuchon

Signature of Arbitrator **April 13, 2022**

PROCEDURAL HISTORY

This matter proceeded to trial on November 29, 2021, on all disputed issues. The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of his employment; 2) whether the Respondent was given notice of the accident within the time limits stated in the Act; 3) the causal connection between the accident and the Petitioner's left knee condition; 4) payment of medical bills; 5) entitlement to TTD benefits from January 23, 2018, through July 22, 2018; and 6) the nature and extent of the Petitioner's injury.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 32 years old and had been employed by the Respondent as a floor layer. (AX1, T. 14) On December 30, 2017, the Petitioner was starting a job installing commercial carpet at a furniture store in O'Fallon, Illinois, where the job had already begun and was behind schedule. (T. 14-15, 17) He was laying 12-by-50-foot glue-down carpet on a concrete floor and using a "knee kicker" to align the pattern on two pieces of carpet by holding the "knee kicker" over the carpet on his hands and knees and hitting the pad with each knee repetitively. (T. 18-22, 25-26) The Petitioner said that the job he was on before the furniture store job was at Sunnen Station Apartments in Missouri and consisted of laying vinyl plank, which did not entail using a "knee kicker." (T. 23-24) He stated that he wears knee pads, but they don't protect his knees when using the "knee kicker" because the pads slide back on his legs. (T. 28) He said that at the end of the day on December 30, 2017, his knees were sore – like a normal day. (T. 30)

The Petitioner testified that the next day he did not work, his knees were still sore, and his left knee was starting to swell and get stiff. (T. 31) The following day was New Year's Day, and the Petitioner did not work. (T. 32) He said he rested because his left knee was not feeling well

and was swollen, and he put ice on it and took anti-inflammatories. (Id.) On January 2, 2018, he tried to work at Sunnen Station, but his knee got worse, and he went to his primary care provider, Dr. Timothy Beaty, at Clinton County Rural Health. (T. 33) He said he did not report this injury to the Respondent because he did not think it was an accident. (T. 42)

Mark Gau, the Respondent's president, testified that the company's main office is in Earth City, Missouri, and the company had a satellite facility in Belleville, Illinois. (T. 61, 64-65) Mr. Gau testified that according to a labor report, the Petitioner worked at the two job sites from December 4, 2017, through January 23, 2018. (T. 69, RX1) On December 11, 2017, the Petitioner was installing carpet tiles that did not require the use of a "knee kicker." (T. 69-70, RX1) The report reflected that on December 30, 2017, the Petitioner was installing carpet for eight hours. (T. 70, RX1) Mr. Gau also testified that the Respondent informs its employees of its policy that accidents are to be reported that day to the immediate job foreman or supervisor. (T. 75) Mr. Gau said he first became aware that the Petitioner was alleging an injury from December 30, 2017, when he received the Application for Adjustment of Claim on March 13, 2018. (T. 76-77)

On January 2, 2018, the Petitioner saw Dr. Beaty and complained of pain, redness and swelling to his left knee for the past three days without a specific injury. (PX1) A physical examination showed mild tenderness, swelling and erythema to the anterior and lateral left knee over the lower patella and just distal and lateral to the patella. (Id.) The Petitioner had full active range of motion. (Id.) Dr. Beaty diagnosed left knee cellulitis and prescribed Motrin and an antibiotic. (Id.) The Petitioner returned to Dr. Beaty on January 9, 2018, and the redness had resolved, but the Petitioner still had pain and swelling. (Id.) At that time, Dr. Beaty diagnosed left knee pain and referred the Petitioner to orthopedics. (Id.)

On January 15, 2018, the Petitioner saw Dr. Donald Bassman, an orthopedic surgeon at Motion Orthopaedics, and reported that his knee pain began about December 30, 2017. (PX2) He did not complain of lack of range of motion, and there was no catching or locking of the knee. (Id.) Dr. Bassman noted a mild amount of swelling and minimal erythema in the prepatellar bursa area. (Id.) He diagnosed acute and nontraumatic prepatellar bursitis and continued antibiotic treatment. (Id.) The Petitioner testified that neither Dr. Beaty nor Dr. Bassman performed any pulling or twisting on his knee to assess the stability of his knee. (T. 35)

The Petitioner testified that on January 23, 2018, he was working at Sunnen Station when his knee gave out, causing him to fall and experience severe pain. (T. 36) He said he did not slip nor twist his knee prior to it giving out. (T. 38-39) The Petitioner reported this event to the Respondent. (T. 41) He said that from December 30, 2017, to January 23, 2018, his left knee was continuously painful and swollen, but after his knee gave out, his knee became extremely painful and he could barely walk, so he knew at that point there was something seriously wrong. (T. 42)

The Petitioner returned to Dr. Bassman on January 23, 2018, and reported that he was squatting down and rose up, experiencing severe pain, and that it hurt to walk. (PX2) There was no swelling and his knee was not locked, but felt like wanting to give way at times. (Id.) An examination revealed tenderness at the posterolateral joint line, positive McMurray's testing and decreased range of motion. (Id.) There was no instability, malalignment or asymmetry. (Id.) Dr. Bassman diagnosed acute and traumatic left knee pain in the lateral compartment and ordered an MRI. (Id.) The MRI was performed on January 26, 2018, and showed tears of the anterior cruciate ligament (ACL) and of the posterior horn of the medial meniscus, along with joint effusion. (Id.) On January 29, 2018, Dr. Bassman reviewed the MRI and again examined the Petitioner, finding positive Lachman and anterior drawer tests, instability and decreased range of motion. (Id.) He

diagnosed tears of the ACL, medial meniscus and lateral meniscus, characterizing them as acute and traumatic. (Id.) He planned to perform ACL reconstruction and meniscectomies. (Id.)

The Petitioner gave a recorded statement on February 1, 2018, regarding the January 23, 2018, incident. (RX3) He stated that he was walking on asphalt at the Sunnen Station jobsite when his left knee "just snapped." (Id.) He said he did not trip or slip on anything. (Id.) He said he informed his supervisor. (Id.) Regarding his previous injury December 30, 2017, he said he had "a little spout (sic) of bursitis" that went away on its own. (Id.) The rest of the sentence was transcribed as inaudible except for the words: "taking some antibiotics and." (Id.)

A representative of the Respondent prepared a Missouri Department of Labor report of injury on January 30, 2018, saying that the Petitioner suffered a strain/tear in his left knee while walking in a parking lot to a delivery truck at the Sunnen Station job site. (PX4) The report stated: "While walking to the delivery truck he felt a pop in his left knee and lost strength in it." (Id.) On the same day, the Petitioner's supervisor filled out an accident investigation form with a similar description of the incident. (RX5)

At another visit to Dr. Bassman on February 12, 2018, the Petitioner reported that he was in less pain. (PX2) When the Petitioner inquired about whether the injury could have happened from the bursitis, Dr. Bassman responded that he did not think so and that it was more comparable with an injury where the Petitioner squatted down and got up twisted. (Id.) Dr. Bassman still planned to perform surgery. (Id.)

The Petitioner testified that he did not like the responses he was getting from Dr. Bassman, so he sought a second opinion from Dr. Didi Omiyi, an orthopedic surgeon at Bonutti Clinic, whom the Petitioner saw on March 6, 2018. (T. 40, PX3) At that time, the Petitioner described the January 23, 2018, incident as his knee giving out on him as he walked on ice. (Id.) He reported

starting to have pain on January 1, 2018. (Id.) An examination revealed full flexion and decreased extension, moderate effusion, mild medial and lateral joint tenderness and positive drawer and Lachman tests but no abnormal laxity or discomfort with varus or valgus stress. (Id.) Dr. Omiyi read the MRI as showing the ACL tear to be chronic. (Id.) His impressions were left knee ACL and medial and lateral meniscal tears and a sprain at the head of the left lateral gastroc. (Id.) He recommended surgery. (Id.)

On March 14, 2018, Dr. Omiyi performed arthroscopic ACL reconstruction with allograft, debridement chondroplasty and a partial lateral meniscectomy. (Id.) He ordered the Petitioner off work until June 14, 2018, pending treatment and recovery. (Id.) The Petitioner underwent physical therapy at Apex Physical Therapy from March 16, 2018, through September 12, 2018, for a total of 12 visits. (PX4) At follow-up appointments with Dr. Omiyi, the Petitioner experienced improvement in his pain, stability and range of motion. (PX3) Off-work orders were continued, and he was allowed to return to work with restrictions on August 17, 2018. (Id.) He was released to full duty on February 8, 2019. (Id.) At that time, he was reporting 95 percent improvement since the surgery but was experiencing pain with kneeling without a knee pad and popping and locking with pain. (Id.) On March 22, 2019, Dr. Omiyi found the Petitioner to be at maximum medical improvement and released him. (Id.)

On June 3, 2019, a records review was performed by Dr. Timothy Farley, an orthopedic surgeon at Motion Orthopaedics. (RX6, Deposition Exhibit 2) He wrote that the mechanism of injury that leads to an ACL tear generally includes a dramatic landing twisting force and/or collision-type event. (Id.) He said that the Petitioner's descriptions of the events in December 2017 and January 2018 were not consistent with the development of a ligament tear in the knee. (Id.)

Dr. Farley testified consistently with his report at a deposition on May 19, 2020. (PX6) He said he believed it was very unlikely that using a carpet stretcher would have caused the Petitioner to sustain a traumatic ACL or meniscus injury. (Id.) He said such an injury would be obvious to an orthopedic surgeon or other physician because swelling would encompass the entirety of the knee. (Id.) Dr. Farley said the injury also would be obvious to a patient, who would generally hear a loud pop and have massive swelling in the knee over the next 24 hours. (Id.) He said that within a couple of weeks of an ACL tear, there would still be swelling within the knee itself, and with symptomatic meniscus tears, common findings would be catching and locking. (Id.) He noted that it appeared that the swelling the Petitioner had was prepatellar in the nature of bursitis rather than full knee swelling that would be present with an ACL tear. (Id.)

On cross-examination, Dr. Farley agreed that his opinion was that the second incident also would not typically be the type of event that would produce an ACL tear. (Id.) In his review of the MRI, he said he did not see signs of chronicity of the ACL tear, postulating that the injury occurred a few weeks, if not a few days before the study. (Id.) He said that he had tried using a carpet stretcher in the past and acknowledged that it entailed pushing hard. (Id.)

Dr. Omiyi testified consistently with his reports at a deposition on August 20, 2020. (PX6) He explained that in assessing the Petitioner's ACL tear as chronic on February 22, 2018, he would typically mean that he did not see evidence of bone bruising to show the injury happened immediately at that point in time. (Id.) He said that during surgery, he found that the ACL was completely torn, there was chondromalacia under the patella and there was a tear in the lateral meniscus but no tears of the medial meniscus. (Id.) He said the ACL stump was present, which meant that the injury was more recent rather than chronic, with chronic being more than a six-month period. (Id.)

When given the details of the Petitioner's description of the December 30, 2017, incident, details of the examinations and treatment the Petitioner underwent before seeing Dr. Omiyi, and the Petitioner's description of the January 23, 2018, incident, Dr. Omiyi testified that it was possible for the Petitioner to sustain an injury to his knee by using the "knee kicker" on a repeated basis because of the blunt force to the patellofemoral compartment. (Id.) He said that although it would not be the most common mechanism of injury for an ACL injury, the activity – depending on the technique or twisting force – possibly could cause damage to the ACL. (Id.) Based on the entire history, Dr. Omiyi opined that it was reasonable to expect that some sort of injury or damage resulted from use of the "knee kicker" on December 30, 2017, and that the Petitioner's knee giving out on January 23, 2018, could be a continuum of the previous injury. (Id.)

The Respondent testified that he still works as a floor layer but for a different company. (T. 11, 59) He said his knee isn't 100 percent, but it feels better than it was. (T. 45) He said he tries to not use the "knee kicker" at work, but he can do all of his work activities. (Id.) He said he does experience pain with certain activities. (T. 46)

CONCLUSIONS OF LAW

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

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

In order to obtain compensation under the Act, a claimant bears the burden of proving by a preponderance of the evidence two elements: (1) that the injury occurred in the course of the

claimant's employment and (2) that the injury arose out of the claimant's employment. *McAllister v. Ill. Workers' Comp. Com'n, 2020 IL 12484, ¶ 32.*

The phrase "in the course of employment" refers to the time, place and circumstances of the injury. *Id. at ¶34.* A compensable injury occurs in the course of employment when it is sustained while a clamant is at work or while he or she performs reasonable activities in conjunction with his or her employment. *Id.*

The Petitioner alleges that the origin of his injury was in his use of the "knee kicker" on December 30, 2017. But he did not report an injury until January 23, 2018. It is not surprising that the Petitioner did not identify the use of the "knee kicker" as a work accident per se. He classified his symptoms on December 30, 2017, as being like a normal day. But with a few days of rest, the pain and swelling did not go away. When the knee gave out on January 23, 2018, he knew something was wrong and connected that event to a work injury.

Part of the confusion regarding exactly when this injury took place is the result of the treatment he received from Drs. Beaty and Bassman, which the Arbitrator characterizes as cursory. In looking at the records, it is apparent that they did no testing for ACL or meniscus tears, and the Petitioner's testimony confirmed that. They chalked up the Petitioner's symptoms to bursitis and/or cellulitis. Again, it was no surprise that the Petitioner parroted these diagnoses when he made his statement to the Respondent's insurer regarding his condition.

Dr. Omiyi believed the injury occurred as a result of using the "knee kicker," and the incident in which the Petitioner's knee gave way was a continuation of that injury. Dr. Farley did not believe the injury happened in either event. However, he acknowledged that using a "knee kicker" would entail a lot of pushing.

The "arising out of" component is primarily concerned with causal connection. *McAllister at ¶ 36*. To satisfy this requirement, it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *Id.* The three categories of risk are: (1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics. *Id. at ¶38.*

A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing: (1) acts he or she was instructed to perform by the employer; (2) acts that he or she had a common-law or statutory duty to perform; or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties. *Id. at ¶46.* Use of the "knee kicker" was an act the Petitioner was reasonably expected to perform.

Next is the requirement that the risk created a causal connection between the employment and the accidental injuries. The circumstantial evidence showed that the Petitioner apparently had no serious knee problems before the accident. He appeared to be accustomed to his knees being sore after a day of using the "knee kicker." But after December 30, 2017, the pain did not resolve, and the swelling got worse. Aside from the Petitioner's knee giving out on January 23, 2018 – which both doctors agreed would not have caused an ACL tear – there was no evidence of an intervening incident that would have caused the injury.

In forming his opinions, Dr. Farley relied on the amount of swelling in the Petitioner's knee that would result from an ACL tear, saying that if the Petitioner had torn his ACL on December, 30, 2017, the swelling would have been greater and encompassed the whole knee. However, Dr. Farley never saw the swelling first-hand. He postulated that Drs. Beaty and Bassman would have recognized the signs of a torn ACL when they examined him before January 23, 2018. But that is

speculation and conjecture, especially in light of it not appearing that the doctors did very thorough examinations before January 23, 2018. Also, the Arbitrator notes that at the visit to Dr. Bassman on January 23, 2018 – when there should have been evidence of the ACL tear that was seen on the MRI three days later – there was no swelling in the knee "at that point."

As noted above, Dr. Farley did not examine the Petitioner nor interview him to get details not apparent in the written records. As a treating physician, Dr. Omiyi had the opportunity to become familiar with the Petitioner's condition and the circumstances as to how it came about. He opined that the Petitioner did tear his ACL and meniscus by using the "knee kicker" on December 30, 2017, and that the incident on January 23, 2018, where his knee gave way was a continuation of that injury, which was a logical conclusion. For all the reasons stated above, the Arbitrator gives greater weight to Dr. Omiyi's opinions and very little, if any, weight to Dr. Farley's opinions.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that his injuries had their origin in a risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury.

When a claimant is injured due to an employment-related risk, it is unnecessary to perform a neutral-risk analysis to determine whether the claimant was exposed to a risk of injury to a greater degree than the general public. *Steak 'n Shake v. Ill. Workers' Comp. Comm'n, 216 IL App 3d 150500WC at ¶38.* Because the Arbitrator finds that an employment risk was present, no further analysis is necessary.

Thus, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that the Petitioner's injuries occurred in the course of and arose out of her employment.

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

Section 6(c) of the Act provides "Notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident". The statute further provides that "No defect or inaccuracy of such notice shall be a bar to the maintenance or 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" Finally, section 6(c) provides that the report may be given orally or in writing.

As stated above, it was reasonable that the Petitioner did not believe a work accident occurred on December 30, 2017. The Petitioner did not provide notice of that specific injury to the employer until the Application for adjustment of Claim was received by the Respondent on March 13, 2018. He did inform his supervisor of an injury when his knee gave out January 23, 2018, at the Sunnen Station project and reported that as an accident. In addition, on February 1, 2018, the Petitioner provided a statement to the Respondent's insurance adjuster that he was treated for bursitis for his left knee one month before and provided the identity of his treating physician to the adjustor. As late as February 12, 2018, the Petitioner was under the impression that his condition resulted from the January 23, 2018, incident because he specifically asked Dr. Bassman whether his injury was related to his prior condition – which had only been identified to him as bursitis at the time – and Dr. Bassman replied that it was more comparable with the January 23, 2018, incident. Apparently, the Petitioner did not make the connection between the first incident and his condition until after that. Furthermore, there was no evidence of undue prejudice to the Respondent.

Therefore, the Arbitrator finds that the Petitioner gave timely notice to the Respondent as required by section 6(c) of the Act.

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

This issued is addressed above in the analysis of whether the Petitioner's injuries arose out of and in the course of his employment, and the findings above are incorporated herein.

Therefore, the Arbitrator finds that the Petitioner's current condition is causally related to the work accident.

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

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).*

Based on the findings above, the medical services as listed in Petitioner's Exhibit 5 are found to be reasonable and necessary. Therefore, the Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 5 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 (L): What temporary benefits are in dispute? (TTD)

The parties dispute temporary total disability benefits from January 23, 2018, through July 22, 2018. An employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

The ability to do light or restricted work does not preclude a finding of temporary total disability. *Id.* at 121.

There were no off-work orders produced from Dr. Bassman. Dr. Omiyi ordered the Petitioner off work from March 14, 2018, through August 17, 2018. Because the Petitioner is only seeking TTD until July 22, 2018, the Arbitrator assumes that the Petitioner went back to work at that time. Therefore, the Petitioner is entitled to temporary total disability benefits pursuant to Section 8(b) of the Act for 18 and 4/7 weeks from March 14, 2018, through August 17, 2018.

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 still works as a flooring installer with the same physical demands as before the injury. Therefore, the Arbitrator places significant weight on this factor.

(iii) **Age.** The Petitioner was 32 years old at the time of the injury. He has many work years left during which time he will need to deal with the residual effects of the injury. The Arbitrator places significant weight on this factor.

(iv) **Earning Capacity.** There was no evidence of limitation of the Petitioner's earning capacity. Therefore, the Arbitrator places no weight on this factor.

(v) **Disability.** The Petitioner appears to have made a full recovery, although he testified that he still experiences some pain. The Arbitrator puts some weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 27 percent of the Petitioner's left leg.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC014416
Case Name	Kerri Dethrow v. State of Illinois - Chester Mental Health Center
Consolidated Cases	19WC014417; 19WC014418; 19WC031750;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0401
Number of Pages of Decision	10
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Aaron Wright

DATE FILED: 10/14/2022

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KERRI DETHROW,
Petitioner,

vs. NO: 19 WC 14416

STATE OF ILLINOIS/ CHESTER MENTAL HEALTH,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, and permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 21, 2022 is hereby affirmed and adopted.

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

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

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.

October 14, 2022
o: 10/06/22
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC014416
Case Name	DETHROW, KERRI v. STATE/CHESTER MENTAL HEALTH
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Aaron Wright

DATE FILED: 3/21/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 15, 2022 0.82%

/s/William Gallagher, Arbitrator
Signature

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

March 21, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Madison)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Kerri Dethrow
Employee/Petitioner

v.

State/Chester Mental Health
Employer/Respondent

Case # 19 WC 14416

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, Herrin Docket, on February 24, 2022. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On November 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 not causally related to the accident.

In the year preceding the injury, Petitioner earned $44,135.71; the average weekly wage was $848.76.

On the date of accident, Petitioner was 36 years of age, single with 1 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $0.00. The parties stipulated TTD benefits were paid in full.

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

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, related to the accident of November 13, 2016, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Based upon the Arbitrator's Conclusions of Law attached hereto, no permanent partial disability benefits are awarded.

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

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

William R. Gallagher

MARCH 21, 2022

William R. Gallagher, Arbitrator
ICArbDec p. 2

Findings of Fact

Petitioner filed four Applications for Adjustment of Claim which alleged she sustained accidental injuries arising out of and in the course of her employment by Respondent. In case 19 WC 14416, the Application alleged that on November 13, 2016, Petitioner was "Assaulted by Combative Patient" and sustained an injury to her "Neck/Head/Back/Body as a Whole." In case 19 WC 14417, the Application alleged that on January 29, 2019, Petitioner was "Assaulted by Combative Patient" and sustained an injury to her "Neck/Head/Body as a Whole." In case 19 WC 14418, the Application alleged that on February 24, 2019, Petitioner was "Restraining a Combative Patient" and sustained an injury to her "Neck/Head/Right Shoulder/Body as a Whole." In case 19 WC 31750, the Application alleged that on August 7, 2019, Petitioner was "Assaulted by a Combative Patient" and sustained an injury to her "Neck, Right Shoulder/Body as a Whole" (Arbitrator's Exhibit 2).

In all four cases, Petitioner and Respondent stipulated Petitioner sustained work-related injuries and temporary total disability benefits had been paid in full. Petitioner sought an award of payment of outstanding medical bills and permanent partial disability. Respondent disputed liability on the basis of causal relationship (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a security therapy aide. Petitioner's job duties required her to have daily contact with mental health patients.

On November 13, 2016, Petitioner was punched in the head by a patient. Petitioner was initially seen by a physician at the facility and it was determined Petitioner had not sustained a concussion. The following day, November 14, 2016, Petitioner sought treatment from Dr. Elvira Salarda, her family physician. At that time, Petitioner complained of neck pain and a headache. Petitioner was diagnosed as having sustained a contusion to the left orbit. She was directed to take over-the-counter medication and apply ice to the affected area (Petitioner's Exhibit 3).

Petitioner subsequently underwent MRI scans on November 25, 2016, of the brain and cervical spine. According to the radiologist, the MRI of the brain was normal. According to the radiologist, the MRI of the cervical spine revealed spur formation and foraminal stenosis at C3-C4 and C4-C5; spur formation and stenosis at C5-C6; and an annular tear and tiny central disc extrusion at C6-C7 (Petitioner's Exhibit 4).

From December, 2016, through January, 2018, Petitioner sought chiropractic treatment from Dr. Ryan Reiss and Dr. Chris Murry. Most of the treatment Petitioner received through this time consisted of various chiropractic modalities and physical therapy (Petitioner's Exhibits 5 and 6).

On January 3, 2019, Petitioner was again seen in Dr. Salarda's office because of her neck pain/stiffness. Petitioner was prescribed medication and directed to follow up as needed (Petitioner's Exhibit 3). No medical provider opined Petitioner was at MMI following the accident of November 13, 2016.

On January 29, 2019, Petitioner was again assaulted by a patient who punched her multiple times in the head. Petitioner sustained multiple bruises/contusions to her head and also experienced neck and back pain/stiffness.

Petitioner was seen by Dr. Salarda the following day, January 30, 2019. At that time, she complained primarily of neck pain and headaches. Dr. Salarda diagnosed Petitioner with a head injury, contusion of the right ear and cervical muscular spasm. She directed Petitioner to continue to take medication and perform back/shoulder exercises (Petitioner's Exhibit 3).

Petitioner was also seen by Dr. Reiss on January 30, 2019. He administered chiropractic care to Petitioner's cervical and thoracic spine. She continued to treat with Dr. Reiss through February 21, 2019. Petitioner was also seen by Dr. Murry on February 16, 2019, and received chiropractic care (Petitioner's Exhibits 4 and 5).

Petitioner was again seen by Dr. Salarda on February 7, 2019. At that time, Petitioner complained of chronic headaches and neck pain. On examination, it was noted Petitioner had bilateral trapezius and cervical muscular spasm as well as cervical spine tenderness (Petitioner's Exhibit 3).

On February 24, 2019, Petitioner attempted to break up a fight between two patients. She had one of the patients restrained, but he was able to remove his arm from the physical hold which caused Petitioner to sustain an injury to her neck and right shoulder.

Following the accident of February 24, 2019, Petitioner was again treated by Dr. Reiss, Dr. Murry and Dr. Salarda. Petitioner's primary complaints were neck and right shoulder pain as well as headaches. Dr. Salarda noted Petitioner had neck pain with radiculopathy and ordered right shoulder x-rays and an MRI of Petitioner's cervical spine (Petitioner's Exhibit 3).

The right shoulder x-rays and cervical MRI scan were performed on March 8, 2019. According to the radiologist, the x-ray of Petitioner's right shoulder was negative for fractures/dislocations. According to the radiologist, the MRI of Petitioner's cervical spine revealed cervical mild spondylosis and a tiny central disc protrusion at C6-C7 which was slightly increased from the prior exam (Petitioner's Exhibit 4).

On April 29, 2019, Petitioner was evaluated by Dr. Matthew Gornet, an orthopedic surgeon. At that time, Petitioner complained of neck and bilateral trapezius pain, primarily on the right, as well as frequent headaches. Petitioner informed Dr. Gornet her current problem, at least in regard to its severity, began at the time she sustained the accident on January 29, 2019. Dr. Gornet reviewed the MRI scans of November 25, 2016, and March 8, 2019, of Petitioner's cervical spine. He opined the MRI of March 8, 2019, revealed herniations at C3-C4, C4-C5, C5-C6 and C6-C7. When compared to the MRI of November 25, 2016, he opined the herniations at C3-C4 and C4-C5 had increased and the prior MRI showed a mild disc protrusion at C6-C7. He recommended Petitioner receive additional conservative treatment including a steroid injection at C6-C7, but if Petitioner's condition did not improve, a high resolution MRI scan of Petitioner's cervical spine should be obtained as well as an MRI arthrogram of Petitioner's right shoulder. Dr. Gornet opined the accident of January 29, 2019, was, at a minimum, an aggravation, but also a new injury (Petitioner's Exhibit 7).

Dr. Gornet saw Petitioner on June 24, 2019. At that time, he noted Petitioner had received an epidural injection at C6-C7 and had been evaluated by Dr. Paletta for her right shoulder condition. He ordered the high resolution MRI scan of Petitioner's cervical spine (Petitioner's Exhibit 7).

The MRI scan of Petitioner's cervical spine was performed on July 18, 2019. According to the radiologist, the MRI revealed foraminal protrusions at C3-C4 and C4-C5 as well as an annular tear/protrusion at C6-C7. A CT scan of Petitioner's cervical spine was also performed on July 18, 2019. According to the radiologist, it revealed spurs at C3-C4 and C4-C5 as well as a central protrusion at C6-C7 (Petitioner's Exhibits 10 and 11).

When Dr. Gornet saw Petitioner on July 18, 2019, he reviewed the MRI and CT scans which were performed that same day. His interpretation of the diagnostic studies was consistent with those of the radiologist. He opined Petitioner had axial neck pain and recommended surgical treatment at C3-C4, C4-C5 and C6-C7 (Petitioner's Exhibit 7).

On August 7, 2019, Petitioner was again assaulted by a patient and sustained an injury to her neck and right shoulder. Petitioner was seen by Dr. Salarda that same day and was diagnosed with a neck and right shoulder injury. Dr. Salarda noted Petitioner was scheduled for neck surgery on September 22, 2019. She prescribed medication and authorized Petitioner to remain off work (Petitioner's Exhibit 3).

Petitioner was seen by Dr. Gornet on November 11, 2019. At that time, Petitioner was working full duty and trying to tolerate her neck and right shoulder symptoms. Dr. Gornet noted he would follow up with her in three months time to determine if Petitioner could continue to tolerate her symptoms (Petitioner's Exhibit 7).

Dr. Gornet did not see Petitioner again until July 11, 2020. At that time, Petitioner advised she continued to have neck and bilateral shoulder/trapezius pain as well as headaches. Dr. Gornet again opined Petitioner had cervical disc herniations at three levels, but an up-to-date MRI was indicated (Petitioner's Exhibit 7).

The MRI was performed on September 21, 2020. According to the radiologist, the MRI revealed bilateral foraminal protrusions at C3-C4, C4-C5 and C5-C6 as well as an annular tear/protrusion at C6-C7. A CT scan of Petitioner's cervical spine was performed that same day. According to the radiologist, the CT scan revealed a central protrusion at C6-C7 (Petitioner's Exhibits 10 and 11).

Dr. Gornet saw Petitioner on September 21, 2020, and reviewed the diagnostic studies that were performed that same day. Dr. Gornet's interpretation of the diagnostic studies was consistent with that of the radiologist. He recommended Petitioner proceed with disc replacement surgery at C4-C5, C5-C6 and C6-C7. At that time, Petitioner advised she wanted to proceed with the surgery given her ongoing symptoms (Petitioner's Exhibit 7).

Dr. Gornet performed surgery on Petitioner's cervical spine on October 7, 2020. The procedure consisted of disc replacements at C4-C5, C5-C6 and C6-C7 (Petitioner's Exhibit 12).

Dr. Gornet continued to treat Petitioner following surgery. When he saw her on January 25, 2021, he authorized Petitioner to return to work without restrictions effective March 8, 2021. Dr. Gornet last saw Petitioner on October 21, 2021, and noted she was working full duty, but still had some mild symptoms in her neck and right shoulder. Dr. Gornet opined Petitioner was at MMI (Petitioner's Exhibit 7).

At the direction of Respondent, Petitioner was examined by Dr. Michael Chabot, an orthopedic surgeon, on January 11, 2021. In connection with his examination of Petitioner, Dr. Chabot reviewed reports regarding Petitioner's accidents, medical records and diagnostic studies provided to him by Respondent. Dr. Chabot initially noted the medical records provided to him were incomplete and lacked records which predated the accident of January 29, 2019, and the only MRI study he had for review was the one performed on March 8, 2019. However, in Dr. Chabot's review of the MRI of March 8, 2019, he opined it did not clearly defined acute changes which could be attributed to the accident of January 29, 2019 (Respondent's Exhibit 2).

Respondent provided additional medical records and diagnostic studies to Dr. Chabot. He reviewed same and prepared a supplemental report dated March 19, 2021. He opined the MRI of July 18, 2019, revealed foraminal narrowing but no disc herniations at C4-C5 and C5-C6. He also opined it revealed a shallow disc bulge at C6-C7 but no neural compression. Dr. Chabot opined the MRI of September 21, 2020, was "essentially unchanged" when compared to the MRI of July 18, 2019. Based upon his review of those two MRIs, he opined the MRI report of March 8, 2019, was "grossly overstated." Dr. Chabot disagreed with Dr. Gornet's opinion Petitioner had multiple disc injuries as a result of the accident of January 29, 2019, and the disc replacement surgery performed by Dr. Gornet was questionable (Respondent's Exhibit 3).

Dr. Chabot was deposed on April 16, 2021, 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. Specifically, Dr. Chabot testified he reviewed the MRI scans of March 8, 2019, and July 18, 2019, and disagreed with the opinion of the radiologist that they revealed multiple disc protrusions in the cervical spine. He testified the MRI scans did not reveal any evidence of acute trauma and there was no medical basis for Petitioner undergoing disc replacement surgery (Respondent's Exhibit 4; pp 20-22).

On cross-examination, Dr. Chabot agreed that Petitioner being assaulted and punched in the face could aggravate or cause a cervical spine injury. He also conceded Petitioner continued to be symptomatic until the surgery of October 7, 2020, but she had improved afterward (Respondent's Exhibit 4; pp 26-30).

Dr. Gornet was deposed on May 6, 2021, 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 he diagnosed disc pathology at C4-C5, C5-C6 and C6-C7, which correlated with the MRI findings. He testified the condition he diagnosed and treated was related to the accident of January 29, 2019, and noted Petitioner's complaints were much more severe after that accident than they had been previously (Petitioner's Exhibit 13; pp 8-12, 18).

On cross-examination, Dr. Gornet agreed Petitioner had neck complaints dating back to the accident of November, 2016. However, he reaffirmed his opinion as to causality on the basis that Petitioner's complaints following the accident of January 29, 2019, were much more severe than what they were prior and his observation of the objective findings he noted in his review of the MRI scans (Petitioner's Exhibit 13; pp 20-21).

Petitioner testified that prior to her sustaining the initial accident at work, she had not sustained any type of injury to either her neck or right shoulder. Prior to the disc replacement surgery, Petitioner testified she had constant headaches and neck pain. Petitioner said she was able to return to work following surgery and her condition was significantly improved. However, Petitioner testified she still continues to have symptoms in her neck and right shoulder especially when she has to handle aggressive patients or engage in any heavy lifting. Petitioner's activities outside of work have also been adversely affected, including playing golf and engaging with various activities with her child.

Conclusions of Law

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

The Arbitrator concludes Petitioner's current condition of ill-being is not causally related to the accident of November 13, 2016.

In support of this conclusion the Arbitrator notes following:

Petitioner sustained a work-related accident on November 13, 2016, and received conservative medical/chiropractic treatment thereafter, through January 3, 2019.

Petitioner subsequently sustained another work-related accident on January 29, 2019. Petitioner's primary treating physician, Dr. Gornet opined Petitioner's neck condition which required disc replacement surgery was related to the accident of January 29, 2019.

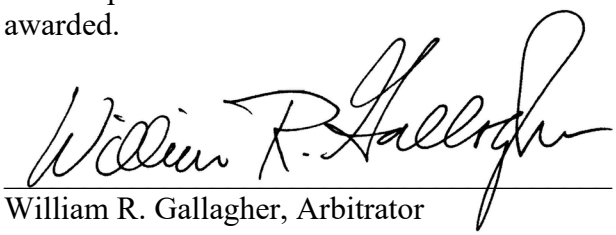
In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner related to the accident of November 13, 2016, was reasonable and necessary and Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services related to the accident of November 13, 2016, as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

Based upon the Arbitrator's conclusion of law in disputed issue (F), no permanent partial disability benefits are awarded.



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC014417
Case Name	Kerri Dethrow v. State of Illinois - Chester Mental Health Center
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Decision Type	Commission Decision
Commission Decision Number	22IWCC0402
Number of Pages of Decision	11
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Aaron Wright

DATE FILED: 10/14/2022

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KERRI DETHROW,
Petitioner,

vs. NO: 19 WC 14417

STATE OF ILLINOIS/ CHESTER MENTAL HEALTH,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, and permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 21, 2022 is hereby affirmed and adopted.

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

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

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.

October 14, 2022
o: 10/06/22
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC014417
Case Name	DETHROW, KERRI v. STATE/CHESTER MENTAL HEALTH
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Aaron Wright

DATE FILED: 3/21/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 15, 2022 0.82%

/s/William Gallagher, Arbitrator
Signature

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

March 21, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Madison)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Kerri Dethrow
Employee/Petitioner

v.

State/Chester Mental Health
Employer/Respondent

Case # 19 WC 14417

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, Herrin Docket, on February 24, 2022. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On January 29, 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 $44,135.71; the average weekly wage was $848.76.

On the date of accident, Petitioner was 38 years of age, single with 1 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $0.00. The parties stipulated TTD benefits were paid in full.

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

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, related to the accident of January 29, 2019, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $509.26 per week for 100 weeks because the injury sustained caused the 20% loss of use of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

William R. Gallagher

MARCH 21, 2022

William R. Gallagher, Arbitrator
ICArbDec p. 2

Findings of Fact

Petitioner filed four Applications for Adjustment of Claim which alleged she sustained accidental injuries arising out of and in the course of her employment by Respondent. In case 19 WC 14416, the Application alleged that on November 13, 2016, Petitioner was "Assaulted by Combative Patient" and sustained an injury to her "Neck/Head/Back/Body as a Whole." In case 19 WC 14417, the Application alleged that on January 29, 2019, Petitioner was "Assaulted by Combative Patient" and sustained an injury to her "Neck/Head/Body as a Whole." In case 19 WC 14418, the Application alleged that on February 24, 2019, Petitioner was "Restraining a Combative Patient" and sustained an injury to her "Neck/Head/Right Shoulder/Body as a Whole." In case 19 WC 31750, the Application alleged that on August 7, 2019, Petitioner was "Assaulted by a Combative Patient" and sustained an injury to her "Neck, Right Shoulder/Body as a Whole" (Arbitrator's Exhibit 2).

In all four cases, Petitioner and Respondent stipulated Petitioner sustained work-related injuries and temporary total disability benefits had been paid in full. Petitioner sought an award of payment of outstanding medical bills and permanent partial disability. Respondent disputed liability on the basis of causal relationship (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a security therapy aide. Petitioner's job duties required her to have daily contact with mental health patients.

On November 13, 2016, Petitioner was punched in the head by a patient. Petitioner was initially seen by a physician at the facility and it was determined Petitioner had not sustained a concussion. The following day, November 14, 2016, Petitioner sought treatment from Dr. Elvira Salarda, her family physician. At that time, Petitioner complained of neck pain and a headache. Petitioner was diagnosed as having sustained a contusion to the left orbit. She was directed to take over-the-counter medication and apply ice to the affected area (Petitioner's Exhibit 3).

Petitioner subsequently underwent MRI scans on November 25, 2016, of the brain and cervical spine. According to the radiologist, the MRI of the brain was normal. According to the radiologist, the MRI of the cervical spine revealed spur formation and foraminal stenosis at C3-C4 and C4-C5; spur formation and stenosis at C5-C6; and an annular tear and tiny central disc extrusion at C6-C7 (Petitioner's Exhibit 4).

From December, 2016, through January, 2018, Petitioner sought chiropractic treatment from Dr. Ryan Reiss and Dr. Chris Murry. Most of the treatment Petitioner received through this time consisted of various chiropractic modalities and physical therapy (Petitioner's Exhibits 5 and 6).

On January 3, 2019, Petitioner was again seen in Dr. Salarda's office because of her neck pain/stiffness. Petitioner was prescribed medication and directed to follow up as needed (Petitioner's Exhibit 3). No medical provider opined Petitioner was at MMI following the accident of November 13, 2016.

On January 29, 2019, Petitioner was again assaulted by a patient who punched her multiple times in the head. Petitioner sustained multiple bruises/contusions to her head and also experienced neck and back pain/stiffness.

Petitioner was seen by Dr. Salarda the following day, January 30, 2019. At that time, she complained primarily of neck pain and headaches. Dr. Salarda diagnosed Petitioner with a head injury, contusion of the right ear and cervical muscular spasm. She directed Petitioner to continue to take medication and perform back/shoulder exercises (Petitioner's Exhibit 3).

Petitioner was also seen by Dr. Reiss on January 30, 2019. He administered chiropractic care to Petitioner's cervical and thoracic spine. She continued to treat with Dr. Reiss through February 21, 2019. Petitioner was also seen by Dr. Murry on February 16, 2019, and received chiropractic care (Petitioner's Exhibits 4 and 5).

Petitioner was again seen by Dr. Salarda on February 7, 2019. At that time, Petitioner complained of chronic headaches and neck pain. On examination, it was noted Petitioner had bilateral trapezius and cervical muscular spasm as well as cervical spine tenderness (Petitioner's Exhibit 3).

On February 24, 2019, Petitioner attempted to break up a fight between two patients. She had one of the patients restrained, but he was able to remove his arm from the physical hold which caused Petitioner to sustain an injury to her neck and right shoulder.

Following the accident of February 24, 2019, Petitioner was again treated by Dr. Reiss, Dr. Murry and Dr. Salarda. Petitioner's primary complaints were neck and right shoulder pain as well as headaches. Dr. Salarda noted Petitioner had neck pain with radiculopathy and ordered right shoulder x-rays and an MRI of Petitioner's cervical spine (Petitioner's Exhibit 3).

The right shoulder x-rays and cervical MRI scan were performed on March 8, 2019. According to the radiologist, the x-ray of Petitioner's right shoulder was negative for fractures/dislocations. According to the radiologist, the MRI of Petitioner's cervical spine revealed cervical mild spondylosis and a tiny central disc protrusion at C6-C7 which was slightly increased from the prior exam (Petitioner's Exhibit 4).

On April 29, 2019, Petitioner was evaluated by Dr. Matthew Gornet, an orthopedic surgeon. At that time, Petitioner complained of neck and bilateral trapezius pain, primarily on the right, as well as frequent headaches. Petitioner informed Dr. Gornet her current problem, at least in regard to its severity, began at the time she sustained the accident on January 29, 2019. Dr. Gornet reviewed the MRI scans of November 25, 2016, and March 8, 2019, of Petitioner's cervical spine. He opined the MRI of March 8, 2019, revealed herniations at C3-C4, C4-C5, C5-C6 and C6-C7. When compared to the MRI of November 25, 2016, he opined the herniations at C3-C4 and C4-C5 had increased and the prior MRI showed a mild disc protrusion at C6-C7. He recommended Petitioner receive additional conservative treatment including a steroid injection at C6-C7, but if Petitioner's condition did not improve, a high resolution MRI scan of Petitioner's cervical spine should be obtained as well as an MRI arthrogram of Petitioner's right shoulder. Dr. Gornet opined the accident of January 29, 2019, was, at a minimum, an aggravation, but also a new injury (Petitioner's Exhibit 7).

Dr. Gornet saw Petitioner on June 24, 2019. At that time, he noted Petitioner had received an epidural injection at C6-C7 and had been evaluated by Dr. Paletta for her right shoulder condition. He ordered the high resolution MRI scan of Petitioner's cervical spine (Petitioner's Exhibit 7).

The MRI scan of Petitioner's cervical spine was performed on July 18, 2019. According to the radiologist, the MRI revealed foraminal protrusions at C3-C4 and C4-C5 as well as an annular tear/protrusion at C6-C7. A CT scan of Petitioner's cervical spine was also performed on July 18, 2019. According to the radiologist, it revealed spurs at C3-C4 and C4-C5 as well as a central protrusion at C6-C7 (Petitioner's Exhibits 10 and 11).

When Dr. Gornet saw Petitioner on July 18, 2019, he reviewed the MRI and CT scans which were performed that same day. His interpretation of the diagnostic studies was consistent with those of the radiologist. He opined Petitioner had axial neck pain and recommended surgical treatment at C3-C4, C4-C5 and C6-C7 (Petitioner's Exhibit 7).

On August 7, 2019, Petitioner was again assaulted by a patient and sustained an injury to her neck and right shoulder. Petitioner was seen by Dr. Salarda that same day and was diagnosed with a neck and right shoulder injury. Dr. Salarda noted Petitioner was scheduled for neck surgery on September 22, 2019. She prescribed medication and authorized Petitioner to remain off work (Petitioner's Exhibit 3).

Petitioner was seen by Dr. Gornet on November 11, 2019. At that time, Petitioner was working full duty and trying to tolerate her neck and right shoulder symptoms. Dr. Gornet noted he would follow up with her in three months time to determine if Petitioner could continue to tolerate her symptoms (Petitioner's Exhibit 7).

Dr. Gornet did not see Petitioner again until July 11, 2020. At that time, Petitioner advised she continued to have neck and bilateral shoulder/trapezius pain as well as headaches. Dr. Gornet again opined Petitioner had cervical disc herniations at three levels, but an up-to-date MRI was indicated (Petitioner's Exhibit 7).

The MRI was performed on September 21, 2020. According to the radiologist, the MRI revealed bilateral foraminal protrusions at C3-C4, C4-C5 and C5-C6 as well as an annular tear/protrusion at C6-C7. A CT scan of Petitioner's cervical spine was performed that same day. According to the radiologist, the CT scan revealed a central protrusion at C6-C7 (Petitioner's Exhibits 10 and 11).

Dr. Gornet saw Petitioner on September 21, 2020, and reviewed the diagnostic studies that were performed that same day. Dr. Gornet's interpretation of the diagnostic studies was consistent with that of the radiologist. He recommended Petitioner proceed with disc replacement surgery at C4-C5, C5-C6 and C6-C7. At that time, Petitioner advised she wanted to proceed with the surgery given her ongoing symptoms (Petitioner's Exhibit 7).

Dr. Gornet performed surgery on Petitioner's cervical spine on October 7, 2020. The procedure consisted of disc replacements at C4-C5, C5-C6 and C6-C7 (Petitioner's Exhibit 12).

Dr. Gornet continued to treat Petitioner following surgery. When he saw her on January 25, 2021, he authorized Petitioner to return to work without restrictions effective March 8, 2021. Dr. Gornet last saw Petitioner on October 21, 2021, and noted she was working full duty, but still had some mild symptoms in her neck and right shoulder. Dr. Gornet opined Petitioner was at MMI (Petitioner's Exhibit 7).

At the direction of Respondent, Petitioner was examined by Dr. Michael Chabot, an orthopedic surgeon, on January 11, 2021. In connection with his examination of Petitioner, Dr. Chabot reviewed reports regarding Petitioner's accidents, medical records and diagnostic studies provided to him by Respondent. Dr. Chabot initially noted the medical records provided to him were incomplete and lacked records which predated the accident of January 29, 2019, and the only MRI study he had for review was the one performed on March 8, 2019. However, in Dr. Chabot's review of the MRI of March 8, 2019, he opined it did not clearly defined acute changes which could be attributed to the accident of January 29, 2019 (Respondent's Exhibit 2).

Respondent provided additional medical records and diagnostic studies to Dr. Chabot. He reviewed same and prepared a supplemental report dated March 19, 2021. He opined the MRI of July 18, 2019, revealed foraminal narrowing but no disc herniations at C4-C5 and C5-C6. He also opined it revealed a shallow disc bulge at C6-C7 but no neural compression. Dr. Chabot opined the MRI of September 21, 2020, was "essentially unchanged" when compared to the MRI of July 18, 2019. Based upon his review of those two MRIs, he opined the MRI report of March 8, 2019, was "grossly overstated." Dr. Chabot disagreed with Dr. Gornet's opinion Petitioner had multiple disc injuries as a result of the accident of January 29, 2019, and the disc replacement surgery performed by Dr. Gornet was questionable (Respondent's Exhibit 3).

Dr. Chabot was deposed on April 16, 2021, 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. Specifically, Dr. Chabot testified he reviewed the MRI scans of March 8, 2019, and July 18, 2019, and disagreed with the opinion of the radiologist that they revealed multiple disc protrusions in the cervical spine. He testified the MRI scans did not reveal any evidence of acute trauma and there was no medical basis for Petitioner undergoing disc replacement surgery (Respondent's Exhibit 4; pp 20-22).

On cross-examination, Dr. Chabot agreed that Petitioner being assaulted and punched in the face could aggravate or cause a cervical spine injury. He also conceded Petitioner continued to be symptomatic until the surgery of October 7, 2020, but she had improved afterward (Respondent's Exhibit 4; pp 26-30).

Dr. Gornet was deposed on May 6, 2021, 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 he diagnosed disc pathology at C4-C5, C5-C6 and C6-C7, which correlated with the MRI findings. He testified the condition he diagnosed and treated was related to the accident of January 29, 2019, and noted Petitioner's complaints were much more severe after that accident than they had been previously (Petitioner's Exhibit 13; pp 8-12, 18).

On cross-examination, Dr. Gornet agreed Petitioner had neck complaints dating back to the accident of November, 2016. However, he reaffirmed his opinion as to causality on the basis that Petitioner's complaints following the accident of January 29, 2019, were much more severe than what they were prior and his observation of the objective findings he noted in his review of the MRI scans (Petitioner's Exhibit 13; pp 20-21).

Petitioner testified that prior to her sustaining the initial accident at work, she had not sustained any type of injury to either her neck or right shoulder. Prior to the disc replacement surgery, Petitioner testified she had constant headaches and neck pain. Petitioner said she was able to return to work following surgery and her condition was significantly improved. However, Petitioner testified she still continues to have symptoms in her neck and right shoulder especially when she has to handle aggressive patients or engage in any heavy lifting. Petitioner's activities outside of work have also been adversely affected, including playing golf and engaging with various activities with her child.

Conclusions of Law

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

The Arbitrator concludes Petitioner's current condition of ill-being is causally related to the accident of January 29, 2019.

In support of this conclusion the Arbitrator notes the following:

There was no dispute Petitioner sustained a work-related injury on January 29, 2019.

Dr. Gornet, Petitioner's primary treating physician, performed cervical disc replacement surgery at three levels and opined that disc injury he diagnosed and treated was causally related to the accident of January 29, 2019.

Dr. Gornet reviewed MRI scans of Petitioner's cervical spine performed on November 25, 2016, March 8, 2019, July 18, 2019, and September 21, 2020. He opined the three MRI scans performed subsequent to the accident of January 29, 2019, revealed disc pathology in the cervical spine that was not present in the prior MRI of November 25, 2016.

Dr. Gornet's interpretations of the MRI scans were consistent with those of the radiologist.

Respondent's Section 12 examiner, Dr. Chabot, opined the MRI scan of March 8, 2019, and July 18, 2019, did not revealed disc protrusions in the cervical spine and the report of the March 8, 2019, MRI scan was "grossly overstated."

When deposed, Dr. Chabot agreed the mechanics of the injury of Petitioner being punched in the face would aggravate or cause a cervical spine injury.

Petitioner attempted to defer undergoing disc replacement surgery and only proceeded with the surgery when she could no longer tolerate the symptoms. Subsequent to the surgery, Petitioner's condition/symptoms improved and she was able to return to work without restrictions.

Based on the preceding, the Arbitrator finds the opinion of Dr. Gornet to be more persuasive than that Dr. Chabot in regard to causality.

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

The Arbitrator concludes that all of the medical treatment provided to Petitioner related to the accident of January 29, 2019, was reasonable and necessary and Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services related to the accident of January 29, 2019, as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

The Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of 20% loss of use of the person as a whole.

In support of this conclusion the Arbitrator notes following:

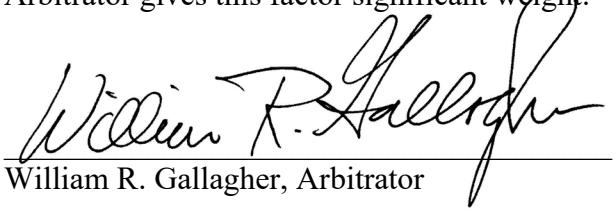
Neither Petitioner nor Respondent tendered an AMA impairment rating. The Arbitrator gives this factor no weight.

Petitioner was employed as a security therapy aide at the time she sustained the accident. As the circumstances of all of the four accidents clearly revealed, Petitioner has to deal with patients who can become aggressive and combative. However, Petitioner was able to return to work to her regular job. The Arbitrator gives this factor moderate weight.

Petitioner was 38 years old at the time she sustained the injury. Petitioner has approximately 30 years before she will reach normal retirement age. She will have to live with the effects of the injury for the remainder of her working and natural life. The Arbitrator gives this factor moderate weight.

There was no evidence the injury had any effect on Petitioner's future earning capacity. The Arbitrator gives this factor moderate weight.

As a result of the injury, Petitioner underwent cervical spine surgery which consisted of disc replacements at three levels. While Petitioner made a good recovery following surgery and was able to return to work to her regular job, she continues to have neck pain especially when lifting and dealing with aggressive patients. Petitioner's testimony regarding her symptoms/complaints was credible and consistent with the injury she sustained. The Arbitrator gives this factor significant weight.



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC014418
Case Name	Kerri Dethrow v. State of Illinois - Chester Mental Health Center
Consolidated Cases	19WC014416; 19WC014417; 19WC031750;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0403
Number of Pages of Decision	10
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Aaron Wright

DATE FILED: 10/14/2022

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KERRI DETHROW,
Petitioner,

vs. NO: 19 WC 14418

STATE OF ILLINOIS/ CHESTER MENTAL HEALTH,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, and permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 21, 2022 is hereby affirmed and adopted.

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

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

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.

October 14, 2022
o: 10/06/22
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC014418
Case Name	DETHROW, KERRI v. STATE/CHESTER MENTAL HEALTH
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Aaron Wright

DATE FILED: 3/21/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 15, 2022 0.82%

/s/ William Gallagher, Arbitrator
Signature

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

March 21, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Madison)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Kerri Dethrow
Employee/Petitioner

v.

State/Chester Mental Health
Employer/Respondent

Case # 19 WC 14418

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, Herrin Docket, on February 24, 2022. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On February 24, 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 $44,135.71; the average weekly wage was $848.76.

On the date of accident, Petitioner was 39 years of age, single with 1 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $0.00. The parties stipulated TTD benefits were paid in full.

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

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, related to the accident of February 24, 2019, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Based upon the Arbitrator's Conclusions of Law attached hereto, no permanent partial disability benefits are awarded.

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

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

William R. Gallagher, Arbitrator **MARCH 21, 2022**

ICArbDec p. 2

Findings of Fact

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The MRI scan of Petitioner's cervical spine was performed on July 18, 2019. According to the radiologist, the MRI revealed foraminal protrusions at C3-C4 and C4-C5 as well as an annular tear/protrusion at C6-C7. A CT scan of Petitioner's cervical spine was also performed on July 18, 2019. According to the radiologist, it revealed spurs at C3-C4 and C4-C5 as well as a central protrusion at C6-C7 (Petitioner's Exhibits 10 and 11).

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Dr. Gornet performed surgery on Petitioner's cervical spine on October 7, 2020. The procedure consisted of disc replacements at C4-C5, C5-C6 and C6-C7 (Petitioner's Exhibit 12).

Dr. Gornet continued to treat Petitioner following surgery. When he saw her on January 25, 2021, he authorized Petitioner to return to work without restrictions effective March 8, 2021. Dr. Gornet last saw Petitioner on October 21, 2021, and noted she was working full duty, but still had some mild symptoms in her neck and right shoulder. Dr. Gornet opined Petitioner was at MMI (Petitioner's Exhibit 7).

At the direction of Respondent, Petitioner was examined by Dr. Michael Chabot, an orthopedic surgeon, on January 11, 2021. In connection with his examination of Petitioner, Dr. Chabot reviewed reports regarding Petitioner's accidents, medical records and diagnostic studies provided to him by Respondent. Dr. Chabot initially noted the medical records provided to him were incomplete and lacked records which predated the accident of January 29, 2019, and the only MRI study he had for review was the one performed on March 8, 2019. However, in Dr. Chabot's review of the MRI of March 8, 2019, he opined it did not clearly defined acute changes which could be attributed to the accident of January 29, 2019 (Respondent's Exhibit 2).

Respondent provided additional medical records and diagnostic studies to Dr. Chabot. He reviewed same and prepared a supplemental report dated March 19, 2021. He opined the MRI of July 18, 2019, revealed foraminal narrowing but no disc herniations at C4-C5 and C5-C6. He also opined it revealed a shallow disc bulge at C6-C7 but no neural compression. Dr. Chabot opined the MRI of September 21, 2020, was "essentially unchanged" when compared to the MRI of July 18, 2019. Based upon his review of those two MRIs, he opined the MRI report of March 8, 2019, was "grossly overstated." Dr. Chabot disagreed with Dr. Gornet's opinion Petitioner had multiple disc injuries as a result of the accident of January 29, 2019, and the disc replacement surgery performed by Dr. Gornet was questionable (Respondent's Exhibit 3).

Dr. Chabot was deposed on April 16, 2021, 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. Specifically, Dr. Chabot testified he reviewed the MRI scans of March 8, 2019, and July 18, 2019, and disagreed with the opinion of the radiologist that they revealed multiple disc protrusions in the cervical spine. He testified the MRI scans did not reveal any evidence of acute trauma and there was no medical basis for Petitioner undergoing disc replacement surgery (Respondent's Exhibit 4; pp 20-22).

On cross-examination, Dr. Chabot agreed that Petitioner being assaulted and punched in the face could aggravate or cause a cervical spine injury. He also conceded Petitioner continued to be symptomatic until the surgery of October 7, 2020, but she had improved afterward (Respondent's Exhibit 4; pp 26-30).

Dr. Gornet was deposed on May 6, 2021, 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 he diagnosed disc pathology at C4-C5, C5-C6 and C6-C7, which correlated with the MRI findings. He testified the condition he diagnosed and treated was related to the accident of January 29, 2019, and noted Petitioner's complaints were much more severe after that accident than they had been previously (Petitioner's Exhibit 13; pp 8-12, 18).

On cross-examination, Dr. Gornet agreed Petitioner had neck complaints dating back to the accident of November, 2016. However, he reaffirmed his opinion as to causality on the basis that Petitioner's complaints following the accident of January 29, 2019, were much more severe than what they were prior and his observation of the objective findings he noted in his review of the MRI scans (Petitioner's Exhibit 13; pp 20-21).

Petitioner testified that prior to her sustaining the initial accident at work, she had not sustained any type of injury to either her neck or right shoulder. Prior to the disc replacement surgery, Petitioner testified she had constant headaches and neck pain. Petitioner said she was able to return to work following surgery and her condition was significantly improved. However, Petitioner testified she still continues to have symptoms in her neck and right shoulder especially when she has to handle aggressive patients or engage in any heavy lifting. Petitioner's activities outside of work have also been adversely affected, including playing golf and engaging with various activities with her child.

Conclusions of Law

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

The Arbitrator concludes Petitioner's current condition of ill-being is not causally related to the accident of February 24, 2019.

In support of this conclusion the Arbitrator notes following:

Petitioner sustained the work-related accident on February 24, 2019, approximately one month after she sustained the accident of January 29, 2019.

Petitioner’s primary treating physician, Dr. Gornet opined Petitioner's neck condition which required disc replacement surgery was related to the accident of January 29, 2019.

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

The Arbitrator concludes that all of the medical treatment provided to Petitioner related to the accident of February 24, 2019, was reasonable and necessary and Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services related to the accident of February 24, 2019, as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

Based upon the Arbitrator's conclusion of law in disputed issue (F), no permanent partial disability benefits are awarded.

William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC031750
Case Name	Kerri Dethrow v. State of Illinois - Chester Mental Health Center
Consolidated Cases	19WC014416; 19WC014417; 19WC014418;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0404
Number of Pages of Decision	10
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Aaron Wright

DATE FILED: 10/14/2022

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KERRI DETHROW,
Petitioner,

vs. NO: 19 WC 31750

STATE OF ILLINOIS/ CHESTER MENTAL HEALTH,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, and permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 21, 2022 is hereby affirmed and adopted.

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

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

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.

October 14, 2022
o: 10/06/22
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC031750
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Consolidated Cases	
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Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Aaron Wright

DATE FILED: 3/21/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 15, 2022 0.82%

/s/ William Gallagher, Arbitrator
Signature

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

March 21, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Madison)

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ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Kerri Dethrow
Employee/Petitioner

v.

State/Chester Mental Health
Employer/Respondent

Case # 19 WC 31750

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, Herrin Docket, on February 24, 2022. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On August 7, 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 $44,135.71; the average weekly wage was $848.76.

On the date of accident, Petitioner was 39 years of age, single with 1 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $0.00. The parties stipulated TTD benefits were paid in full.

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

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, related to the accident of August 7, 2019, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Based upon the Arbitrator's Conclusions of Law attached hereto, no permanent partial disability benefits are awarded.

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

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

William R. Gallagher

MARCH 21, 2022

William R. Gallagher, Arbitrator
ICArbDec p. 2

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Dr. Gornet continued to treat Petitioner following surgery. When he saw her on January 25, 2021, he authorized Petitioner to return to work without restrictions effective March 8, 2021. Dr. Gornet last saw Petitioner on October 21, 2021, and noted she was working full duty, but still had some mild symptoms in her neck and right shoulder. Dr. Gornet opined Petitioner was at MMI (Petitioner's Exhibit 7).

At the direction of Respondent, Petitioner was examined by Dr. Michael Chabot, an orthopedic surgeon, on January 11, 2021. In connection with his examination of Petitioner, Dr. Chabot reviewed reports regarding Petitioner's accidents, medical records and diagnostic studies provided to him by Respondent. Dr. Chabot initially noted the medical records provided to him were incomplete and lacked records which predated the accident of January 29, 2019, and the only MRI study he had for review was the one performed on March 8, 2019. However, in Dr. Chabot's review of the MRI of March 8, 2019, he opined it did not clearly defined acute changes which could be attributed to the accident of January 29, 2019 (Respondent's Exhibit 2).

Respondent provided additional medical records and diagnostic studies to Dr. Chabot. He reviewed same and prepared a supplemental report dated March 19, 2021. He opined the MRI of July 18, 2019, revealed foraminal narrowing but no disc herniations at C4-C5 and C5-C6. He also opined it revealed a shallow disc bulge at C6-C7 but no neural compression. Dr. Chabot opined the MRI of September 21, 2020, was "essentially unchanged" when compared to the MRI of July 18, 2019. Based upon his review of those two MRIs, he opined the MRI report of March 8, 2019, was "grossly overstated." Dr. Chabot disagreed with Dr. Gornet's opinion Petitioner had multiple disc injuries as a result of the accident of January 29, 2019, and the disc replacement surgery performed by Dr. Gornet was questionable (Respondent's Exhibit 3).

Dr. Chabot was deposed on April 16, 2021, 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. Specifically, Dr. Chabot testified he reviewed the MRI scans of March 8, 2019, and July 18, 2019, and disagreed with the opinion of the radiologist that they revealed multiple disc protrusions in the cervical spine. He testified the MRI scans did not reveal any evidence of acute trauma and there was no medical basis for Petitioner undergoing disc replacement surgery (Respondent's Exhibit 4; pp 20-22).

On cross-examination, Dr. Chabot agreed that Petitioner being assaulted and punched in the face could aggravate or cause a cervical spine injury. He also conceded Petitioner continued to be symptomatic until the surgery of October 7, 2020, but she had improved afterward (Respondent's Exhibit 4; pp 26-30).

Dr. Gornet was deposed on May 6, 2021, 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 he diagnosed disc pathology at C4-C5, C5-C6 and C6-C7, which correlated with the MRI findings. He testified the condition he diagnosed and treated was related to the accident of January 29, 2019, and noted Petitioner's complaints were much more severe after that accident than they had been previously (Petitioner's Exhibit 13; pp 8-12, 18).

On cross-examination, Dr. Gornet agreed Petitioner had neck complaints dating back to the accident of November, 2016. However, he reaffirmed his opinion as to causality on the basis that Petitioner's complaints following the accident of January 29, 2019, were much more severe than what they were prior and his observation of the objective findings he noted in his review of the MRI scans (Petitioner's Exhibit 13; pp 20-21).

Petitioner testified that prior to her sustaining the initial accident at work, she had not sustained any type of injury to either her neck or right shoulder. Prior to the disc replacement surgery, Petitioner testified she had constant headaches and neck pain. Petitioner said she was able to return to work following surgery and her condition was significantly improved. However, Petitioner testified she still continues to have symptoms in her neck and right shoulder especially when she has to handle aggressive patients or engage in any heavy lifting. Petitioner's activities outside of work have also been adversely affected, including playing golf and engaging with various activities with her child.

Conclusions of Law

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

The Arbitrator concludes Petitioner's current condition of ill-being is not causally related to the accident of August 7, 2019.

In support of this conclusion the Arbitrator notes following:

Petitioner’s primary treating physician, Dr. Gornet opined Petitioner's neck condition which required disc replacement surgery was related to the accident of January 29, 2019.

At the time Petitioner sustained the accident on August 7, 2019, Dr. Gornet had already recommended Petitioner undergo cervical spine surgery.

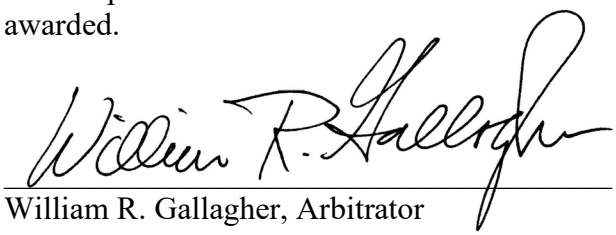
In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner related to the accident of August 7, 2019, was reasonable and necessary and Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services related to the accident of August 7, 2019, as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

Based upon the Arbitrator's conclusion of law in disputed issue (F), no permanent partial disability benefits are awarded.



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC004063
Case Name	Holly Pruitt v. Belleville Township High School District #201
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0405
Number of Pages of Decision	13
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Jason Going, Kevin Boyne
Respondent Attorney	Glenn Blackmon

DATE FILED: 10/14/2022

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF ST. CLAIR)

☒ 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

HOLLY PRUITT,
Petitioner,

vs. NO: 19 WC 4063

BELLEVILLE TOWNSHIP HIGH SCHOOL DISTRICT #201,
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, average weekly wage, temporary total disability, medical expenses, and permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 18, 2022 is hereby affirmed and adopted.

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

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

Under Section 19(f)(2) of the Act, no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

October 14, 2022
o: 10/06/22
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC004063
Case Name	PRUITT, HOLLY v. BELLEVILLE TOWNSHIP HIGH SCHOOL DISTRICT #201
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Jason Going
Respondent Attorney	Kylee Jordan

DATE FILED: 2/18/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 15, 2022 0.77%

/s/ Jeanne AuBuchon, Arbitrator

Signature

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

☐ 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

Holly Pruitt
Employee/Petitioner

v.

Belleville Township High School Dist. #201
Employer/Respondent

Case # **19** WC **4063**

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 **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Collinsville**, on **August 26, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **December 18, 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 $**N/A**; the average weekly wage was $**813.56**.

On the date of accident, Petitioner was **50** years of age, ***married*** with **0** dependent children.

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

Respondent ***has 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 $**Any Paid** under Section 8(j) of the Act.

ORDER

Respondent shall pay medical expenses as shown in Petitioner's Exhibit 1 as provided in Section 8(a) of the Act and shall be given a credit for medical benefits that have been paid or paid through group health insurance. 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. The Respondent shall hold the Petitioner harmless for any health insurance lien.

Respondent shall pay Petitioner the sum of **$542.37**/week for 7 and 6/7ths weeks of temporary total disability benefits, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the sum of **$488.14**/week for 41 weeks, as provided in Section **8(e)9** of the Act, because the injuries sustained caused **20% 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.

Jeanne L. AuBuchon

Signature of Arbitrator

FEBRUARY 18, 2022

PROCEDURAL HISTORY

This matter proceeded to trial on August 26, 2021, on all issues. The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of her employment; 2) the causal connection between the accident and the Petitioner's right hand condition only as it relates to whether the accident arose out of and in the course of employment; 3) the Petitioner's average weekly wage; 4) liability for medical bills; 5) entitlement to TTD benefits from January 7, 2019, through January 21, 2019, and from July 1, 2020, through August 9, 2020; and 5) the nature and extent of the Petitioner's injury.

FINDINGS OF FACT

At the time of the accident on December 18, 2018, the Petitioner, who was 51 years old, was employed by the Respondent as a paraprofessional, assisting special needs students. (AX1, T. 9-10) The Petitioner reviewed a teaching assistant job description submitted by the Respondent that included as an essential job duty "(a)ssist in maintaining the health and safety of all students," which the Petitioner testified includes giving the children "TLC" and being there for them because they frequently they do not get the care they need at home. (RX5, T. 11) She said that commonly, children come to school without adequate food or money for food, leading staff to provide lunch money for the students. (T. 12-13)

The Petitioner testified that on December 18, 2018, she was walking on a sidewalk to get students off the bus when she stepped off the sidewalk to get the attention of a coworker to pay her back for money she borrowed to buy lunch for a student during a field trip. (T. 21, 40) She said she tripped over dirt where moles had dug and fell on her right hand. (T. 22) On cross-examination, the Petitioner admitted that she told an insurance adjuster that she owed the coworker

money for her own lunch. (T. 32) She explained that she had money for her own lunch, but used it for the student and had to borrow money for her own lunch from her coworker. (T. 48)

The day after the accident, the Petitioner sought treatment at St. Elizabeth's UrgiCare, where X-rays showed a possible small chip fracture. (PX3) Physician Assistant Alyssa Bamba was unable to rule out ligamentous injury due to swelling and pain limitations. (Id.) The Petitioner's hand was placed in a splint, and she was prescribed medication. (Id.) She was referred to her primary care physician, Dr. Anne Nash, and Dr. Timothy Leeburton, an orthopedic hand surgeon at BJC Medical Group. (Id.)

The Petitioner saw Dr. Leeburton on January 7, 2019. (PX4) He gave the Petitioner a thumb spica brace, ordered her off work and ordered an MRI, which showed mild arthritic changes at the first metacarpal phalangeal joint and an intermediate signal within the radial and ulnar collateral ligaments of that joint. (PX4, PX2) Radiologist Adam Taves diagnosed a grade one sprain. (PX2) On January 21, 2019, Dr. Leeburton ordered the Petitioner to use the thumb brace full time, prescribed an oral corticosteroid and gave a restriction of wearing her brace while working. (PX4) At a follow-up visit on February 11, 2019, the Petitioner reported that her swelling was better, but she still was experiencing pain. (Id.) Dr. Leeburton prescribed physical therapy. (Id.) The Petitioner underwent occupational therapy at Memorial Hospital from February 14, 2019, through April 16, 2019, for a total of 16 visits. (PX2)

On April 17, 2019, the Petitioner returned to Dr. Leeburton with complaints of tingling and pain in her right hand. (PX4) She reported that a lot of her thumb symptoms resolved, but she still had swelling, pain and numbness involving multiple digits. (Id.) Dr. Leeburton opined that a lot of her symptoms could have been related to carpal tunnel syndrome and ordered an EMG. (Id.) The study was performed on April 22, 2019, by Dr. Boris Khariton at Memorial Hospital, who

found moderate to severe right median motor-sensory focal distal neuropathy at the wrist, which could have represented carpal tunnel syndrome. (PX2) On May 1, 2019, Dr. Leeburton recommended a carpal tunnel release. (PX4)

The Petitioner sought a second opinion from Dr. Harvey Mirly, another orthopedic hand surgeon at BJC Medical Group. (T. 26) On October 8, 2019, he diagnosed a sprain of the ulnar collateral ligament of the right wrist and gave the Petitioner another thumb brace. (PX4) The Petitioner returned to Dr. Mirly on June 4, 2020, reporting increased difficulty using her thumb and having frequent episodes of pain. (Id.) An X-ray showed marked laxity of the ulnar collateral ligament with radial deviation. (Id.) On July 1, 2020, Dr. Mirly performed a repair of the ulnar collateral ligament of the metacarpophalangeal joint in the Petitioner's right thumb that included placement of a K-wire (pin) across the joint. (PX2) The pin was removed on August 6, 2020, and Dr. Mirly allowed the Petitioner to return to work on August 10, 2020, with the restriction of wearing a brace on her right thumb. (Id.)

The Petitioner underwent physical therapy at Memorial Hospital from August 6, 2020, to September 10, 2020, for a total of ten visits. (PX2) On September 15, 2020, Dr. Mirly found the Petitioner to be at maximum medical recovery and released her from treatment. (PX4)

The Petitioner testified that although the injury did not keep her from working, she continued to have problems after the surgery. (T. 27) The Petitioner demonstrated that she was unable to touch her thumb to her palm, with the thumb stopping about a half inch or so from the palm, and demonstrated difficulty gripping a can of soda. (T. 28) She said her hand bothers her when lifting medium to heavy objects and when the weather changes. (T. 29) She continued to wear her brace when lifting and when pushing students in wheelchairs. (T. 30)

The Petitioner's Wage Statement showed that the Petitioner earned $1,047.12 twice per month. (RX4) She testified that she worked for ten months out of the year, with her salary spread out over the entire year. (T. 9, 14, 41) Before that, she had worked as a substitute. (T. 15) She also had concurrent income working at Oak Hill Nursing Home, and said her employer was aware of this employment. (T. 17) She started that job May 31, 2018, and worked 30-40 hours per week and mandatory overtime. (T. 17-20) The Petitioner's pay history from Oak Hill encompassed 14 two-week pay periods between June 8, 2018, and December 7, 2018, with the first paycheck appearing to cover only one week. (PX5) During that time, the Petitioner earned $8,917.37, including overtime and weekend differential. (Id.) While she was off work during her treatment, she was paid by the Respondent, but missed work at the nursing home. (T. 31)

CONCLUSIONS OF LAW

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

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

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

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 the claimant's employment and (2) that the injury arose out of the claimant's employment. *McAllister v. Ill. Workers' Comp. Com'n*, 2020 IL 12484, ¶ 32.

The phrase "in the course of employment" refers to the time, place and circumstances of the injury. *Id*. at ¶34. A compensable injury occurs in the course of employment when it is sustained while a clamant is at work or while he or she performs reasonable activities in

conjunction with his or her employment. *Id.* It was undisputed that the Petitioner was at work during work hours when she fell and injured her hand.

The "arising out of" component is primarily concerned with causal connection. *Id*. at ¶ 36. To satisfy this requirement, it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *Id.* The three categories of risk are: (1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics. *Id*. at ¶38.

A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing: (1) acts he or she was instructed to perform by the employer; (2) acts that he or she had a common-law or statutory duty to perform; or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties. *Id*. at ¶46.

The Petitioner, whom the Arbitrator finds to be credible, explained that when she fell, she was seeking out a coworker to repay her for buying her lunch after she used her lunch money to pay for lunch for a student on a field trip who had no money. Although she told the insurance adjuster only that she was paying the coworker back for her own lunch, her explanation was plausible and believable. She also said that staff paying for children's food was a common occurrence. Therefore, the Arbitrator finds that the Petitioner's actions were those that she might reasonably expected to perform incident to her duties.

When a claimant is injured due to an employment-related risk, it is unnecessary to perform a neutral-risk analysis to determine whether the claimant was exposed to a risk of injury to a greater degree than the general public. *Steak 'n Shake v. Ill. Workers' Comp. Comm'n*, 216 IL App 3d

150500WC at ¶38. Because the Arbitrator finds that an employment risk was present, no further analysis is necessary.

Thus, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that the Petitioner's injury occurred in the course of and arose out of her employment.

Issue G: What were the Petitioner's earnings?

According to the wage records, the Petitioner earned $1,047.12 bimonthly from the Respondent. This equals an average weekly wage of $483.29 per week. The Petitioner earned $8,917.37 over 27 weeks at her concurrent employment at Oak Hill Nursing Home, resulting in an average weekly wage of $330.27. There was no evidence to contradict the Petitioner's testimony that the overtime she earned at that job was mandatory.

Therefore, the Arbitrator finds that the Petitioner's total average weekly wage was $813.56.

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).

Based on the determination above that the Petitioner's injury was causally related to the accident that arose out of and in the course of her employment and there being no medical opinions that the treatment was unreasonable or unnecessary, 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)

The parties dispute temporary total disability benefits for the periods of January 7, 2019, through January 21, 2019, and from July 1, 2020, through August 9, 2020.

Based on the Petitioner's doctors taking her off work for those time periods, the Petitioner was entitled to TTD benefits for 7 and 6/7 weeks, with the Respondent receiving credit for the wages it paid her during those time periods.

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 rating was given. Therefore, the Arbitrator gives no weight to this factor.

(ii) **Occupation.** The Petitioner continues to work in her occupations with the same physical demands as she had prior to the accident. Therefore, the Arbitrator places some weight on this factor.

(iii) **Age.** The Petitioner was 51 years old at the time of the injury. She has several work years left during which time she will need to deal with the residual effects of the injury. The Arbitrator places significant weight on this factor.

(iv) **Earning Capacity.** There was no evidence of limitation of the Petitioner's earning capacity. Therefore, the Arbitrator places some weight on this factor.

(v) **Disability.** The Petitioner continues to suffer effects from her injury – limited range of motion in her thumb and problems with gripping – more than 2½ years after her surgery. The Arbitrator puts significant weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 20 percent of the right hand.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC008643
Case Name	Dennis Evans v. Hostess Brands
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0406
Number of Pages of Decision	10
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	TODD STRONG
Respondent Attorney	Marcy Bennett

DATE FILED: 10/17/2022

/s/Maria Portela, Commissioner

Signature

22IWCC0406

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DENNIS EVANS,

Petitioner,

vs. NO: 12 WC 8643

HOSTESS BRANDS,

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 maintenance benefits 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.

Although the Commission agrees with the beginning and ending dates of the Arbitrator's maintenance award under §8(a) of the Act, we find that he miscounted the number of weeks and only awarded 55-2/7 weeks. By our calculation, the number of weeks is hereby modified up to 55-4/7 weeks (July 16, 2016 through August 8, 2017).

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $524.10 per week for a period of 55-4/7 weeks, that being the period of maintenance benefits as provided in §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner permanent partial disability benefits of $471.74 per week for a period of 250 weeks, as provided in Section 8(d)2 of the Act, as the injuries sustained caused a 50% permanent partial disability to

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 $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.

October 17, 2022

/s/ *Maria E. Portela*

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

SE/
O: 9/6/22
49

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC008643
Case Name	EVANS, DENNIS v. HOSTESS BRANDS
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	Sean Oswald
Respondent Attorney	Marcy Bennett

DATE FILED: 9/7/2021

THE INTEREST RATE FOR THE WEEK OF AUGUST 31, 2021 0.05%

/s/Adam Hinrichs, 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

DENNIS EVANS
Employee/Petitioner
v.
HOSTESS BRANDS
Employer/Respondent

Case # **12** WC **008643**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Adam Hinrichs**, Arbitrator of the Commission, in the city of **Peoria**, on **07/22/2021**. 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 **January 30, 2012**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**40,884.48**; the average weekly wage was $**786.24**.

On the date of accident, Petitioner was **49** years of age, ***single*** with **3** dependent children.

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

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**20,666.68** for maintenance, and $**0** for other benefits, for a total credit of $**20,666.88**.

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

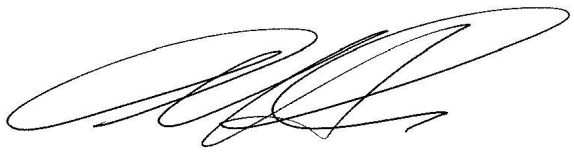
ORDER

Respondent shall pay Petitioner maintenance benefits of $524.10/week for 55 2/7 weeks, from July 16, 2016 through August 8, 2017, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $471.74/week for a period of 250 weeks, as provided in Section 8(d)2 of the Act, as the injuries sustained caused a 50% permanent partial disability to Petitioner's 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.



_____ **SEPTEMBER 7, 2021**

Signature of Arbitrator

FINDINGS OF FACT

On April 25, 2017, The Commission issued a decision, 17IWCC0259, affirming and adopting Arbitrator Gallagher's decision awarding Petitioner maintenance benefits from September 25, 2015 through July 15, 2016 and vocational rehabilitation/job assistance as provided in Section 8(a) of the Act. (Px. 3).

Dennis Evans, Petitioner, testified that during the time of his first hearing, he was living in Denver, Colorado and came to Illinois for the hearing. Petitioner was contacted by a representative of Genex Vocational Rehabilitation services in Denver following the Commission award. Petitioner testified that he never participated with any job searches while in Denver. Petitioner testified that he was never provided with any job leads while he was living in Denver. (Tx. pp. 16-18).

Petitioner testified that he intended to meet with the Genex representative in Denver, however, his property had been stolen. Petitioner testified that he informed the Genex representative that he wasn't going to be able to stay in Denver any longer as he had no transportation, no clothing, furniture, and that he was informed by his attorney to come back to Peoria to resume his job search. Petitioner then returned to Peoria. (Tx. pp. 18-19).

Petitioner testified that he was never contacted by a representative of Genex for vocational rehabilitation services while he was in Peoria. He testified that in 2018 he began job searches for jobs only in Peoria. (Tx. p. 19).

Petitioner testified that he applied for all his potential jobs through Indeed.com ("Indeed"). Petitioner testified that he did not know his email account or log in name for Indeed. (Tx. p. 46).

Petitioner testified that since 2018, when he began submitting resumes on Indeed, he had some phone interviews, and zero in-person interviews. Petitioner testified that if he found a job that was paying $9.00 or $10.00 per hour, he would not follow up or interview with the employer with that job listing because that was his choice. (Tx. pp 28-31).

Petitioner testified he's been a laborer all his life. Petitioner testified that he applied for jobs that he couldn't take, like landscaping, because he had to apply for jobs whether he could do them or not. Petitioner testified that if he were offered a job today for $11/an hour, he would not accept this job. (Tx. pp. 34, 49-50).

Petitioner testified he has not been contacted by a Respondent representative every 4 months since the prior decision of the Commission awarding vocational rehabilitation (Tx. p. 35).

Respondent introduced exhibits regarding their efforts at Petitioner's vocational rehabilitation. A letter dated May 1, 2017 to Petitioner's attorney instituting Vocational rehabilitation (Rx. 1), an email exchange with Petitioner's attorney from May 8-10, 2017 confirming that Petitioner has been unreachable, and confirming his contact information. (Rx. 2). A June 25, 2017 letter was admitted wherein Respondent is trying to begin vocational rehabilitation as ordered, and having issues locating the Petitioner. (Rx. 3).

A letter dated August 2, 2017, was admitted wherein Respondent's attorney is again trying to begin Vocational rehabilitation, noting Petitioner's non-compliance. (Rx. 4).

A letter dated August 8, 2017, was admitted terminating maintenance benefits due to Petitioner's non-compliance with the vocational rehabilitation process. (Rx. 5).

A letter dated August 28, 2017, was admitted summarizing the Respondent's vocational rehabilitation attempts, and cessation of vocational rehabilitation based on non-compliance. (Rx. 6). Respondent introduced vocational

rehabilitation reports from May 2, 2017 through August 28, 2017, outlining the significant steps taken by the Respondent's vocational rehabilitation counselor prior to the termination of maintenance. (Rx. 7-11).

Petitioner testified that he previously had surgery on both shoulders and that he had a 10-15 pound lifting restriction above shoulder level for the left arm only. He stated that the air conditioning 'messed' with his shoulder, and clarified that it was the air conditioning, not cooler temperatures which affected him. (Tx. pp. 31-32).

Petitioner stated he has lots of problems with his fingers and feeling in his fingers is almost gone. Petitioner testified that he has pain in the right arm at 7/10, depending on the temperature, or if it's a rainy day. (Tx. pp. 33-34). Petitioner's left arm pain is rated at 6/10 and he stated that it hurts all the time (Tx. p. 34).

CONCLUSIONS OF LAW

Issue (K): What temporary total benefits are in dispute? Maintenance.

In order to be entitled to maintenance benefits, the Petitioner must demonstrate a reasonable and diligent job search, either through vocational rehabilitation or on his own. In this matter, Petitioner has proven he is entitled to maintenance benefits from July 16, 2016 through August 8, 2017.

After the Commission's decision, Respondent initiated vocational rehabilitation with vocational counselor, Ms. Jill Adams at Genex. As the court determined in *Archer Daniels Midland Co. v. Indus. Com.*, the Petitioner's failure to make a good faith effort in cooperation of rehabilitation, limits the Respondent's responsibility for ongoing rehab. (138 Ill. 2d 107, 115-16, 149 Ill. Dec. 253, 256, 561 N.E.2d 623, 626 (1990)). The court further confirmed that if Petitioner does not put forth a good faith effort in vocational rehabilitation, Respondent may be justified in termination of benefits. (*Hayden v. Industrial Comm'n*, 214 Ill.App.3d 749, 574 N.E.2d 99, 103, 158 Ill.Dec.305 (1st Dist. 1991)).

Respondent introduced several letters and emails outlining vocational rehabilitation efforts between May 1, 2017 and August 28, 2017, (Rx. 1-6), as well as vocational rehabilitation reports outlining the steps taken, and steps attempted in the furtherance of Petitioner's employment (Rx. 7-11). Miss Adams' reports confirm numerous attempts to contact the Petitioner and his attorney. Ms. Adams even requested Petitioner's resume, so she could work on it until Petitioner was present for in-person vocation training. Petitioner failed to provide Ms. Adams with his resume, failed to return numerous phone calls, and failed to attend any person rehabilitation/counseling.

The Respondent reasonably relied upon the Petitioner's testimony and his ongoing confirmation that he planned on working and living in Colorado. As such, Respondent instituted vocational rehabilitation in Colorado. Per an agreement with Petitioner, Respondent issued an advance on benefits in order for Petitioner to travel to Colorado. Despite these efforts by Respondent, Petitioner did not comply with the vocational rehabilitation process.

The Petitioner's testimony conflicts with Ms. Adams' reports, specifically regarding the attempts to contact Petitioner. Ms. Adams' vocational rehabilitation reports are supported by the letters sent to Petitioner's attorney in 2017. Petitioner's testimony is not supported by the record.

After numerous months of minimal progress, and no attendance for vocational rehabilitation, Respondent reasonably notified Petitioner of termination of vocational rehabilitation and of maintenance benefits. Respondent was justified in terminating vocational rehabilitation and maintenance benefits on August 8, 2017.

The Petitioner's testimony confirmed that his job searches have not risen to the level of diligent or reasonable. Mr. Evans was clear, he refused to follow up or reach out to any job that paid less than he wanted. With these self-imposed limitations Petitioner placed on what he deemed to be acceptable employment; the result was zero in-person interviews in the almost three years since he began applying for jobs on Indeed in 2018.

To be entitled to maintenance benefits, the Petitioner must demonstrate that he has engaged in a reasonable and diligent job search. The petitioner offered his testimony regarding his job logs from 2018 to 2021, which were neither reasonable nor diligent, and are insufficient to meet the burden of proof. Petitioner is awarded benefits from the day after his hearing awarding vocational assistance, July 16, 2016, through August 8, 2017. During this period Respondent was responsible for and offered vocational rehabilitation. After this period, Petitioner was not entitled to maintenance benefits due to non-compliance.

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

When a Petitioner makes a claim for permanent total disability, he must provide medical evidence to support his disability or fulfill the factors for odd-lot permanent total disability. In this matter, the Petitioner has not introduced evidence permanently restricting him from work, nor has Petitioner fulfilled the factors to satisfy an odd-lot permanent total disability award.

If the employee's disability is limited in nature so that he is not obviously unemployable, or if there is no medical evidence to support a claim of total disability, the burden is on the employee to establish by a preponderance of the evidence that he falls into the "odd lot" category, that is, one who, although not altogether incapacitated to work, is so handicapped that he will not be employed regularly in any well-known branch of the labor market. (*Westin Hotel v. Illinois Workers' Compensation Comm'n*, 372 Ill. App. 3d 527, 544 (2007)). This burden can be satisfied by showing no work is available based on a diligent job search or that due to his age, education, experience training, etc., he is unable to perform anything except the most basic position for which a stable market does not exist. (*E.R. Moore Co. v. Industrial Comm'n* (1978), 71 Ill.2d 353, 361, 17 Ill.Dec. 207, 376 N.E.2d 206)

Due to his work injury, the Petitioner has permanent work restrictions limiting his overhead lifting with his left arm to 10-15 pounds. For all other activity and body parts, the Petitioner was released to full duty work.

In attempting to meet his required burden of proof for odd lot permanent total disability, Petitioner offered his own testimony, and numerous job logs. (Px. 4-7). The Petitioner's job logs do not rise to the level of reasonable or diligent, and do not provide the evidence to support a claim that the Petitioner is unemployable. Petitioner testified that he made a choice not to accept lower paying jobs. Further, no expert vocational rehabilitation opinion was offered supporting Petitioner's claim for odd-lot permanent total disability benefits.

The Petitioner has failed to meet his burden of proof that he is an odd lot permanent total disability candidate.

Given this, pursuant to 820 ILCS 305/8.1(b) the Arbitrator shall determine the level of disability based on the following factors:

With regard to subsection (i) of §8.1b(b): the Arbitrator notes that no AMA impairment report and/or opinion was submitted into evidence. The Arbitrator has considered and gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee: the Petitioner was employed as a route salesman at the time of the work accident and he is not able to return to work in his prior capacity as a

result of his work injury. Petitioner sustained a loss of occupation. The Arbitrator has considered and gives significant weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 49 years old at the time of the accident. The Arbitrator has considered and gives some weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity: Petitioner testified that it was his choice to refuse to interview for lower paying jobs. No other evidence was introduced regarding Petitioner's future earning capacity. The Arbitrator has considered and gives some weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner's surgery and post-surgical recovery with Dr. Wolcott, and permanent work restrictions of lifting overhead with his left arm of 10-15 pounds. The Petitioner's limitations in regard to his left shoulder are significant. The Arbitrator has considered and gives significant weight to this factor.

The Arbitrator finds that the injuries sustained caused a 50% permanent partial disability to Petitioner's person as a whole.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC019228
Case Name	Natalie Valentine v. Country Club Hills Police Dept
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0407
Number of Pages of Decision	7
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Chris Cooper
Respondent Attorney	Daniel Flores

DATE FILED: 10/24/2022

/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	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

NATALIE VALENTINE,

Petitioner,

vs. NO: 18 WC 19228

COUNTRY CLUB HILLS POLICE DEPARTMENT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of Petitioner's permanent disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 23, 2022 is hereby affirmed and adopted.

The bond requirement in Section 19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." *820 ILCS 305/19(f)(2)*. Based upon the denial of compensation herein, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

October 24, 2022

/s/ *Deborah J. Baker*

DJB/lyc

O: 10/12/22

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC019228
Case Name	VALENTINE, NATALIE v. COUNTRY CLUB HILLS POLICE DEPARTMENT
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	5
Decision Issued By	Antara Nath Rivera, Arbitrator

Petitioner Attorney	Chris Cooper
Respondent Attorney	Richard Lenkov

DATE FILED: 3/23/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 22, 2022 0.87%

/s/ Antara Nath Rivera, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

NATALIE VALENTINE
Employee/Petitioner

v.

COUNTRY CLUB HILLS POLICE DEPARTMENT
Employer/Respondent

Case # **18 WC 19228**

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 Antara Nath Rivera, Arbitrator of the Commission, in the city of **Chicago on March 1, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. [ ] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [ ] Was there an employee-employer relationship?
C. [ ] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [ ] What was the date of the accident?
E. [ ] Was timely notice of the accident given to Respondent?
F. [ ] Is Petitioner's current condition of ill-being causally related to the injury?
G. [ ] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [ ] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [ ] What temporary benefits are in dispute?
   [ ] TPD [ ] Maintenance [ ] TTD
L. [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 **4/13/18**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did*** 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 $**8,886.20**; the average weekly wage was $**170.89**.

On the date of accident, Petitioner was **56** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**6,762.35** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**2,000.00** for other benefits, for a total credit of $**8,762.35**.

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

ORDER

The Arbitrator finds no legal or evidentiary basis for awarding permanency benefits in this case. In its decision, which neither party appealed, the Commission found that Petitioner established causation as to temporary conditions requiring a course of treatment through January 16, 2019. The Arbitrator is bound by this decision. The Arbitrator also notes that Petitioner did not appear at the hearing held on March 1, 2022, and that Petitioner's counsel offered no new medical or testimonial evidence at that hearing. Thus, the Arbitrator makes no permanency award.

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

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

MARCH 23, 2022

Signature of Arbitrator

PROCEDURAL HISTORY

Arbitrator Steffenson tried this matter on August 20, 2019, and August 27, 2019. (Exhibit A) On February 19, 2020, Arbitrator Steffenson issued a decision ("Decision"). *Id.* In his Decision, Arbitrator Steffenson found that Natalie Valentine's ("Petitioner") current condition was not casually related to the April 13, 2018, work accident. *Id.* Based on that finding, Arbitrator Steffenson denied temporary total disability (TTD) benefits, payment of unpaid medical bills by Country Club Hills Police Department ("Respondent"), prospective medical care, and penalties and attorneys' fees. *Id.*

Petitioner filed a timely Petition for Review ("Review") under section 19(b) of the Act and notice was given to all parties. (Exhibit B) On June 7, 2021, the Commission issued its decision on the Review. In its Review, the Commission considered the issues of accident, causal connection, the reasonableness and necessity of medical treatment, prospective medical care, temporary disability, and penalties pursuant to sections 19(k) and 19(l). *Id.* The Commission considered Arbitrator Steffenson's Findings of Fact. *Id.* The Commission partially modified the Decision with respect to the issues of causal connection, medical expenses, and TTD. *Id.* The Commission further found that benefits be awarded for treatment obtained on the date of the accident through the date of maximum medical improvement ("MMI"). *Id.* The Commission affirmed the Decision with respect to the issues of prospective medical care and penalties. *Id.* The Commission remanded 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). *Id.*

On March 1, 2022, a hearing was held before Arbitrator Nath Rivera. (Transcript from March 1, 2022, hearing "T."1) Petitioner's attorney, Christopher Cooper, was present and informed the Arbitrator that Petitioner was not present due to a recent medical procedure. (T. 4-5) Respondent was represented by attorney Daniel Flores. (T. 4) At hearing, Petitioner rested on the previous testimony of Petitioner, the previously submitted medical records, the Decision and the Review. Petitioner argued that nature and extent is at issue and that Petitioner is entitled to permanent partial disability (PPD) due to the fact that Petitioner's aggravations were compensable. (T. 12-14) Respondent also rested on previous testimony of Petitioner, the previously submitted medical records, the Decision and the Review. Respondent argued that Petitioner's aggravations were temporary and were resolved by the MMI date per the Commission's findings. (T. 15) Petitioner introduced into evidence the Arbitrator's Decision (Exhibit A), the Commission's decision, (Exhibit B), and the previous transcript from the 19(b) hearing (Exhibit C). Respondent did not object to the Exhibits being entered into evidence. (T. 16-17)

STATEMENT OF FACTS

The Arbitrator adopts Arbitrator Steffenson's Findings of Fact (Exhibit A) and the Commission's adoption of said Findings of Fact (Exhibit B).

CONCLUSIONS OF LAW

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

The Arbitrator notes that pursuant to Section 8.1(b) of the Act, permanent partial disability ("PPD") shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the criteria to be considered includes: (i) the reported level of impairment pursuant to AMA; (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. Based on Petitioner's previous testimony, the Arbitrator finds that Petitioner sustained a lumbar strain and a temporary aggravation of the preexisting condition of her disc herniation and right hip. (Exhibit C). Petitioner testified that prior to the April 13, 2018, work related accident she was released to full duty work without any restrictions. *Id*. Petitioner testified that she was working full duty for about two weeks prior to the accident. Petitioner testified that as she was clearing out the parking lot of Club 183 after it closed for the night and was about to get out of her vehicle to investigate another vehicle. *Id.* She testified that said vehicle hit her head-on just as she was exiting her vehicle. *Id*. Arbitrator relies on the Commission's decision and finds that this work-related motor vehicle accident resulted in a soft tissue lumbar strain. (Exhibit A, Exhibit B, Resp. Ex. 1).

The Arbitrator's reading of the Commission's decision is that said lumbar strain resulted in a temporary aggravation of the lumbar and right hip. (Exhibit B) The Arbitrator relies on the Commission's finding that the temporary aggravation to her preexisting right hip condition resolved on December 3, 2018, and that the temporary aggravation to her preexisting lumbar spine (lower back) condition, which included right leg radicular symptoms, resolved on January 16, 2019, the date of MMI. *Id.* The Arbitrator adopts this finding as well as the Commission's finding that Petitioner's current condition of ill-being to the lumbar spine is not causally related to the undisputed work-related accident as the law of the case. *Id.* The Arbitrator noted that there was no new testimonial or medical evidence presented at the March 1, 2022, trial regarding the enumerated criteria, pursuant to Section 8.1(b) of the Act, contradicting this finding. Thus, the Arbitrator finds no legal or evidentiary basis for awarding permanency benefits in this case.

Arbitrator Antara Nath Rivera

March 23, 2022

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC023411
Case Name	John Baker v. State of Illinois – Big Muddy River Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0408
Number of Pages of Decision	9
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Kenton Owens

DATE FILED: 10/24/2022

/s/ Thomas Tyrrell, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOHN BAKER,

Petitioner,

vs. NO: 20 WC 23411

STATE OF ILLINOIS/BIG MUDDY RIVER CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 7, 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.

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.

October 24, 2022
o090622
TJT/ldm
051

/s/*Thomas J. Tyrrell*
Thomas J. Tyrrell

/s/*Maria E. Portela*
Maria E. Portela

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC023411
Case Name	BAKER, JOHN v. ST OF IL/BIG MUDDY RIVER CORRECTIONAL CENTER
Consolidated Cases	No Consolidated Cases
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Kenton Owens

DATE FILED: 10/7/2021

THE INTEREST RATE FOR THE WEEK OF OCTOBER 5, 2021 0.05%

/s/ Linda Cantrell, Arbitrator
Signature

CERTIFIED as a true and correct copy

pursuant to 820 ILCS 305/14

October 7, 2021

/s/ Brendon O'Rourke

Brendan O'Rourke, Assistant Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

John Baker
Employee/Petitioner

v.

State of Illinois/Big Muddy River Correctional Center
Employer/Respondent

Case # **20** WC **023411**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **August 9, 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 **September 3, 2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**69,788.62**; the average weekly wage was $**1,342.08**.

On the date of accident, Petitioner was **56** years of age, ***married*** with **1** dependent child.

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

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

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

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, directly to the medical providers and pursuant to the medical fee schedule. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits. The parties stipulate that Respondent shall receive a credit for medical bills paid through its group medical plan, if any, pursuant to Section 8(j) of the Act. Respondent shall further hold Petitioner harmless from all claims or liabilities made by the group medical plan to the extent of such 8(j) credit.

Respondent shall pay Petitioner the sum of $**805.25**/week for a period of **50.6** weeks, as provided in Section **8(e)** of the Act, because the injuries sustained caused **20% loss of use of the right arm.**

Respondent shall pay Petitioner compensation that has accrued from January 7, 2021 when Dr. Barr released Petitioner at maximum medical improvement, through August 9, 2021, and shall pay the remainder of the award, if any, in weekly payments.

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

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

OCTOBER 7, 2021

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JOHN BAKER,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 20-WC-023411
	)	
STATE OF ILLINOIS/BIG MUDDY RIVER CORRECTIONAL CENTER,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Mt. Vernon on August 9, 2021 on all issues. The parties stipulated that on September 3, 2020 Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent and that Petitioner's current condition of ill-being is causally connected to his injury. The issues in dispute are medical bills and the nature and extent of Petitioner's injuries. All other issues have been stipulated.

TESTIMONY

Petitioner was 56 years old, married, with one dependent child at the time of accident. Petitioner has held the position of Correctional Food Service Supervisor II for three and a half years. He testified that on September 3, 2020 he attempted to prevent a stack of plastic milk crates approximately six to seven feet tall from falling over. His dominant right arm was pulled and he felt a pop and immediate pain. He was sent to the on-site health care unit and stated they felt a knot and told him to follow up with his doctor. The following morning Petitioner was examined at the Orthopedic Center of Southern Illinois. On 9/10/20, Petitioner underwent a biceps tendon repair performed by Dr. Roland Barr.

Petitioner testified that prior to surgery he was unable to lift anything and his arm was painful. He stated he had never injured his right elbow or bicep prior to 9/3/20. Petitioner noted improvement following surgery and a home exercise program. He was released to full duty work and returned to his pre-accident position with Respondent. He has not returned to the doctor since being released. He has pain performing certain activities. Playing catch with his son has been adversely affected as he is not able to throw a ball for very long and he cannot throw as far. Petitioner stated he uses his left arm more while fishing because setting a hook causes pain in his right arm. He has played golf twice since his injury and has pain in his arm engaging in this

sport. He takes over-the-counter Tylenol and uses Biofreeze occasionally. He testified he intends to retire in November 2021.

MEDICAL HISTORY

On 9/4/20, Petitioner presented to the Orthopaedic Institute of Southern Illinois with severe complaints of right elbow pain. The history of accident was taken and Petitioner reported he felt an immediate ripping type of pain following the incident. Examination revealed marked tenderness to palpation at the distal aspect of the biceps with painful active and passive flexion, and significant pain and weakness with supination. PA Mason assessed a right distal biceps tendon rupture and ordered an MRI. The MRI revealed a complete rupture of the distal biceps tendon and signs of retraction and hemorrhage. Immediate surgery was indicated and Petitioner was given an off work slip.

On 9/10/20, Dr. Roland Barr performed surgery and observed a complete distal biceps tendon rupture. Follow up visits show Petitioner was placed in a splint, then a hinged elbow brace, and was released to light duty work beginning 10/22/20, with restrictions of no use of the right hand except for writing, typing, and driving. On 10/22/20, Dr. Barr noted Petitioner was improving and stated he would not reach MMI until five months postop. On 1/7/21, Petitioner reported to Dr. Barr he was doing well and wanted to return to work. Dr. Barr released Petitioner at MMI on this date. Respondent did not obtain a Section 12 examination.

CONCLUSIONS OF LAW

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

Based upon the parties' stipulation to causal connection and the absence of contradictory medical opinions, the Arbitrator finds that Petitioner is entitled to medical benefits. Respondent shall therefore pay Petitioner's medical bills contained in Petitioner's Group Exhibit 1, as provided in Section 8(a) and Section 8.2 of the Act, directly to the medical providers and pursuant to the medical fee schedule. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits. The parties stipulate that Respondent shall receive a credit for medical bills paid through its group medical plan, if any, pursuant to Section 8(j) of the Act. Respondent shall further hold Petitioner harmless from all claims or liabilities made by the group medical plan to the extent of such 8(j) credit.

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

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of §8.1b of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820

ILCS 305/8.1b. The Act further provides that "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment**: Neither party submitted an AMA Impairment Rating. Therefore, the Arbitrator gives no weight to this factor.

(ii) **Occupation**: Petitioner continues to serve as a Correctional Food Service Supervisor for Respondent. The Arbitrator places greater weight on this factor.

(iii) **Age**: Petitioner was 56 years old at the time of accident. Petitioner testified he intends to retire in November 2021. Nevertheless, he must live with his disability for a number of years. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity**: There is no evidence of reduced earning capacity contained in the record. Petitioner returned to his pre-accident employment with Respondent. The Arbitrator places some weight on this factor.

(v) **Disability**: Petitioner sustained a complete right distal biceps tendon rupture. He credibly testified that despite the improvement resulting from surgery and home exercises, he still experiences symptoms with some activities. His son plays travel baseball and he has difficulty throwing a baseball with his right dominant arm. Petitioner stated he uses his left arm more while fishing because setting a hook causes pain in his right arm. He takes over-the-counter Tylenol and uses Biofreeze occasionally. Petitioner was released to full duty work without restrictions on 1/7/21 and returned to his prior employment with Respondent. The Arbitrator places greater weight on this factor.

Based upon all of the foregoing factors and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 20% loss of use of the right arm under 8(e) of the Act.

Linda J. Cantrell, Arbitrator

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC033518
Case Name	Jose Mejia v. Advanced Disposal
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0409
Number of Pages of Decision	41
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	James Nawrocki
Respondent Attorney	Jack Shanahan

DATE FILED: 10/25/2022

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jose Mejia,

Petitioner,

vs. NO: 17 WC 33518

Advanced Disposal,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 17, 2022, is hereby affirmed and adopted.

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

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

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

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

October 25, 2022

MP:yl
o 10/20/22
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	17WC033518
Case Name	MEJIA, JOSE v. ADVANCED DISPOSAL
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	38
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	James Nawrocki
Respondent Attorney	Jack Shanahan

DATE FILED: 2/17/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 15, 2022 0.77%

/s/ Joseph Amarilio; Arbitrator

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Jose Mejia
Employee/Petitioner

v.

Advanced Disposal
Employer/Respondent

Case # **17** WC **33518**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was provided to each party. The matter was heard by the Honorable **Joseph Amarilio**, Arbitrator of the Commission, in the city of **Chicago**, on **12/16/2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **08/14/2017**, 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 $**80,184.00**; the average weekly wage was $**1,542.00**.

On the date of accident, Petitioner was **41** years of age, ***married*** with **2** dependent children.

ORDER

The Arbitrator finds Petitioner's current condition of ill-being to his right knee is causally related to the accident and that Petitioner's current condition of ill-being to his right shoulder is also causally related to the accident,

The Arbitrator finds that all the medical services that were provided to the Petitioner regarding the right shoulder and the right knee as well as the second knee surgery were reasonable, necessary, and causally related to the August 14, 2017 accident.

The Arbitrator the Arbitrator finds that Petitioner is entitled to prospective medical care consisting of a right arthroscopic rotator cuff repair and a possible biceps tenodesis offered by Dr. Roger Chams along with all related services in accordance with Sections 8(a) and 8.2 of the Act.

The parties stipulated that all TTD has been paid and, thus, is not in dispute.

By agreement of the parties, 17 WC 33517 is deferred.

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/ *Joseph D. Amarilio*

Signature of Arbitrator JOSEPH D. AMARILIO

FEBRUARY 17, 2022

ATTACHMENT TO ARBITRATION DECISION –19(b)/ 8 (a)

FINDINGS OF FACT OF FACT AND CONCLUSIONS OF LAW

I. Procedural History - 17 WC 033518

This is the second 19(b)/8(a) hearing in regard to the above-captioned matter regarding an August 14, 2017 work accident filed under Commission docket number 17 WC 033518. It was heard on December 17, 2021 in the City of Chicago.

The case previously proceeded to hearing before Arbitrator Maria Bocanegra and was limited, by agreement of the parties, to the right knee. After a finding for the Petitioner on the disputed issues, Respondent filed a timely review of the arbitration decision. The Commission Decision and Opinion on Review was filed on September 16, 2020. The Commission affirmed and adopted the Decision of Arbitrator Bocanegra filed on March 22, 2019. (PX 1)

At the December 17, 2021 hearing, the parties reserved the issue of unpaid medical bills for final disposition or hearing. The parties agreed that all temporary total disability benefits (TTD) have been paid and, thus, TTD is not in dispute. (ARB X 1) As in the previous trial, the parties orally stipulated that they will

proceed in the claim filed under 17 WC 033518 and deferred the claim filed under 17 WC 033517 regarding a left knee claim.

The parties currently dispute three issues: (1) whether Petitioner's current conditions of ill-being to his right knee and right shoulder are causally connected to his work injury; (2) whether Petitioner's second knee surgery was reasonable, necessary and causally related to the work accident of August 14, 2017; and, (3) whether Petitioner is entitled to prospective medical care in the form of a second surgery to the right shoulder.

As noted above, this matter was previously tried by the parties on a prior 19(b)/8(a) petition before Arbitrator Bocanegra on the issue of causal connection and medical necessity of surgery to petitioner's right knee proposed by his treating orthopedic surgeon, Dr. Chams. Relying on the findings and opinions of Respondent's section 12 examining physician, Dr. Verma, Respondent disputed that the right knee was in a surgical condition and disputed that the proposed surgery was causally related to the August 14, 2017 work accident. (PX 1).

Dr. Chams also had prescribed right shoulder surgery following the August 14, 2017 work accident, which respondent did authorize, based on the opinions of Dr. Verma (PX 1, RX 1, p.6). Following that surgery, Dr. Chams recommended a second surgery on petitioner's right shoulder, the causal connection and medical necessity of which is currently disputed.

In the prior hearing concerning the recommendation for the first right knee surgery, Arbitrator Bocanegra adopted the findings and opinions Dr. Chams that petitioner's right knee conditions were caused and/or aggravated by petitioner's work accident and that right knee surgery was appropriate. She found the findings and opinions of Dr. Chams to be more credible than those of Dr. Verma. Following Respondent's Review, the Commission agreed and upheld the decision on September 16, 2020 (PX 1).

In addition, the parties confirmed prior to this hearing that, following the first right knee surgery on November 27, 2020, Dr. Chams had ordered a second surgery to the right knee, which petitioner underwent on September 1, 2021. Respondent currently disputes its liability for that second knee surgery based on the findings and opinions of Dr. Verma rendered after petitioner's first right knee surgery (Arb. Trans. (AT) 5-6).

Based on the Commission's Decision regarding the first right knee surgery, respondent nevertheless authorized the second right knee surgery and has represented that it has paid appropriate benefits. As payment of medical benefits under the Act is not an admission of liability for those benefits pursuant to Section 8 (820 ILCS 305/8(a)), respondent maintains its dispute as to the causal connection of the second knee surgery to the original work injury. See also. *Lewis v. Industrial*

Commission, 357 Ill. 309 (1934) (payment of medical benefits under the Act is not an admission of liability for those benefits.)

The issues presented to the arbitrator on these 19 (b)/8 (a) petitions are therefore the causal connection and medical necessity of the proposed second right shoulder surgery and respondent's liability for the second right knee surgery. (Arb. Ex. 1, AT 5-6).

Lastly, the parties acknowledged that the consolidated case filed under docket number 17 WC 33517 concerned a left knee injury that is not the subject of the petitioner's 8(a) petition in 17 WC 33518 (AT 4-5) and has been deferred by agreement of the parti.

II. FINDINGS OF FACT

This is the second 19b/8a hearing in this case, the first being tried before Arbitrator Bocanegra and limited as to issues involving the right knee only, the right shoulder injury was deferred. After finding for Petitioner, Respondent filed a timely review, the Commission affirmed. No further appeals were taken. The Commission Decision was introduced into evidence as Petitioner's exhibit number 1 and forms as the basis of the law of the case as to certain facts and findings in the current hearing. Under the doctrine of the law of the case, "where an issue has been litigated and decided, a court's unreversed decision on that question of law or

fact settles that question `for all subsequent stages of the suit.'" *Pekin Insurance Co. v. Pulte Home Corp.*, 344 Ill. App. 3d 64, 69 (2003), quoting *Norton v. City of Chicago*, 293 Ill. App. 3d 620, 624 (1997).

In her decision, Arbitrator Bocanegra found that on August 14, 2017 Petitioner was 41-year-old Front Load Truck Driver for Respondent who had no prior right knee injuries. On that date, Petitioner was putting a compactor in the back of a 6-wheeler truck, when the compactor started to roll off. Petitioner held on to the compactor and was pulled off the back of the truck about 4-5 feet off the ground, twisting his right shoulder and falling to the ground on his right knee. He injured his right knee, right shoulder and complained of neck pain as well. (PX 1, p. 3)

After initially receiving treatment at Physicians Immediate Care, Petitioner sought treatment with Dr. Roger Chams, an orthopedic surgeon, for both his right shoulder and right knee. Dr. Chams diagnosed a right shoulder rotator cuff tear and a right knee meniscal tear. He opined that both injuries were related to the August 14, 2017 accident, and that each had to be addressed surgically (PX 1, p. 3, Dr. Chams 03/24/2020 narrative, PX 3).

In regard to the right shoulder, Respondent's counsel stated during the evidence deposition of Dr. Chams:

> "Yes, as far as the injury of August 14, 2017, the Respondent agreed that Mr. Mejia was injured during the course of his employment on the date and that he sustained an injury consisting of a partial rotator cuff tear to his right shoulder and that the treatment initially recommended by Dr. Chams consisting of arthroscopic repair of the shoulder injury was necessary and casually related." (PX 3, pp. 6-7)

Accordingly, Respondent authorized surgery was for the right shoulder. Prior testing revealed a high-grade 1 cm rotator cuff tear, bursitis, subacromial encroachment and AC arthropathy. On June 14, 2018, Dr. Chams performed a right shoulder arthroscopy with debridement of the labrum, subacromial decompression, distal clavicle restriction, as well as a rotator cuff repair. (Px 2)

Petitioner then began a course of physical therapy. However, he soon began to develop tingling in the right thumb on August 6, 2019 and pain in the right shoulder requiring medication on September 17, 2018. Dr. Chams continued Petitioner in physical therapy, elevating the shoulder rehabilitation to "aggressive physical therapy" (PX 2). On October 1, 2018, Dr. Chams requested a new MRI, which was performed on October 24, 2018 (Px 2). It was read as normal (PX 3, p. 9) On December 17, 2018, Dr. Chams noted and recorded that Petitioner was experiencing pain and weakness post operatively with full range of motion but

with positive signs of impingement. Petitioner was continuing with the work conditioning (PX 2).

On January 21, 2019, physical therapy was discontinued due to Petitioner's positive impingement and a high level of pain. Dr. Chams also wanted a repeat MRI with a diagnostic arthroscopy (PX 3, pp. 9-10)

In his April 27, 2031 evidence deposition, Dr. Chams opined that Petitioner sustained a right meniscal tear from the August 14, 2017 accident, which needed to be surgically repaired (PX 1). Whereas Dr. Verma, in his January 29, 2018 Section 12 examination, stated that he could find no evidence of an acute injury and could not find any evidence that Petitioner needed surgery or any further treatment. (RX 2, pp. 10-14). Dr. Verma rendered these opinions which are inconsistent with his review of Dr. Chams' treatment records, the surgical report and post-surgical records, MRI reports and scans, and therapy records following the MRI scan. (RX 1, p. 8)

On April 12, 2019, Petitioner was again examined by Dr. Verma. No opinion on the shoulder could be given until MRI's could be reviewed. (RX q, pp. 7, 12) A new MRI with an arthrogram was eventually authorized and took place on August 2, 2019. (PX 3, p. 11) Dr. Chams read the results to show a high-grade partial tear in the articular side of the rotator cuff (PX 3, p. 11) In a supplemental

Section 12 report dated October 1, 2019, Dr. Verma found only routine post-surgical findings with no evidence of a new or recurrent injury. He recommended an FCE instead of surgery (RX 1, pp. 15-16) In contract, Dr. Chams, opined that there was a retear in the same location as the rotator cuff tear that had previously been torn. (p.25, Px 3) and it correlated with Petitioner's physical examination (PX 3, pp. 11-12). Moreover, Dr. Chams explained that because Petitioner had a high-grade partial tear, and not a full thickness tear, there was no leaking of dye during the MRI arthrogram (PX 3, p. 13) Dr. Chams also stated that high-grade partial tears are treated like full thickness tears: if the patient is having pain, they should be fixed. (PX 3, p.13)

Both Dr. Chams and Dr. Verma agree that recurrent rotator cuff tears for his sized tear occur 5-10% of the time (PX 3, p.21; RX 1 p.37) Dr. Chams testified that retears "… can happen from nothing. You know, it's the actual body's way of not healing. It can happen from a traumatic event early on in physical therapy, it can happen from something very casual, so I can't tell you." (PX 3, p.21)

Dr. Chams opined that recurrent rotator cuff tears are a natural and foreseeable consequence of the original injury. (PX 3, p.21) No evidence was introduced to show any new or intervening injuries.

On February 21, 2020, Petitioner had a FCE, which was considered valid. Physical examination was significant for a marked decrease in his involved right shoulder range of motion compared to his left. He also had diminished sensation at his right median nerve distribution. Grip strength testing showed a marked strength deficit on the right compared to the left but was invalid on Rapid Exchange Grip. Petitioner showed an edema increase at his involved right hand from the pre-FCE and post-FCE of 39mL, consistent with his subjective complaints and reported history of swelling with activity. The recommendation was for light duty work not in excess of 20 lbs. and no more than 10 lbs. above the right shoulder height on an occasional basis. In summary, the FCE examiner opined that Petitioner is unable to return to his previous occupation as a garbage truck driver based on the official job description. (Px 2)

Petitioner continued to follow up with Dr. Chams at regular intervals. There was no active treatment as the surgeries, for the right shoulder and right knee , were not being approved. (Px 2)

Following the September 16, 2020 Commission decision, right knee surgery was performed by Dr. Chams on November 23, 2020. (AT 18) After the surgery, petitioner testified that within one month, he was in pain, his knee was swollen and would lock on him every now and then. He was using a brace that he testified went

from his ankle to the top of his leg, and he used that and crutches for the next 16 weeks. Petitioner testified that his knee then locked up while he was in bed on the morning of March 18, 2021. Following an examination on that date, Dr. Chams ordered a new right knee MRI. Following the results of that, petitioner testified that Dr. Chams prescribed a second right knee surgery. This surgery took place on September 1, 2021 (AT 18-20).

Following this second knee surgery, petitioner testified that he felt that his knee was getting worse. He said that Dr. Chams provided a cortisone shot into the knee on November 29, 2021, and that a cartilage injection is also being considered "due to the fact that I am bone-on-bone." (AT 20-21).

At his evidence deposition, Dr. Chams was asked about what he found in the knee and the effect of waiting three years to do the meniscal repair:

Q. Tell us about—tell us about the injury that you went into his knee to repair.

A. He had—He had a really bad injury. So he had something called a discoid meniscus, which is he was born with a disc of C-shape meniscus, but he tore the periphery, making it a very unstable tear.

Q. Okay. And my question to you is this: Mr. Mejia was injured in August of 2017. He's now operated on by you for this injury in November of 2020. Does a delay of three years have anything to do with the severity of the injury that you addressed?

A. Yeah, it has very much to do with the effects to the healing. In other words, the

> blood supply for—we know that if you're going to fix the meniscus, like we did
> repair it and we repaired it because of his age, they do very poorly by waiting on it. They do better right after the injury, and as time goes on, they're very time sensitive. (Px 3, pp. 15-16)

Dr. Chams found the meniscus to be "Torn to Shreds" with only 10% to be intact (pgs. 36-37, Px 3).

Following knee surgery Petitioner used crutches and a knee brace. Physical therapy was initiated on December 9, 2020 with mild effusion and tenderness noted (PX 2). Similar findings were noted on February 18, 2020. (PX2). On March 18, 2020, Petitioner reported that he experienced an acute episode of right knee locking with an inability to bend. A recurrent right meniscal tear was suspected (Px 2).

On April 7, 2021, Petitioner had a new MRI of the right knee which was read as showing a bucket handle tear with some components displaced into the notch. (Px 2, pp. 37-38) Dr. Chams recommended surgery. Dr. Chams opined that is related to the original injury:

> Q. And Doctor, you know, you surgically repaired it in November. Is the re-tear related to the original injury or to the original - - or to the surgery? How would you explain it?

A. Well, when you have an original tear that was peripheral in that discoid meniscus, they heal about 50 percent of the time. So 50 percent of the time,
we have to go back in and clean it up. This is a very unstable tear that took
a long time to scope. (Px 3, p. 22)

On June 2, 2021, Dr. Verma issued a Section 12 records review report. His 6 findings are found below:

1. I do agree with Dr. Chams that a second surgery on the right knee is medically
necessary and reasonable. Specifically, the MRI does show a displaced fragment
of meniscus with failure of the prior repair.

2. At this point, assuming that the commission did find that the first right knee surgery was related to the August 2017, work injury, then the second surgery would represent a failure of the prior repair and subsequently be related to the same injury date.

3. At this point, assuming, again, that the first knee surgery was found to be related to the condition, it is my opinion that the second knee surgery is a direct result of the first knee surgery, given the failure of the prior repair with recurrent meniscal tearing and therefore, I would relate the condition to the work injury. However, regardless of the commission's opinion, it remains my opinion; the patient's condition of the knee is non-work related. Specifically, at the time of the initial event, the patient demonstrated no swelling of the knee. He had no specific pain with palpation. MRI scan showed evidence of a discoid meniscus with patellar chondromalacia, both of which are preexisting conditions. Meniscal tearing in the setting of a discoid lateral meniscus occurs commonly in the absence of any traumatic event and the lack of exam findings at the time of the initial evaluation, would not be consistent with acute or traumatic meniscal tear.
Assuming that the patient's knee condition is non-work related, the second surgery would also be non-work related.

4. Not applicable, regardless of causation, I do agree with Dr. Chams' recommendation that a second surgery would be appropriate at this time given the displacement of the meniscal fragment.

5. Following the first knee surgery, in which meniscal repair was performed, the treatment recommended by Dr. Chams of restricted weight bearing, bracing, and crutches followed by progressive physical therapy was reasonable and appropriate.

6. At this point, in regards (sic.) to the right shoulder my opinions remain unchanged after review of the additional medical records.

Based on these opinions, Respondent authorized a second knee surgery that was performed on September 1, 2021 by Dr. Chams. Petitioner testified that the knee still swells and is painful. At his last visit with Dr. Chams on November 29, 2021, he was given an epidural injection with a cartilage implant being considered. He is continuing in P.T.

On December 16, 2021, this case was tried as a 19b/8a hearing on on the issue of casual connection, medical necessity and prospective medical necessity.

The documentary evidence in this case is fairly straightforward: petitioner introduced The Commission's Decision in the prior hearing is PX 1, the full records of Dr. Chams from 2016 through November 2021 as Exhibit 2, and the evidence deposition testimony of Dr. Chams as his Exhibit 3.

Respondent introduced the evidence deposition testimony of Dr. Verma as its Exhibit 1, to which was appended as exhibits his prior reports in this matter. For convenience's sake and ease of reference in this matter, Respondent also introduced as its Exhibit 2 the testimony of Dr. Verma from his 2018 deposition preceding the 2019 trial.

-- Right Shoulder

As noted, the only treatment that has not been subject to dispute between Dr. Chams and Dr. Verma was the prescription for right shoulder surgery following the August 2017 work accident. Respondent stipulated that Petitioner was injured during the course of his employment on August 14, 2017 and that he sustained an injury consisting of a partial rotator cuff tear to his right shoulder and that the treatment initially recommended by Dr. Chams consisting of an arthroscopic repair of the shoulder injury was necessary and causally related. (Px. 3, pp. 6-7)

Petitioner underwent that procedure on June 14, 2018. According to Dr. Chams, he performed an arthroscopic rotator cuff repair, distal clavicle resection and subacromial decompression (PX 3, p. 6; see also, PX 2, 6/14/18 op rpt). Petitioner followed up with Dr. Chams almost monthly through December 2018. Concurrently, petitioner was undergoing physical therapy, which Dr. Chams described in his testimony as aggressive physical therapy. (PX3, pp. 6-8; PX 2, office visits).

As noted above, Dr. Chams ordered a new MRI after the October 1, 2018 follow-up visit, which was performed on October 24, 2018. He described the findings of that study in his deposition as "essentially normal" postoperative changes with some evidence of tendinosis. (PX3, p. 8).

Petitioner reported progress in therapy at his November 2018 visit, but noted that the right shoulder was sore. At that time, Dr. Chams recommended that petitioner begin work conditioning.

At the follow-up visit on December 17, 2018, petitioner was still having pain and weakness in the right shoulder, along with signs of impingement. He had full range of motion, however. Dr. Chams testified that the evidence for impingement was complaints of pain in the mid-range of motion. (PX 3, pp.7-8). The examination report of December 17, 2018 confirms that petitioner had full range of motion of the shoulder and a largely negative examination except for positive impingement testing. (PX 2, 12/17/18 offc visit).

Nonetheless, by January 21, 2019, petitioner complained he was unable to tolerate work hardening due to pain, and he was discharged from that program. Dr. Chams' examination was positive for impingement and complaints of tenderness, and he recommended a repeat diagnostic arthroscopy on that date. (PX 3, pp. 8-9)

Comparison with the examination note of this date again shows full bilateral range of motion of the shoulders with tenderness only in the lateral bursa and positive impingement signs.

When asked during his deposition to explain the recommendation for a second right shoulder surgery considering MRI findings that were essentially normal, Dr. Chams stated that "his exam didn't match his MRI." Petitioner was having more pain than was typical for that period postoperatively, and with postoperative MRIs, "you can miss things." (PX 3, p.9).

With the second shoulder surgery recommendation, respondent opted to have petitioner re-examined by Dr. Verma on April 12, 2019 (RX 1, Dep. Ex. 2). A subsequent records review report evaluating the MRI films was obtained on June 24, 2019 (inadvertently dated October 6, 2019 (RX 1, p.40)), from which Dr. Verma recommended an MRI arthrogram (RX 1, Dep. Ex. 2). This was undertaken on August 2, 2019, and petitioner then followed up with Dr. Chams on August 12, 2019. (PX 2).

During his deposition, Dr. Verma confirmed the summary of his initial Section 12 report findings on January 29, 2018, following the August 14, 2017 work accident, relative to the proposed initial surgeries to the right shoulder and right knee. Dr. Verma confirmed that the initial post-accident MRI of the right shoulder in 2018 showed a high-grade partial supraspinatus tear consistent with an

acute injury, for which he recommended arthroscopic repair. He felt the findings and need for the first right shoulder surgery were causally related to the August 14, 2017 work injury (RX 1, p.6).

In his report of the April 12, 2019 (RX 1, Dep. Ex. 2), Dr. Verma reviewed the operative report and postoperative records from Dr. Chams, including the post-op MRI report from October 24, 2018, along with petitioner's therapy records. He stated that the shoulder surgery revealed that the cartilage, labrum, and biceps were all normal, and that petitioner had an acromial osteophyte along with a tear of the rotator cuff which was repaired. He noted the operative findings were consistent with what he had anticipated based on the MRI and the preoperative examination notes. (RX 1, pp. 8-9).

Regarding the postoperative right shoulder treatment, Dr. Verma testified that petitioner underwent routine postoperative rehabilitation, and with continued complaints of pain, underwent a repeat MRI that showed essentially normal post-surgical changes and no new condition. He testified that the postoperative pain complaints were atypical for the recovery from this type of surgery. He denied that there was anything in the records of Dr. Chams that would objectively account for the petitioner's subjective pain complaints (RX 1, pp. 9-10).

He further noted petitioner's complaints of numbness and tingling down the right arm and that a cervical MRI had been recommended. During his Section 12

examination on April 12, 2019, petitioner had diffuse pain including the neck and paratrapezial region with numbness and tingling all the way down to his fingers. He also had global pain around the shoulder and difficulty lifting (RX 1, p.10; Dep. Ex. 2, p. 2).

Regarding his physical examination, Dr. Verma opined that petitioner had a negative Spurling sign despite complaints of neck pain with range of motion. He also complained of global pain in the shoulder but had no evidence of stiffness with passive range of motion. With active range of motion, however, petitioner was limited due to pain. In other words, petitioner only complained of stiffness when he was asked to move his arm through range of motion (RX 1, pp. 10-11).

Dr. Verma found that Petitioner demonstrated 4/5 strength in both planes, limited by pain, and his biceps testing was normal as were his instability exams. Likewise, his distal neurovascular exam was normal, but petitioner had complaints throughout all his digits in a non-anatomic distribution. Dr. Verma defined non-anatomic distribution as meaning that one could not associate the numbness to any single dermatome or nerve root that would provide an anatomic etiology to it (RX 1, pp. 10-11).

Dr. Verma did not have the MRI of the shoulder at the time of the April 2019 Section 12 examination but based on his examination and review of the records, his diagnosis was persistent right shoulder pain of unclear etiology. As for

the cervical spine, Dr. Verma did not relate those complaints to any aspect of the August 2017 work injury or to the shoulder surgery (RX 1, pp.11-12). The Arbitrator notes that petitioner is making no claim of respondent's liability for the cervical spine complaints or treatment.

Dr. Verma was subsequently provided the shoulder MRI films, and his summary of those is contained in a record review report prepared on June 24, 2019 (RX 1, Dep. Ex. 2, incorrectly dated October 6, 2019). Following his review of the shoulder MRI, Dr. Verma recommended that an MRI arthrogram be done. (RX 1, p.13, 40; Dep. Ex. 2, 6/24/19 rpt.). Dr. Verma stated that an MRI arthrogram "gives you a better ability to evaluate anatomic findings within the shoulder, particularly in the setting of prior surgery." (RX 1, p.13).

The MRI arthrogram was done on August 2, 2019 (PX 2, 8/4/19 arthr. rpt.). In his October 1, 2019 report reviewing those films, he noted that the arthrogram report in the opinion of the interpreting radiologist referenced a recurrent high-grade partial tear of the articular surface, but that upon his review of the actual films, disagreeing with the findings and opinions of the radiologist as well as Dr. Charms, Dr Verma testified that the arthrogram showed no evidence of a new or recurrent injury. Instead, the findings were typical for the postsurgical appearance of a rotator cuff that had been repaired. The rotator cuff was otherwise structurally

intact, and Dr. Verma felt no further treatment to the shoulder was needed beyond an FCE. (RX 1, pp. 14-15).

On the issue of the proposed second surgery, Dr. Verma confirmed his opinion that it was not medically necessary. The basis for this opinion was that petitioner's subjective pain complaints were not consistent with any diagnosis of recurrent or persistent rotator cuff pathology, the objective findings showed the shoulder was functioning well and the diagnostic studies did not show a surgical lesion whose repair would improve petitioner's subjective complaints (RX 1, p.16).

In his deposition, Dr. Chams explained that an arthrogram involves a dye being injected into the shoulder joint prior to the MRI to look for evidence of a full thickness tear by virtue of leakage of the dye. (PX 3, p.10). Dr. Chams testified that the 2019 arthrogram showed a high-grade partial tear in the articular side of the rotator cuff. He further testified that this finding correlated with his clinical findings. (PX 3, pp. 10-11).

When questioned about Dr. Verma's interpretation of the arthrogram and how it compared to Dr. Chams', however, Dr. Chams testified that, "it correlates well because, you know, we didn't think he had a full thickness tear, we thought he had a high-grade tear. So, you won't see any dye leaking into the person that happens with a full thickness tear." (PX 3, pp. 11-12).

When asked whether his recommendation for the second shoulder surgery was based simply on petitioner's subjective complaints of pain, Dr. Chams referenced the arthrogram, and noted his two-plus years of treating petitioner. When asked what the purpose of his proposed second surgery was, however, his answer was, "to look at his rotator cuff, and if it's torn, to fix it, so he can go back to work." (PX 3, pp. 24-25).

With regard to his right shoulder, petitioner testified that he has not received any treatment to the shoulder since the FCE. He testified that since the first shoulder surgery, he can only elevate his shoulder up to a lateral position to the neck on the right side but has full elevation of the shoulder on the left side. He testified that he takes ibuprofen and over-the-counter medication to address the pain in his right knee and right shoulder. (AT 22-23).

Right Knee

Following the knee surgery that was awarded by the Commission, Dr. Chams confirmed that the pathology revealed in the knee surgery was chondromalacia and the torn discoid meniscus (PX 3, pp. 32-33). His medical records verify the postoperative course petitioner testified to, including the knee locking incident of March 18, 2021 (PX 2). Dr. Chams described that petitioner had had a bucket handle tear of the meniscus, “and that meniscus that we repaired

on the outside, that failed, so it clipped into the joint and locked his knee up." He ordered a new MRI of the right knee, which the doctor said showed a bucket handle tear of his meniscus that was locking his knee. (PX 3, pp. 17-18).

He testified that with the original tear that was peripheral in the discoid meniscus, which heal about 50% of the time, such that 50% of the time it is necessary to "go back in and clean it up. This is a very unstable tear that took a long time to scope." He testified that the second surgery would involve taking a piece of the meniscus out rather than attempting to repair it (PX 3, p. 20).

With the second knee surgery proposal coming in early 2021, respondent forwarded the first operative report and follow up records through April 15, 2021 to Dr. Verma for a record review, which he completed on June 2, 2021 (RX 1, Dep. Ex. 3). He testified, after reviewing Dr. Chams' first operative report and the follow-up records, that Dr. Chams repaired a torn discoid meniscus "from the periphery, using an inside-out device." When presented with this additional information and asked whether the additional pre- and post-op records changed his prior opinion as to the medical necessity of the first surgery, Dr. Verma testified that it did not. (RX 1, pp.19-20).

This opinion was based on the fact that at the time of his original Section 12 examination in January 2018, petitioner had full range of motion in the knee and the knee MRI did not show any evidence of an acute or traumatic finding. Had

petitioner torn the meniscus traumatically from the work accident, he said one would expect signs of swelling and other evidence of acute injury. He further testified that it looks like the surgery that Dr. Chams performed "made the patient worse because he had a subsequent event where the meniscus is now further torn and requires some additional surgery." (RX 1, pp. 20–21).

As for the proposed second surgery itself, Dr. Verma agreed that it was medically necessary due to the outcome of the first surgery. With the understanding that the Commission had adopted Dr. Chams' opinion that the first knee surgery was medically necessary and causally related, Dr. Verma agreed that the second surgery would be necessary and related to the first surgery (RX 1, p. 24).

Independent of legal causation, however, Dr. Verma testified that the outcome of the first knee surgery supports his original opinion that there was a stable discoid meniscus prior to the first surgery, and that the first surgery was therefore unnecessary given the absence of any structural abnormality in the meniscus. The first knee surgery caused the stable lateral meniscus to become unstable, giving petitioner a worse condition in his knee than he began with. (RX 1, pp. 24-25).

As noted, petitioner underwent the second knee surgery on September 1, 2021 with respondent's authorization. Petitioner's Exhibit 2 contains no follow up exam notes from Dr. Chams prior to the December 17, 2021 hearing.

III. CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the Petitioner 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 or her claim *O'Dette v. Industrial Commission,* 79 Ill. 2d 249, 253 (1980) including that there is some causal relationship between the employment and the injury. *Caterpillar Tractor Co. v. Industrial Commission*, 129 Ill. 2d 52, 63 (1989). And, yet it also is well established that the Act is a humane law of remedial nature and is to be liberally construed to effect the purpose of the Act - that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public.. *Shell Oil v. Industrial Comm'n,* 2 Ill.2nd 590, 603 (1954). The Act is a remedial statute which

should be liberally construed to provide financial protection for injured workers. *McAllister v. IWCC*, 2020 IL 124848 ¶ 32. The Act's provisions are to be read in harmony to achieve that goal. *Vaught v. Industrial Commission,* 52 Ill.2d 158, 165 (1972). Workers are entitled to "prompt, sure, and definite compensation, together with a quick and efficient remedy" with industry bearing the "costs of such injuries" rather than the injured worker. *O'Brien v. Rautenbush*, 10 Ill.2d 167, 174 (1956). Decisions of an Arbitrator shall be based exclusively on stipulation of the parties, the evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e)

Credibility Finding: The Arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47 The Arbitrator viewed Petitioner's demeanor under direct examination and under cross-examination. The Arbitrator considered the testimony of Petitioner with the other evidence in the record. Petitioner's testimony is found to be credible. Furthermore, the Arbitrator has considered the testimony in the evidence deposition Dr. Chams and Dr. Verma with the other evidence in the record. The

Arbitrator found the testimony of Dr. Chams to be more persuasive than Dr. Verma.

With regard to Issue F, is Petitioner's current condition of ill-being causally related to the injury, and Issue J – Were the medical services that were provided to Petitioner reasonable and necessary, the Arbitrator finds the following:

The Supreme Court in *International Harvester v. Industrial Commission,*46 III.2d 238 (1970) defined an "independent intervening cause" as one which breaks the chain of causation between a work-related injury and an ensuing injury or disability. Where the work injury causes a subsequent injury, the chain of causation is not broken. Cases have applied a "but for" test basing compensability for an ultimate injury or disability upon a finding that it was caused by an event which would not have occurred had it not been for the original injury. Clear illustrations of this chain of causation relationship are cases where a second injury occurs due to treatment for the first or where a suicidal act is caused by the effects of an original injury. The "but for" rationale has also been extended 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 or disabling . The court held that compensation for subsequent injury or disability is properly awardable when the existing employment-connected condition is a

causative factor in producing either the subsequent injury or the subsequent disability.

In *Nabisco Brands, Inc. v. Industrial Commission,* 266 Ill. App 3d 1103, (1st Dist. 1994), the Appellate Court held, what is well settled law, that an employer is liable for all injuries and disabilities traceable to an accident injury absent an intervening cause breaking the chain. For example, in *Brooks v. Industrial Commission*, 78 Ill.2d 150 (1980) the Respondent asserted that the pain associated with an exploratory laminectomy performed to treat Petitioner's back condition from a workplace fall was cause of Petitioner's disability rather than the fall itself. The Supreme Court held that the surgery was not an independent intervening cause where the it was performed because of the work injury.

Once again, petitioner bears the burden of proving every element of his claim by a preponderance of the credible evidence. The Commission determined after a full hearing that the first right knee surgery was medically necessary and causally related to the August 14, 2017 work injury. Petitioner nonetheless bears the burden of proving that the second right knee surgery and the subsequent treatment was likewise causally related to the work accident or the treatment resulting therefrom.

Dr. Verma's testimony that a second right knee surgery was made necessary by the first right knee surgery is sufficient for the Arbitrator to find that respondent is liable for the second right knee surgery, which was performed on September 1, 2021. Since the Arbitrator and the parties are bound by the prior Commission decision regarding the first surgery, testimony that a second surgery is now necessary due to the first surgery legally causally connects the second knee surgery to the work accident.

The Act was created to protect the health and survival of workers injured in their jobs. See *Peoria County Bellwood v. IC*, 115 Ill.2d 524, 529 (1987); *O'Brien v. Rautenbush*, 10 Ill.2d 167, 174 (1956). The Act does not punish workers for poor surgical results. Respondents are not excused from their §8(a) obligations. There is no suboptimal treatment defense to §8(a) rights.

The recent case of *Steve Lewis v. Illinois Workers' Compensation Comm'n,* 2021 IL App (5th) 200302WC-U (09/24/2021) is instructive. and factually like the instant case. As in *Lewis*, Respondent asserts that an employer cannot be liable for any condition caused by treatment rendered by a claimant's chosen physicians that was not reasonable and necessary. The Appellate Court in *Lewis* not only disagreed but reversed the Commission. The court held that the Commission's agreement with Respondent's assertion was against the manifest weight of the evidence.

The *Lewis* court held that *Zick v. Industrial Comm'n*, 93 Ill. 2d 353 (1982), and *Reynolds v. Danz*, 172 Ill. App. 3d 907 (1988), are not dispositive of the disputed issue in *Lewis*. In *Zick*, the Supreme Court held that where the claimant voluntarily submitted to treatment by a physician of her choice, where treatment results in a disability *unrelated* to an injury sustained during employment, it would be unjust to hold the respondent liable. *Lewis* at ¶ 133 [*emphasis added*) In *Zick*, although the employer presented evidence of possible mistreatment of the claimant's condition, the question presented was "whether [the claimant's] disability resulted from trauma [sustained in the forklift accident], or whether it was due to a congenital anomaly aggravated by medical mistreatment." Id. at 359. The Commission found, and the *Zick* court later affirmed, that the claimant's current condition of ill-being resulted from medically improper and unnecessary surgeries that were unrelated to the accidental injury. Id. at 360

In contrast here, and like *Lewis,* there is no question that Petitioner's treatment in the form of knee surgery was for purported symptoms related to his condition of ill-being in his knee. Here, the treatment administered by Petitioner's treating orthopedic surgeon was directly related to Petitioner's symptoms from his condition of ill-being in Petitioner's right knee. The record demonstrates that Petitioner was working without incident before injuring his right knee. It is undeniable and undisputed that Dr. Chams performed the second surgery to

alleviate Petitioner's complaints of pain stemming from his right knee injury. Consequently, it is clear from the record that, absent these complaints, Petitioner would not have undergone surgery.

Here, Petitioner's work-related accident was a causative factor in his condition of ill-being. It need not be the sole or primary cause. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Here, the knee surgery was natural consequence that flowed from Petitioner's injury that arose out of and in the course of his employment is compensable. It was not caused by an independent intervening accident that broke the chain of causation between a work-related injury and an ensuing disability or injury. *See, Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 786 (2005)

- Right Shoulder

The Arbitrator finds that Petitioner's current condition of ill-being in his right shoulder is causally related to his work injury. It has long been held that "a chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *Int'l Harvester v. Indus. Comm'n*, 93 Ill. 2d 59, 63-64 (1982). "When the claimant's version of the accident is uncontradicted and his testimony is

unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award. Id. at 64. It is also well established that an accident need not be the sole or primary cause-as long as employment is a cause-of a claimant's condition. *Sisbro v Industrial Commission*, 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth Hospital v Worker's Compensation Comm'n*, 371 Ill. App 3d 882, 888 (2007). A claimant with a pre-existing condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v Industrial Commission*, 92 Ill.2d 30, 36 (1982). That Petitioner had a pre-existing condition does not preclude the use of a chain of events analysis. *Schroeder v Illinois Worker's Compensation Commission*, 2017 Ill. App.(4th) 160192 WC (2017); *Corn Belt Energy Corp. v Illinois Worker's Compensation Commission,* 2016 Ill. App (3d) 150311 WC. The Arbitrator finds based on the weight of the credible evidence in this record, Petitioner's current condition of ill-being is causally related to the work accident based on the chain of events

In this claim, the Petitioner provided unrebutted testimony that, prior to his work accident, he never sought treatment for his right shoulder. Prior to his work accident he did not experience pain which required him to seek medical attention. As a result, the Petitioner established that his right shoulder was asymptomatic

prior to his work accident; accordingly, he established that he was in a "previous condition of good health". Thus, Petitioner also established that he suffered an injury to his right shoulder on August 14, 2017 while performing his job duties. Furthermore, Respondent stipulated that the Petitioner sustained a work-related right shoulder for which surgery was necessary and causally related. (Px 3, pp. 6-7)

In in addition to proving by a preponderance of the evidence that his current condition of ill-being to his right shoulder is causally related to his work injury of under the chain of events, Petitioner's orthopedic surgeon opined that he sustained a work related shoulder injury.

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:

With respect to issue (F), the Arbitrator found that Petitioner's current condition of ill-being to be casually related to the work accident of August 14, 2017. Both Dr. Chams and Dr. Verma agreed that the rotator cuff repair of June 14, 2018 was medically necessary, so there is no dispute as to this procedure.

As to the right knee, the medical necessity of a meniscal repair was established initially by Commission decision (PX 1). The medical necessity for a second surgery stems from the law of the case was established by the medical opinions of both the treating and examining physicians.

Respondent posits that because Petitioner needed a second surgery and his recovery from it is not going well is reason to say such treatment is not reasonable or necessary. Aside, from disregarding the medical opinions of their own Section 12 examining physician on this point, such an argument is not well founded. Dr. Chams is very clear that the delay in treatment of the knee from August 2018 until November 2020, occasioned solely by the delays of Respondent's failure to approve surgery and the delays of litigation complicated the effects of having a meniscus that was 90% shredded. Dr. Charms well explained why the delay in authorizing surgery impaired the result. Moreover, the right knee was locking due to a loose cartilage fragment that had to be removed for the right knee to function. For all of these reasons, the Arbitrator finds all of the medical care afforded to Petitioner by Dr. Chams to treat his right shoulder and knee has been both reasonable and necessary.

In conclusion, the Arbitrator finds that the treatment provided to the Petitioner regarding was reasonable and necessary.

WITH RESPECT TO ISSUE (K), IS THE PETITIOENR ENTITLED TO ANY PROSPECTIVE MEDICAL, THE ARBITRTOR FINDS AS FOLLOWS:

With respect to issue (F), the Arbitrator found Petitioner's current condition of ill-being to be casually related to the work injury of August 14, 2017. In addition, the Arbitrator found the medical opinions of Dr. Chams to be more persuasive than those of Dr. Verma as to the current diagnosis of Petitioner's right shoulder condition. Dr. Chams and Dr. Verma agree that there is a 5-10% rate of retears after an initial rotator cuff tear. Dr. Chams diagnosed a recurrent partial thickness tear. This is confirmed by his reading of the MRI, his clinical examination, and the valid FCE, which showed lifting limitations. Dr. Verma failed to persuasively explain Petitioner's current right shoulder complaints or limitations and simply opines that there is no retear. Yet, Dr. Verma found no evidence of a post-accident injury. The Arbitrator is mindful that Dr. Verma is adamant to this day that no knee injury existed, even after reviewing the surgical report, which disclosed 90% damage. This inability to see, or his inadvertent failure to consider, the significance of the damage renders his opinions to less persuasive than those of Dr. Chams. Dr. Verma reviewed the MRI arthrogram as showing routine post-surgical findings with no evidence of new or recurrent injury (RX 1. p.15) Dr. Chams explained that because Petitioner has a high grade tear

instead of a full thickness tear , there is no dye leakage, but that they are treated the same: if the patient is having pain, you fix them (PX 1, pp. 12-13)

Accordingly, the Arbitrator finds that Petitioner is entitled to prospective medical care, to wit: a right arthroscopic rotator cuff repair and a possible biceps tenodesis offered by Dr. Roger Chams along with all related services in accordance with Sections 8(a) and 8.2 of the Act. When asked what the objective of the second right shoulder surgery would be, Dr. Chams stated, "to look at his rotator cuff, and if it's torn, to fix it, so he can go back to work." (PX 3, pp. 25–26). The Petitioner deserves a chance to get better, a chance to obtain relief. He deserves a chance to get fixed and return to work and become a taxpayer once more.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC010976
Case Name	Jason Cross v. State of Illinois – Illinois Department of Transportation
Consolidated Cases	18WC017670; 21WC028714;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0410
Number of Pages of Decision	24
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 10/25/2022

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jason Cross,

Petitioner,

vs. NO: 17 WC 10976

State of Illinois Department of Transportation,

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 causation, medical expenses, and the nature and extent of Petitioner's disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 2, 2022, is hereby affirmed and adopted.

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

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

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.

October 25, 2022

MP:yl
o 10/20/22
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	17WC010976
Case Name	CROSS, JASON v. STATE OF ILLINOIS/ILLINOIS DEPARTMENT OF TRANSPORTATION
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 6/2/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 1, 2022 1.58%

/s/ Linda Cantrell, Arbitrator

Signature

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

June 2, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JASON CROSS
Employee/Petitioner

v.

STATE OF ILLINOIS/
ILLINOIS DEPARTMENT OF TRANSPORTATION
Employer/Respondent

Case # **17** WC **010976**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin, Illinois** on **March 24, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **August 25, 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 $**69,657.07**; the average weekly wage was $**1,339.56**.

On the date of accident, Petitioner was **31** 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 $**All Paid** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**All Paid**. The parties stipulate that all TTD benefits have been paid and no overpayment or underpayment of TTD benefits are claimed.

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

ORDER

Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's Group Exhibit 1 as they relate to Petitioner's cervical spine, with the exception of expenses related to the MRI spectroscopy as discussed below, and medical expenses related to Petitioner's right shoulder through 2/8/18 when Dr. Mall released Petitioner at MMI. Respondent shall pay said medical expenses directly to the medical providers pursuant to the Illinois medical fee schedule or PPO agreement, whichever is less, as provided in Section 8(a) and Section 8.2 of the Act. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits. The parties stipulate that Respondent shall receive credit allowed under Section 8(j) of the Act for any medical expenses paid through Respondent's group medical plan.

The Arbitrator concludes that the use of MRI spectroscopy is neither reasonable nor necessary and finds Respondent is not liable for medical expenses related to same. The Commission has consistently ruled against the use of MRI spectroscopy. See *Lewis v. The Illinois Workers' Compensation Commission,* 2021 IL App (5th) 200302; *Cruse v. Choate Mental Health Center,* 19IWCC0419; *Streater v. Bi-State Development Agency,* 20IWCC0034; *Burwell v. Walgreens,* 2IWCC0505; *Barnett v. IDOT,* 21IWCC0583; *Salley v. Choate Mental Health Center,* 21IWCC0269. "[T]here is no evidence that such a test is generally accepted or recognized by the orthopedic community." *Goldie Cruse v. Choate Mental Health Center*, 19IWCC0419, 2019 WL 4491547 (2019). MRI spectroscopy as utilized by Dr. Gornet has been denied as being neither reasonable nor necessary. *Cruse v. Choate Mental Health Center,* 19IWCC0419; *Barnett v. IDOT,* 21IWCC0583.

Respondent shall pay Petitioner the sum of $**775.18 (Max rate)**/week for a period of **137.50** weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused permanent partial disability to the extent of **12.5%** loss of Petitioner's body as a whole with regard to his right shoulder, and **15%** loss of Petitioner's body as a whole with regard to his cervical spine.

Respondent shall pay Petitioner compensation that has accrued from 2/8/18, the date Dr. Mall placed Petitioner at MMI with respect to his right shoulder, through the date of arbitration on 3/24/22, and compensation that has accrued from 9/9/21, the date Dr. Gornet released Petitioner at MMI with respect to his cervical spine, through the date of arbitration on 3/24/22, 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.

JUNE 2, 2022

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARIBTRATION DECISION

JASON CROSS,	)	
	)	
Employee/Petitioner,	)	
	)	
	)	**Case No.: 17-WC-010976**
v.	)	
	)	**Consolidated Case Nos.: 18-WC-017670**
	)	**21-WC-028714**
STATE OF ILLINOIS/ILLINOIS DEPARTMENT OF TRANSPORTATION,	)	
	)	
Employer/Respondent	)	

FINDINGS OF FACTS

These claims came before Arbitrator Linda J. Cantrell for trial in Herrin on March 24, 2022. On April 11, 2017, Petitioner filed an Application for Adjustment of Claim alleging injuries to his neck, right shoulder, and body as a whole as a result of transferring a sign from one truck to another on August 25, 2016. (Case No. 17-WC-010976). On November 28, 2018, Petitioner filed an Application for Adjustment of Claim alleging injuries to his back, neck, head, right shoulder, right wrist/thumb, and body as a whole as a result of an automobile accident on May 22, 2018. (Case No. 18-WC-017670). On October 14, 2021, Petitioner filed an Application for Adjustment of Claim alleging injury to his right shoulder and body as a whole as a result of lifting, jacking, and cranking on a dump truck tire on September 14, 2021. (Case No. 21-WC-028714). The cases were consolidated on March 14, 2022.

The issues in dispute in Case No. 17-WC-010976 are causal connection with regard to Petitioner's cervical spine, medical bills related to Petitioner's cervical spine surgery on 9/25/20 and subsequent treatment, including an MRI spectroscopy, and the nature and extent of Petitioner's injuries. The parties stipulate that all temporary total disability benefits have been paid and there is no overpayment or underpayment of TTD benefits claimed. All other issues have been stipulated. The Arbitrator has simultaneously issued separate Decisions in Case Nos. 18-WC-017670 and 21-WC-028714.

TESTIMONY

Petitioner was 31 years of age, single, with one dependent child at the time of accident. Petitioner has been employed by Respondent for over twelve years as a Highway Maintainer. Petitioner testified that on 8/25/16 he attempted to lift a tripod out of a truck that was entangled. He jerked the tripod loose and felt immediate pain in his right shoulder and neck/trapezius area.

Petitioner sought treatment with Dr. Wong who placed him off work and ordered physical therapy. Petitioner testified that therapy improved his symptoms and he returned to work. Petitioner stated his symptoms increased upon returning to work, including pain in his right neck, shoulder, trapezius, and down into his fingertips. Petitioner treated with Dr. Mall and Dr. Gornet. He underwent physical therapy and injections that temporarily alleviated his symptoms. Dr. Mall performed a right shoulder surgery. Petitioner testified that approval for postoperative physical therapy was delayed, and Dr. Mall ordered him to perform exercises at home and the gym that increased his pain. Petitioner testified that Dr. Gornet ordered cervical spine injections that temporarily improved his symptoms.

Petitioner testified that on 5/22/18 he was involved in a motor vehicle accident where he was rear-ended by a pickup truck. He stated he injured his body all over and was transported by ambulance to St. Francis Medical Center. Petitioner returned to Dr. Gornet with increased neck and low back pain. Dr. Gornet placed Petitioner off work and ordered an MRI. Petitioner testified he never had treatment to his low back prior to his May 2018 accident. He underwent injections and physical therapy that provided temporary relief.

Dr. Kutnik performed surgery to repair a right thumb fracture and torn ligament. Petitioner is right-hand dominant. He testified that surgery improved his condition. Dr Kutnik referred Petitioner to Dr. Bradley for a right foot injury. Petitioner testified he never had any injuries or treatment to his right thumb, right foot, or cervical spine prior to his work accidents. He was working full duty without restrictions prior to his accident on 8/25/16.

Dr. Gornet performed disc replacements at L4, L5, and S1. Prior to his surgery, Petitioner testified he had intense low back pain that radiated down his left leg to his toes. His symptoms improved with surgery, and he was released to full duty work in September 2020. Petitioner testified that his neck pain increased when he returned to work, particularly with shoveling, using a chainsaw, chipping wood, and repetitive activities. Dr. Gornet ordered a repeat cervical MRI and performed a disc replacement at C5-6 on 9/25/20. Petitioner testified that prior to his cervical surgery he had intense, constant pain in his neck, shoulder, and trapezius on the right side. He had significant improvement from surgery, and he was released at MMI in September 2021.

Petitioner sustained a third work accident on 9/14/21 when he lifted a tandem dump truck tire into a truck. He stated he felt immediate pain in his right shoulder. Petitioner returned to Dr. Bradley who ordered an injection that significantly improved his symptoms. Dr. Bradley released Petitioner at MMI in December 2021 and he has not returned since.

Petitioner testified he continues to have back pain with repetitive activities, including prolonged standing. Flagging duty at work and washing dishes at home aggravates his condition. Petitioner's low back pain increases with prolonged walking. He continues to perform his job duties as a highway maintainer. He takes Meloxicam twice daily, as well as Flexeril, Wellbutrin, and Ambien. He stated he never took any of these medications prior to his work accidents. Petitioner testified he works 12-hour shifts when snow plowing. Absent bad weather, his normal shift is 7:00 a.m. to 3:30 p.m. He stated snow plowing is rough on his body and he has to pull over and take breaks.

Petitioner testified he is rarely allowed to participate in concrete pours because his production hinders the rest of the team. He stated the jerking motion necessary to start a chainsaw increases his pain. His right shoulder pain increases when he raises his arm over his head. His cervical pain increases with looking down or to the right, and his lumbar pain increases with bending over. He stated that Respondent works with him and his limitations. He testified he used to operate heavy equipment such as a skid steer loader that is operated with hand and foot controls, but the numbness in his left ankle and toes and decreased strength prevents him from operating the equipment. Petitioner testified he has a six-year old daughter who can no longer jump into his arms and he cannot play active with her.

On cross-examination, Petitioner testified he has been released to full duty work without restrictions for all of his injured body parts. He last saw Dr. Gornet in September 2021 and Dr. Bradley in December 2021. Petitioner testified he has not returned to either doctor since. He uses a treadmill for light exercise and gets a good workout performing his job duties. Petitioner testified he has received performance evaluations since returning to work and they have all been lower than they were prior to his accidents. He testified he is the only person in his shop that has never received a bonus. He stated bonuses are based on production or annual performance and he has never received a bonus since the program started in 2016.

MEDICAL HISTORY

On 8/25/16, Petitioner presented to Community Health & Emergency Services where he saw Dr. Nelson Wong. Petitioner reported he injured his right shoulder and neck that morning while lifting a 30-pound tripod out of a truck. (PX3) The records document that he dropped the tripod immediately and was unable to pick it back up. Petitioner reported he continued to work that day and was unable to operate a tractor because he could not turn his head or move his neck to drive. He rated his pain at 10/10, with burning in the right side of his neck. Physical examination revealed muscle spasm, reduced range of motion, pain in the cervical spine, and tenderness in the right trapezius. X-rays were normal. An injection was performed, and Petitioner was taken off work for two days. He was prescribed pain medication and muscle relaxants.

On 8/29/16, Petitioner returned to Dr. Wong and reported slight improvement in his condition but he was still experiencing significant neck pain and was unable to get comfortable, turn his head, or lift his 13-pound child without pain. (PX3) Dr. Wong kept Petitioner off work and referred him for physical therapy.

Petitioner continued to follow up with Dr. Wong and advised he was awaiting approval from workers' compensation to begin physical therapy, but he was engaging in home exercise. He reported continued symptoms, including flare-ups during which he almost went to the emergency room, along with stiffness and difficultly dressing himself. (PX3) Dr. Wong continued Petitioner off work pending therapy.

On 9/20/16, Petitioner was evaluated for physical therapy and rated his neck and bilateral shoulder pain at 8/10, which affected all of his daily activities and disrupted his sleep. (PX5). Examination revealed decreased range of motion and strength, poor posture, poor scapular

stabilization and rhythm, and decreased sensation and reflexes. Petitioner underwent 12 weeks of physical therapy which improved his pain and range of motion.

In November and December 2016, Dr. Wong noted Petitioner continued to have pain with lifting and activity but overall improved with therapy. Petitioner requested to return to work and Dr. Wong placed him on restricted duty for two weeks followed by regular duty.

Upon returning to work Petitioner experienced increased pain and presented to the emergency room at St. Francis Medical Center on 1/19/17. (PX6) It was noted that Petitioner's onset of injury had occurred at work in August 2016 and there had been no new injury since. Petitioner reported that since returning to work he had persistent pain in his neck, upper back, and shoulders along with intermittent numbness and tingling into the right arm, hand, and fingers. Physical examination revealed reduced cervical range of motion, pain, tenderness and spasm in the right trapezius, and numbness and tingling in his right fourth and fifth digits with extension of the cervical spine. He was prescribed different muscle relaxants and pain medications as his current medications had not been helpful. He was instructed to follow up with his doctor and a neurosurgeon.

Petitioner underwent a cervical spine MRI at Southeast Health that revealed a disc herniation at C5-6 and a bulge at C6-7.

On 2/28/17, Petitioner was examined by Dr. Nathan Mall who noted a history of injury on 8/25/16 while lifting a tripod. Dr. Mall noted Petitioner's current symptoms of cervical spine and trapezius pain, numbness into his fingers, burning and shooting pain from his neck down into his elbow and hand, and deep-seated right shoulder pain. Physical exam revealed a positive flexion compression test and Tinel's sign on the right elbow, positive dynamic labral compression and O'Brien's testing on the right shoulder, trapezial pain, pain with Spurling's maneuver to the right, and limitation of rotation to the right. Shoulder x-rays were normal. Dr. Mall reviewed the cervical MRI and opined Petitioner sustained a protruded/herniated disc at C5-6. He noted Petitioner's mechanism of injury was consistent with a superior labral tear and ordered an MRI arthrogram. Dr. Mall also referred Petitioner to Dr. Gornet to further evaluate his cervical spine and placed Petitioner on work restrictions.

On 4/25/17, Dr. Mall opined the MRI arthrogram revealed a clear superior labral tear in the right shoulder. (PX8) He administered a cortisone injection and ordered physical therapy.

On 5/15/17, Petitioner was examined by Dr. Gornet. (PX9) Dr. Gornet documented the history of Petitioner's work injury, conservative treatment, and ongoing symptoms of neck, right trapezius and right shoulder pain, headaches, and tingling down the right arm. He noted Petitioner had not suffered from any significant neck or shoulder problems prior to his work injury. Physical examination revealed neck pain on the right, right trapezius and shoulder pain, tingling in the forearm that was consistent with the C7 distribution, and decreased sensation at the C7 dermatome. Dr. Gornet reviewed the cervical MRI dated 2/15/17 and ordered a repeat MRI with foraminal views which revealed a large foraminal herniation and annular tear at C5-6. (PX9, 10) Dr. Gornet recommended a steroid injection at C5-6 and continued light duty restrictions.

On 6/27/17, Petitioner followed up with Dr. Mall for his right shoulder SLAP tear. (PX8). He noted Petitioner initially gained some relief from the shoulder injection, but his pain returned. Dr. Mall noted Petitioner had a markedly positive O'Brien's test and positive dynamic labral compression test. On 9/28/17, Dr. Mall performed a right shoulder arthroscopy, subacromial decompression and acromioplasty and open biceps tenodesis. (PX12) Intraoperatively, Dr. Mall noted objective findings of a superior labral tear. The superior labrum and subacromial space were debrided and a biceps tenodesis was performed.

Dr. Mall ordered post-operative physical therapy that was delayed, resulting in stiffness in Petitioner's shoulder. Dr. Mall recommended aggressive therapy and a cortisone injection due to the delay. (PX8, 15) The injection improved Petitioner's condition but he reported soreness after going to the gym at Dr. Mall's direction. (PX8). At Petitioner's final visit with Dr. Mall on 2/8/18, he had stiffness with full forward elevation and external rotation. Dr. Mall instructed Petitioner to continue a home exercise program and released him at MMI.

During the time Petitioner treated with Dr. Mall, he continued to follow up with Dr. Gornet. (PX9) Despite undergoing the cervical injection, Petitioner was still persistently symptomatic and had since returned to work on a trial basis. (PX9) On 2/8/18, Dr. Gornet recommended an additional steroid injection at C5-6. He stated that if Petitioner did not improve he would consider surgical intervention. Petitioner underwent the repeat injection on 3/8/18 that provided temporary relief. On 4/5/18, Dr. Gornet noted persistent neck, right trapezius, and right shoulder pain with headaches. Dr. Gornet recommended a new MRI and plain CT scan.

On 5/22/18, Petitioner was involved in a work-related motor vehicle accident. Petitioner pulled off on the shoulder of the road to pick up road signs. (PX13, 23) Before he could put his vehicle in park and while still wearing his seatbelt, Petitioner's truck was rear-ended by a pickup truck resulting in entrapment. The responding paramedics noted Petitioner had neck and low back pain and dizziness. (PX13) Petitioner reported he struck his head on the steering wheel. He was placed in a C-collar and taken to St. Francis Medical Center.

At the hospital, Petitioner reported injuries to his head, neck, torso, shoulder/arm, right wrist, right thumb, and back. (PX6) His symptoms included pain and tenderness in his right shoulder, right wrist, right hand, and cervical, thoracic, and lumbar spines with headache. He underwent x-rays of his chest, pelvis, right shoulder, right wrist, right fingers, and CT scans of his chest, abdomen, pelvis, head, thoracic spine, lumbar spine, and cervical spine. Imaging showed no fractures or hemorrhages with the exception of the right hand x-ray that revealed a nondisplaced fracture of the right thumb. Final diagnoses were lumbar spine stenosis, acute right wrist, right shoulder, thoracic spine, and back pain, cervicalgia, nondisplaced fracture of the right thumb, and a closed head injury. Petitioner was given injections for pain, a splint, and discharged with pain medications. He was instructed to follow up with his physician and a hand specialist.

Petitioner contacted Dr. Gornet's office to report his recent accident. On 6/4/18, Petitioner underwent the recommended cervical MRI and CT scan and followed up with Dr. Gornet. Dr. Gornet reviewed video footage of the motor vehicle accident and stated the property damage was severe and Petitioner's truck was pushed quite some distance from the point of

impact. (PX9, 24) Petitioner reported increased neck pain, right trapezius and shoulder pain with headaches, and stated his symptoms were worse than prior to the vehicle accident. Petitioner had new symptoms of low back pain into the left buttock and hip, with tingling into his left foot and burning in his toes bilaterally. Examination revealed decreased left plantar flexion and EHL function and decreased sensation in the S1 dermatome on the left. Dr. Gornet reviewed the cervical MRI and noted a disc injury at C5-6 which was aggravated by the 5/22/18 accident. Dr. Gornet opined Petitioner suffered a potential new disc injury in his lumbar spine as a result of the accident. He recommended a course of physical therapy for back pain, which was performed at Diversified Rehab, and a motion analysis on his cervical spine. Dr. Gornet referred Petitioner to Dr. Shawn Kutnik for his thumb injury. Dr. Gornet ordered a lumbar MRI that was preformed on 6/25/18 and revealed herniations at L4-5 and L5-S1, with annular fissures and mild deflection of the dura at L4-5. (PX10)

On 8/20/18, Petitioner was examined by Dr. Kutnik who noted prior immobilization of his right thumb with splinting. (PX16) Petitioner reported no injuries to his hand or fingers prior to 5/22/18. He complained of severe, sharp pain at the radial border of the right thumb joint which was aggravated by motion. Petitioner also reported pain in the big toes of both feet that began a few days following the vehicle accident. Dr. Kutnik's exam of Petitioner's toes revealed tenderness to palpation over the first MT joint without clear instability. X-rays showed concentric joint reduction but no fracture. Physical examination of Petitioner's thumb revealed obvious deformity to the MP joint, ulnar deviation of the thumb, laxity of the radial collateral ligament with flexion and extension, and tenderness to palpation over the radial border of the MP joint. X-rays of Petitioner's thumb showed a healed fracture, but a clear subluxation at the MP joint consistent with a ligament tear.

Dr. Kutnik assessed a right thumb chronic radial collateral ligament tear and bilateral toe pain. He recommended that Petitioner follow up with a foot and ankle specialist. With regard to Petitioner's thumb, Dr. Kutnik opined that Petitioner had an obvious tear that had remained persistent and severe despite immobilization, which was causally related to the accident on 5/22/18 and required surgical intervention.

On 9/6/18, Petitioner returned to Dr. Gornet who noted Petitioner's neck and right upper extremity pain and headaches seemed to be trending more positively; however, his low back pain had increased. (PX9) Dr. Gornet recommended additional cervical and lumbar steroid injections at L4-5, L5-S1, and C5-6.

On 11/8/18, Petitioner returned to Dr. Gornet and reported the injections helped his back for a week, but the pain returned, and the neck injection provided only transient relief. Petitioner reported his neck and upper extremity symptoms seemed to be more tolerable than his low back symptoms, which affected all aspects of his life. Dr. Gornet recommended a CT discogram and MRI Spectroscopy to assess Petitioner's back pain.

On 11/13/18, Dr. Kutnik performed a right thumb radial collateral ligament reconstruction with palmaris autograft. (PX12) Intraoperatively, Dr. Kutnik noted obvious insufficiency of the collateral ligament with marked attenuation along the radial border for poor residual integrity. This was reconstructed and grafted.

Petitioner was fitted for a splint at Apex Network Physical Therapy and he underwent physical therapy at Diversified Rehab. (PX17) Follow up visits note Petitioner's thumb was doing well, except for some numbness and residual stiffness. (PX16)

Dr. Kutnik referred Petitioner to Dr. Matthew Bradley for bilateral ankle and great toe pain. On 12/31/18, Dr. Bradley noted the history of Petitioner's 5/22/18 accident and subsequent ankle and toe pain. (PX18) Petitioner reported no prior injuries and he had a dull and aching pain that he rated at 4/10 which was made worse by walking and daily activities. Physical examination of the ankles and toes revealed tenderness and pain with extension bilaterally. Bilateral x-rays and ultrasounds revealed dorsal osteophytes at the distal dorsal first metatarsal. Dr. Bradley assessed sub-acute hallux rigidus status post motor vehicle collision. He recommended inserts and potential injections, or surgery should the condition fail to improve.

The CT discogram and MRI spectroscopy of Petitioner's lumbar spine revealed a provocative disc at L4-5 with a posterior annular tear, and painful chemicals at L4-5 and L5-S1. (PX9, 10, 14, 19, 26) Dr. Gornet recommended surgery.

Prior to lumbar spine surgery, Petitioner returned to Dr. Kutnik who referred him to formal work conditioning on his thumb due to the heavy labor nature of Petitioner's job. However, due to his pending lumbar surgery the therapist was concerned about him over-stressing and the work conditioning was not performed. (PX16)

At his final visit with Dr. Kutnik on 2/27/19, Petitioner reported tightness with the use of his hand and thumb, particularly with heavy use and pinching activities. Overall, Petitioner was doing well and Dr. Kutnik released him at MMI.

On 2/27/19, Petitioner followed up with Dr. Bradley and noted his bilateral toe pain significantly improved with medication. (PX18) Petitioner still had some pain with extension of the right great toe, but overall Dr. Bradley felt that his condition was resolving and released him from care.

On 3/19/19, Dr. Gornet performed an anterior decompression and disc replacement at L4-5 and L5-S1. (PX19, 20) Intraoperative findings included a large central annular tear and central disc herniation at L5-S1, and a large central herniation and annular tear at L4-5. Discectomies were performed and prostheses were inserted.

On 5/2/19, Petitioner was examined by Dr. Michael Chabot pursuant to Section 12 of the Act. (RX4) Dr. Chabot reviewed Petitioner's MRI scans from 2/15/17, 5/15/17, and 6/4/18, and opined Petitioner had a disc protrusion and bulge at C5-6; however, he did not appreciate an annular tear. He agreed there was a causal relationship between Petitioner's objective findings and the accident, and that the medical treatment Petitioner received to date had been reasonable and necessary. However, Dr. Chabot believed Petitioner suffered only a strain injury to his neck and right shoulder as a result of the 8/25/16 accident, and a subsequent strain injury to his neck as a result of the 5/22/18 accident. Dr. Chabot did not believe Petitioner's cervical or right

shoulder conditions required further treatment. He noted he was not asked to comment on Petitioner's lumbar spine condition.

At post-operative visits with Dr. Gornet, Petitioner reporting doing well but he had continued pain in his hips and lumbar spine on the right. A post-op lumbar CT scan was normal and Dr. Gornet referred Petitioner for physical therapy on 7/1/19. Dr. Gornet noted Petitioner was still suffering from neck and shoulder pain with headaches and his cervical treatment had been placed on hold due to lumbar surgery. Dr. Gornet ordered a cervical MRI that revealed disc protrusions at C3-4, C4-5, and C5-6, along with a fragment at C5-6, a small annular tear at C4-5, and a herniation at C3-4. (PX9, 10) In comparison with Petitioner's prior MRI, C5-6 showed some improvement, but C3-4 had progressed. Dr. Gornet continued to place Petitioner's cervical treatment on hold while his lumbar spine healed. On 9/19/19, Petitioner reported his low back pain was improved, but he still had some pain on the right that radiated into his buttock. Dr. Gornet recommended medial branch blocks and facet rhizotomies and kept Petitioner off work.

On 10/17/19, Petitioner was examined a second time by Dr. Chabot pursuant to Section 12 of the Act. (RX5) Dr. Chabot interpreted the pathology on Petitioner's MRI reports as showing a disc protrusion and herniation at C5-6, and a herniation at C6-7. He noted that Petitioner rated his neck and shoulder pain at 5/10. Dr. Chabot opined that the motor vehicle accident of 5/22/18 aggravated or exacerbated Petitioner's prior cervical complaints associated with the 8/25/16 injury. Dr. Chabot noted that Petitioner clearly had an increase in back pain following his 5/22/18 injury which aggravated or exacerbated his back condition. Dr. Chabot opined that Petitioner's cervical and lumbar spine treatment to date had been reasonable and necessary; however, did not feel that further cervical spine treatment was warranted. Dr. Chabot believed that the prior diagnostic studies failed to document that a disc injury at C5-6 was the source of Petitioner's complaints.

Petitioner underwent the medial nerve branch blocks and rhizotomies with Dr. Blake. He reported some relief but had continued lumbar pain on the left side. (PX9, 11, 12)

On 12/12/19, Dr. Gornet noted that while Petitioner had a protrusion/annular tear at C5-6, which he stated was readily seen on all objective studies, he advised surgery was a last resort. He returned Petitioner to work with the understanding he may still require treatment in the future.

On 6/15/20, Petitioner returned to Dr. Gornet and reported improvement in his low back pain, and pain with some activities such as shoveling. (PX9) Petitioner's chief complaint was continued neck pain with headaches, and pain into his right trapezius and shoulder. Dr. Gornet placed Petitioner at MMI with regard to his lumbar spine and encouraged Petitioner to try to live with his cervical symptoms. He ordered Petitioner to follow up for a repeat cervical MRI if he remained symptomatic.

On 8/4/20, it was noted Petitioner returned to work and his neck pain, right shoulder radiculopathy, and headaches increased with activities such as mowing, which required him to turn around and look behind him. (PX9) He underwent a repeat cervical MRI that revealed an annular tear and herniation at C5-6 and a protrusion at C3-4. (PX9, 10)

On 9/25/20, Dr. Gornet performed a cervical disc replacement at C5-6. (PX19) Intraoperatively, Dr. Gornet visualized a large central annular tear, which propagated to the back of the disc, and a herniation within the tear itself. An intraopeative video was performed that showed the nerve hook within the tear, and a second video was performed of the tear all the way back at the posterior annulus. (PX19, 25) The area was debrided and the prosthesis was placed.

On 10/8/20, Petitioner reported a tremendous difference in his pain and was already symptomatically improved. At his three-month follow up, Petitioner reported some sharp pain on occasion when he rotated his head, but overall he was doing very well. A post-operative CT scan was normal and Dr. Gornet returned Petitioner to work full duty without restrictions on 1/7/21.

On 1/13/21, Petitioner was examined a third time by Dr. Chabot pursuant to Section 12 of the Act. (RX6) Dr. Chabot reviewed the medical records from Dr. Gornet, including the operative report dated 9/25/20. He did not comment on the objective intraoperative findings or video taken during surgery that showed Petitioner's large annular tear. Dr. Chabot opined that the medical treatment incurred to date had been reasonable and necessary. He opined that Petitioner had reached MMI and could return to full duty work.

Petitioner underwent physical therapy and followed up with Dr. Gornet on 4/8/21. Petitioner reported some residual cervical symptoms while driving, looking behind him, bending, and lifting, but he was overall improvement.

On 8/18/21, Dr. Chabot issued an addendum report. (RX7) Dr. Chabot concluded that Petitioner's 5/22/18 accident aggravated his neck complaints from his prior injury of 8/25/16. Although in his 1/13/21 report, Dr. Chabot noted that all of Petitioner's medical treatment had been reasonable and necessary, he stated in his addendum report there was no need for cervical disc replacement as the result of either work injuries. He opined that the surgery was performed primarily to address degenerative changes at C5-6 that were never confirmed to be the source of Petitioner's complaints.

Petitioner last saw Dr. Gornet on 9/9/21 and reported that his neck and back had significantly improved, although he experienced some residual symptoms. CT scan showed no evidence of lucency or subsidence, and he was released at MMI.

Shortly following his release, Petitioner suffered another work injury on 9/14/21 while lifting a dump truck tire into a truck. On 9/23/21, Petitioner reported to Dr. Bradley he felt a sudden tearing pain in the lateral aspect of his right shoulder. (PX18) Petitioner stated he attempted activity modification, icing, and Meloxicam, none of which significantly improved his symptoms. Petitioner reported his symptoms increased with elevation above shoulder level and when carrying objects away from his body. Dr. Bradley noted Petitioner's prior shoulder surgery with Dr. Mall in 2017. Physical examination was positive for impingement syndrome. X-rays and an MRI arthrogram were performed which did not reveal evidence of any major pathology. (PX18) Dr. Bradley assessed a right shoulder sprain and impingement. (PX18) He recommended a home exercise program, ice, activity modification, and anti-inflammatory medications and instructed Petitioner to follow up in four to six weeks.

On 10/14/21, Petitioner reported to Dr. Bradley he had no significant change in his symptoms, and he was experiencing a sharp pinch and pain when using his shoulder overhead along with some difficulty sleeping. (PX18) Dr. Bradley performed a right shoulder steroid injection and encouraged Petitioner to continue anti-inflammatories and home exercises.

On 12/9/21, Petitioner reported significant improvement following the injection, although he could still feel a pinching pain with above-the-shoulder activities. (PX18) Dr. Bradley prescribed Meloxicam to take on an as-needed basis, encouraged Petitioner to continue home exercises, and released him at MMI.

Dr. Chabot testified by way of evidence deposition on 10/22/21. (RX8) He testified that Petitioner was cooperative with his examinations and no symptom magnification or malingering was detected. He agreed that he had no records or indication that Petitioner suffered from any cervical spine symptoms prior to 8/25/16. He opined that Petitioner sustained injuries to his cervical spine, shoulder region, and right trapezius area during his initial accident of 8/25/16, and the 5/22/8 accident aggravation his injuries. He testified that the mechanisms of injury for both accidents could cause injury to Petitioner's cervical spine.

Petitioner's spine questionnaire that he completed for Dr. Chabot on 5/2/19 indicated he suffered from neck and right shoulder pain that had been present for two years and nine months. He indicated the pain fluctuated from moderate to severe, and it was stabbing, burning, numb, tingling, aching, and dull. Dr. Chabot noted that at the time of his 10/17/19 exam, Petitioner was still suffering from the same type of symptoms in his neck and right shoulder, and that his physical examination showed Petitioner's cervical range of motion was reduced by 25%. Dr. Chabot conclude that Petitioner was at MMI with regard to his cervical spine condition.

Dr. Chabot agreed with both Dr. Gornet and the radiologist, Dr. Ruyle, that there was disc bulging at C5-6 on Petitioner's 5/15/17 MRI. Regarding Petitioner's 9/19/19 cervical MRI, Dr. Chabot testified that it was unclear that the diminished appearance of the protrusions meant he was healing; and that the difference could represent an interval change, a variation, a difference in MRI studies, or could mean that the disc was undergoing changes. He testified he did not appreciate an annular tear on Petitioner's imaging, but if he had, he still would not have recommended surgery, despite Petitioner's ongoing neck symptoms, because he felt that there was no way to confirm that C5-6 was the source of Petitioner's complaints.

Dr. Chabot testified that he reviewed the cervical spine operative report of 9/25/20 to see what type of operation was performed but had not reviewed any other details regarding same. When asked about Dr. Gornet's intraoperative findings of a large annular tear at C5-6, Dr. Chabot stated, "I'm just not sure how he sees an annular tear… But if that's what he said he saw, I don't deny that's what he saw." Dr. Chabot did not give any indication that he reviewed the operative videos. Dr. Chabot testified that Petitioner reported to him during the 1/13/21 examination that his trapezius and shoulder pain persisted, but it was not as bad as it was prior to the surgery. Dr. Chabot testified that he believed Petitioner's lumbar disc replacement surgery was warranted as a result of the 5/22/18 accident.

Dr. Gornet testified by way of evidence deposition on 12/16/19. (PX26) He testified that Petitioner's physical examination yielded objective findings that were consistent with the C7 distribution, which correlated with the findings of the 2/15/17 MRI. He testified that the MRI demonstrated clear and objective disc pathology at C6-7 and more obviously at C5-6. Specifically, the sagittal image number 7 of the MRI films showed a protruding disc at C5-6, and the axial imaging number 20 showed a fragmented disc, which was impacting the cord on the right side. He testified that the 5/15/17 MRI showed a protrusion at C5-6. He felt that these findings had clinical significance as they correlated with Petitioner's physical examination and subjective complaints.

Dr. Gornet opined that Petitioner suffered a disc injury at C5-6 and potentially at C6-7 as a result of the 8/25/16 accident, and that the injury was the source of Petitioner neck pain, headaches, and a portion of his shoulder pain. He based his opinion on a combination of Petitioner's history, physical examination, and objective pathology on diagnostic studies. He testified that the objective disc pathology was consistent with Petitioner's physical symptoms of referred pain to the shoulder/arm, neck pain, and headaches.

Dr. Gornet testified that Petitioner's neck symptoms and headaches continued throughout subsequent follow-up appointments and increased following his 5/22/18 motor vehicle accident, after which he also developed lumbar spine pain. Dr. Gornet testified that although Petitioner had ongoing pain in his neck, right trap, right shoulder, and headaches, his low back was trending worse. Regarding the lumbar CT discogram and MRI spectroscopy, Dr. Gornet testified that the correlation between the two has been shown to indicate a 95-plus percent chance that the patient would have substantial clinical improvement. He testified that Petitioner's discogram and MRI spectroscopy revealed a correlation of painful chemicals and provocative discography which gave him a high level of confidence that treatment at L4-5 and L5-S1 would benefit Petitioner. He testified that the intraoperative pathology that he observed correlated very well with the MRI and CT discogram, and that more importantly, Petitioner improved following surgery.

Dr. Gornet testified he disagreed with Dr. Chabot's diagnosis of a shoulder and neck strain, as a cervical disc herniation was noted by Dr. Chabot, and Dr. Mall's diagnosis of shoulder pathology was clear and objective on the MRIs and intraoperative findings. Regarding the fact that Dr. Chabot did not appreciate the presence of an annular tear at C5-6 or C6-7, Dr. Gornet stated the annular tear is clearly seen on image number 20 of the 2/15/17 MRI and on image 11 of 13 there is a tear within the disk herniation. He stated the tear is clearly seen as a bright white line, and sometimes you can have a herniation where you do not see objectively a brighter appearance. He stated Petitioner had both which is also identified by the radiologist.

Dr. Gornet testified there was no explanation for Petitioner's cervical spine complaints other than the work injuries. Petitioner had clear objective pathology on multiple scans. Dr. Gornet testified that the 8/25/16 accident was responsible for Petitioner's cervical symptoms, which were aggravated by the 5/22/18 accident that also caused his lumbar spine condition.

CONCLUSIONS OF LAW

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

Respondent disputes that Petitioner's current condition of ill-being in his cervical spine is causally connected to his work accident of 8/25/16.

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).

In addition to or aside from expert medical testimony, 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, 197 Ill.Dec. 502, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 66 Ill.Dec. 347, 442 N.E.2d 908 (1982).

There is no evidence Petitioner had symptoms or complaints with respect to his cervical spine prior to his undisputed work accident on 8/25/16. He was working full duty without restrictions performing heavy labor duties prior to the accident. Petitioner completed a Notice of Injury on the day of accident and reported that while he was trying to free one of the legs on a stuck tripod he felt pain in his right shoulder, neck, and back area. (RX1) He reported a lot of discomfort turning his neck and pain while moving this right arm/shoulder.

Petitioner sought medical care on the day of accident. He reported to Dr. Wong he attempted to lift a 30-pound tripod out of a truck that morning and dropped the tripod when he felt immediate pain. Petitioner stated he continued to work and was unable to turn his head or move his neck to operate machinery. He rated his pain at 10/10, with burning in the right side of his neck. Physical examination was positive for cervical injury with tenderness in the right trapezius. He was initially prescribed injections, medication, physical therapy, and placed off work which improved his symptoms to the point he requested to return to work.

The records reflect that Petitioner returned to work and the pain in his neck, upper back, and shoulders increased and he began experiencing intermittent numbness and tingling into his right arm, hand, and fingers. He sought emergent care in January 2017 at which time he had reduced cervical range of motion, pain, tenderness and spasm in the right trapezius, and numbness and tingling in his right fourth and fifth digits with extension of the cervical spine.

On 2/15/17, Petitioner underwent a cervical spine MRI that revealed a disc herniation at C5-6 and a bulge at C6-7. Dr. Mall noted Petitioner had cervical spine and trapezius pain, numbness into his fingers, burning and shooting pain from his neck down into his elbow and hand, and deep-seated right shoulder pain. Dr. Mall noted positive findings in the right shoulder and referred Petitioner to Dr. Gornet. Dr. Mall opined that Petitioner's mechanism of injury was

consistent with a superior labral tear which was confirmed by an MRI arthrogram. Dr. Mall administered a cortisone injection and ordered physical therapy that provided temporary relief.

Dr. Gornet noted neck pain on the right, right trapezius and shoulder pain, tingling in the forearm that was consistent with the C7 distribution, and decreased sensation at the C7 dermatome. Dr. Gornet ordered a new cervical MRI that revealed a large foraminal herniation and annular tear at C5-6. He recommended a steroid injection at C5-6.

On 9/28/17, Dr. Mall performed a right shoulder arthroscopy, subacromial decompression and acromioplasty and open biceps tenodesis. Dr. Mall appreciated a SLAP tear intraoperatively. He debrided the superior labrum and subacromial space and performed a biceps tenodesis. Due to a delay in physical therapy, Petitioner required post-operative aggressive therapy and a cortisone injection. Dr. Mall released Petitioner at MMI on 2/8/18 at which time he had stiffness with full forward elevation and external rotation.

Despite cervical injections at C5-6, right shoulder surgery, and an attempt to return to work, Petitioner had persistent neck, right trapezius, and right shoulder pain with headaches. On 4/5/18, Dr. Gornet recommended a new MRI and plain CT scan.

On 5/22/18, Petitioner sustained a second undisputed accident where his work truck was rear-ended on the side of the roadway. Responding paramedics noted Petitioner had neck and low back pain and dizziness at the scene of the accident. Emergency care records note injuries to Petitioner's head, neck, torso, shoulder/arm, right wrist, right thumb, and back. His symptoms included pain and tenderness in his right shoulder, right wrist, right hand, and cervical, thoracic, and lumbar spines with headache. Imaging was positive for a nondisplaced fracture of the right thumb.

On 6/4/18, Petitioner underwent the cervical MRI and CT scan that Dr. Gornet recommended prior to Petitioner's 5/22/18 accident. Dr. Gornet reviewed video footage of the motor vehicle accident and stated the property damage was severe and Petitioner's truck was pushed quite some distance from the point of impact. He noted increased neck pain, right trapezius and shoulder pain with headaches, and his symptoms were worse than prior to the vehicle accident. Dr. Gornet reviewed the new cervical MRI and noted a disc injury at C5-6 which he opined was aggravated by the 5/22/18 accident. Dr. Gornet recommended a motion analysis on his Petitioner's cervical spine.

Petitioner underwent cervical and lumbar spine steroid injections at L4-5, L5-S1, and C5-6. Petitioner reported the cervical injection provided only transient relief. Petitioner continued to treat with Dr. Kutnik for his right thumb injury, Dr. Bradley for his ankle/toe injuries, and Dr. Gornet for his lumbar spine which included an anterior decompression and disc replacement at L4-5 and L5-S1 on 3/19/19, followed by medial nerve branch blocks and physical therapy. Treatment for Petitioner's cervical spine was placed on hold for a significant period of time.

An updated cervical MRI revealed disc protrusions at C3-4, C4-5, and C5-6, along with a fragment at C5-6, a small annular tear at C4-5, and a herniation at C3-4. Dr. Gornet compared MRIs and stated C5-6 showed some improvement, but C3-4 had progressed. On 12/12/19, Dr.

Gornet recommend that Petitioner attempt to return to work with respect to his cervical spine as surgery was a last resort. On 6/15/20, Petitioner returned to Dr. Gornet and reported continued symptoms. Dr. Gornet placed Petitioner at MMI with regard to his lumbar spine at that time and encouraged Petitioner to try to live with his cervical symptoms.

On 8/4/20, Dr. Gornet noted Petitioner returned to work and his neck pain radiating into his shoulder and headaches increased with work activities. A repeat cervical MRI revealed an annular tear and herniation at C5-6 and a protrusion at C3-4. On 9/25/20, Dr. Gornet performed a cervical disc replacement at C5-6. Intraoperatively, Dr. Gornet visualized a large central annular tear and herniation. Petitioner reported a tremendous difference in his pain following surgery, with some occasional sharp pain when he rotated his head. On 1/7/21, Dr. Gornet released Petitioner to full duty work without restrictions.

The Arbitrator finds Dr. Gornet's causation opinions more credible than those of Dr. Chabot. Dr. Chabot reviewed Petitioner's MRI scans from 2/15/17, 5/15/17, and 6/4/18, and opined Petitioner had a disc protrusion and bulge at C5-6; however, he did not appreciate an annular tear. He agreed there was a causal relationship between Petitioner's objective findings and the accident, and that the medical treatment Petitioner received to date had been reasonable and necessary. However, Dr. Chabot believed Petitioner suffered only a strain injury to his neck and right shoulder as a result of the 8/25/16 accident, and a subsequent strain injury to his neck as a result of the 5/22/18 accident. Dr. Chabot did not believe Petitioner's cervical or right shoulder conditions required further treatment as of the date of his exam on 5/2/19.

On 10/17/19, Dr. Chabot noted the cervical MRI showed a disc protrusion and herniation at C5-6, and a herniation at C6-7. He opined that Petitioner's motor vehicle accident on 5/22/18 aggravated or exacerbated his prior cervical complaints associated with the 8/25/16 injury. Dr. Chabot opined that Petitioner's cervical spine treatment to date had been reasonable and necessary. However, Dr. Chabot did not feel additional treatment was warranted with respect to Petitioner's cervical spine because diagnostic studies failed to document that a disc injury at C5-6 was the source of Petitioner's complaints.

On 1/13/21, Dr. Chabot reviewed the operative report of Petitioner's cervical surgery performed on 9/25/20 and did not comment on the objective intraoperative findings, including the annular tear found by Dr. Gornet. Again, Dr. Chabot opined that the medical treatment Petitioner received to date had been reasonable and necessary. He opined Petitioner had reached MMI and could return to full duty work.

Dr. Gornet testified that Petitioner's symptoms correlated with objective findings. He testified that the 2/15/17 MRI demonstrated clear and objective disc pathology at C6-7 and a protruding disc at C5-6, with a fragmented disc impacting the cord on the right side. He testified that the 5/15/17 MRI showed a protrusion at C5-6. Dr. Gornet testified that the annular tear is clearly seen on imaging which was confirmed intraoperatively.

Dr. Gornet testified that Petitioner's neck symptoms and headaches increased following his 5/22/18 motor vehicle accident. He opined that the 8/25/16 accident was responsible for Petitioner's cervical condition, which were aggravated by the 5/22/18 accident. The Arbitrator

finds that Petitioner underwent significant conservative treatment following his 8/25/16 accident and was actively undergoing treatment for his cervical spine at the time of his 5/22/18 motor vehicle accident. Petitioner underwent numerous cervical injections, physical therapy, work duty modifications, and medication directed by Dr. Wong and Dr. Gornet. Petitioner attempted to return to work in January 2017 and reported persistent pain in his neck, upper back, and shoulders along with intermittent numbness and tingling into the right arm, hand, and fingers. Objective medical evidence revealed disc pathology at C5-6 and C6-7 prior to Petitioner's accident on 5/22/18. In February 2018, Dr. Gornet recommended additional steroid injections at C5-6 and opined that if Petitioner did not improve, he would consider surgical intervention. Petitioner reported the repeat injection provided only temporary relief. At Petitioner's last visit with Dr. Gornet prior to his 5/22/18 accident, Petitioner complained of persistent neck, right trapezius, and right shoulder pain with headaches and Dr. Gornet recommended a new MRI and plain CT scan. Further treatment of Petitioner's cervical spine was placed on hold while he treated for multiple injuries following his 5/22/18 accident, including right thumb surgery, conservative treatment for his bilateral toes, and lumbar spine surgery.

Based on the medical evidence and the record taken as a whole, the Arbitrator finds that Petitioner's current condition of ill-being in his cervical spine is causally connected to his undisputed work accident that occurred on 8/25/16.

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

Respondent stipulated that Petitioner's current condition of ill-being with respect to his right shoulder is causally connected to his work accident. Based on the Arbitrator's finding as to causal connection with regard to Petitioner's cervical spine, and the opinions of Drs. Gornet and Chabot as to the reasonableness and necessity of the medical treatment, Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's Group Exhibit 1 as they relate to Petitioner's cervical spine, with the exception of expenses related to the MRI spectroscopy as discussed below, and medical expenses related to Petitioner's right shoulder through 2/8/18 when Dr. Mall released Petitioner at MMI. Respondent shall pay said medical expenses directly to the medical providers pursuant to the Illinois medical fee schedule or PPO agreement, whichever is less, as provided in Section 8(a) and Section 8.2 of the Act. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits. The parties stipulate that Respondent shall receive credit allowed under Section 8(j) of the Act for any medical expenses paid through Respondent's group medical plan.

The Arbitrator concludes that the use of MRI spectroscopy is neither reasonable nor necessary. Pursuant to Section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses which are causally related to the work accident and are required to diagnose, relieve, or cure the effects of a claimant's injury. *See University of Illinois v. Indus. Comm'n,* 409 Ill. App. 3d 154, 164. (1992). The Petitioner bears the burden of proof in showing the medical services he received were necessary and the expenses were reasonable. *Renaldo Barnett v. Illinois Department of Transportation*, 21IWCC0583. The Commission has consistently ruled against the use of MRI spectroscopy. See *Lewis v. The Illinois Workers' Compensation Commission,* 2021 IL App (5th)

200302; *Cruse v. Choate Mental Health Center,* 19IWCC0419; *Streater v. Bi-State Development Agency,* 20IWCC0034; *Burwell v. Walgreens,* 2IWCC0505; *Barnett v. IDOT,* 21IWCC0583; *Salley v. Choate Mental Health Center,* 21IWCC0269. "[T]here is no evidence that such a test is generally accepted or recognized by the orthopedic community." *Goldie Cruse v. Choate Mental Health Center*, 19IWCC0419, 2019 WL 4491547 (2019). MRI spectroscopy as utilized by Dr. Gornet has been denied as being neither reasonable nor necessary. *Cruse v. Choate Mental Health Center,* 19IWCC0419; *Barnett v. IDOT,* 21IWCC0583.

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

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment**: Neither Party submitted an AMA rating. Therefore, the Arbitrator gives no weight to this factor.

(ii) **Occupation**: Petitioner continues to work full duty as a highway maintainer for Respondent; however, his ability to perform his job duties has been significantly affected, as he is unable to participate regularly in certain activities, such as concrete pours, operating a jackhammer, and operating a skid steer loader. Petitioner credibly testified that his performance reviews prior to his work accident were at the top of the list and since his accident they are at the bottom. Petitioner testified that Respondent works with his limitations, though Petitioner was not placed on permanent restrictions. The Arbitrator places greater weight on this factor.

(iii) **Age**: Petitioner was 31 years of age on the date of accident. He is a young individual and must live and work with his disabilities 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 Petitioner was younger [46 years of age] and would have to work with his disability for an extended period of time). The Arbitrator places greater weight on this factor.

(iv) **Earning Capacity**: There is no direct evidence Petitioner's accident resulted in a reduced earning capacity. Petitioner testified that bonuses are given out based on annual production and performance, and Petitioner testified his annual performance reviews have been negatively affected due to his injuries. He testified that he is the only employee in his shop that has not received a bonus since the program began in 2016, which is the year of his first work accident. However, there was no evidence admitted at arbitration that Petitioner did not receive annual bonuses specifically due to his work injuries. The Arbitrator places some weight on this factor.

(v) **Disability**: Petitioner sustained injuries to his right shoulder and cervical spine as a result of the accident. He underwent a right shoulder arthroscopy, subacromial decompression and acromioplasty, and open biceps tenodesis, and a cervical disc replacement at C5-6. Petitioner testified he still experiences pain with activities of daily living, such as raising his arm above his head and looking down or to the right. His injuries have negatively affected his job duties as he has difficulty operating a chainsaw, jackhammering, and driving a snowplow. He testified his work performance reviews have been consistently lower since his accident. Petitioner has difficulty playing with his six-year old daughter. He manages his symptoms with Meloxicam, Flexeril, Wellbutrin and Ambien. Petitioner testified he has been released to full duty work without restrictions for his right shoulder and cervical spine and Respondent works with his limitations. The Arbitrator places greater weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 12.5% loss of Petitioner's body as a whole with regard to his right shoulder, and 15% loss of Petitioner's body as a whole with regard to his cervical spine, as provided under Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 2/8/18, the date Dr. Mall placed Petitioner at MMI with respect to his right shoulder, through the date of arbitration on 3/24/22, and compensation that has accrued from 9/9/21, the date Dr. Gornet released Petitioner at MMI with respect to his cervical spine, through the date of arbitration on 3/24/22, and shall pay the remainder of the award, if any, in weekly payments.

Arbitrator Linda J. Cantrell DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC017670
Case Name	Jason Cross v. State of Illinois – Illinois Department of Transportation
Consolidated Cases	17WC010976; 21WC028714;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0411
Number of Pages of Decision	21
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 10/25/2022

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jason Cross,

Petitioner,

vs. NO: 18 WC 17670

State of Illinois Department of Transportation,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of Petitioner's disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 2, 2022, is hereby affirmed and adopted.

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

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

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.

October 25, 2022
MP:yl
o 10/20/22
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	18WC017670
Case Name	CROSS, JASON v. STATE OF ILLINOIS/ DEPARTMENT OF TRANSPORTATION
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 6/2/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 1, 2022 1.58%

/s/ Linda Cantrell, Arbitrator
Signature

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

June 2, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JASON CROSS
Employee/Petitioner

v.

STATE OF ILLINOIS/
DEPARTMENT OF TRANSPORTATION
Employer/Respondent

Case # **18-WC-017670**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin, Illinois** on **March 24, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **May 22, 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 conditions of ill-being with respect to his lumbar spine, right thumb, and bilateral great toes ***is*** causally related to the accident. Petitioner's current condition of ill-being in his cervical spine is not causally related to the 5/22/18 work accident.

In the year preceding the injury, Petitioner earned $**69,657.07**; the average weekly wage was $**1,339.56**.

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 $**All Paid** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**All Paid**. The parties stipulate that all TTD benefits have been paid and no overpayment or underpayment of TTD benefits are claimed.

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

ORDER

Based on the Arbitrator's finding that Petitioner's current condition of ill-being in his cervical spine is causally related to his work accident on 8/25/16, and benefits were awarded accordingly in Case No. 17-WC-010976, the Arbitrator finds that Petitioner's current condition of ill-being in his cervical spine is not causally connected to his accident of 5/22/18 and awards no benefits herein related to Petitioner's cervical spine.

Respondent stipulated that Petitioner's current condition of ill-being with respect to his lumbar spine, right thumb, and bilateral great toes are causally connected to his work accident of 5/22/18. Therefore, Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's Group Exhibit 1 as they relate to Petitioner's lumbar spine, right hand/thumb, and bilateral great toes. Respondent shall pay the medical expenses directly to the medical providers pursuant to the Illinois medical fee schedule or PPO agreement, whichever is less, as provided in Section 8(a) and Section 8.2 of the Act. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits. The parties stipulate that Respondent shall receive credit allowed under Section 8(j) of the Act for any medical expenses paid through Respondent's group medical plan.

Respondent shall pay Petitioner the sum of $**790.64 (Max. rate)**/week for a period of **128.12** weeks, as provided in Sections 8(d)2 and 8(e) of the Act, because the injuries sustained caused permanent partial disability to the extent of **20%** loss of Petitioner's body as a whole related to his lumbar spine, **22%** loss of use of Petitioner's right thumb, **15%** loss of use of Petitioner's right great toe, and **15%** loss of use of Petitioner's left great toe.

Respondent shall pay Petitioner compensation that has accrued from 2/27/19, the date Dr. Kutnik and Dr. Bradley placed Petitioner at MMI with respect to his right thumb and bilateral great toes, through the date of arbitration on 3/24/22, and compensation that has accrued from 6/15/20, the date Dr. Gornet released Petitioner at MMI with respect to his lumbar spine, through the date of arbitration on 3/24/22, 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.

JUNE 2, 2022

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARIBTRATION DECISION

JASON CROSS,	)	
	)	
Employee/Petitioner,	)	
	)	
	)	**Case No.: 18-WC-017670**
v.	)	
	)	**Consolidated Case Nos.: 17-WC-010976**
	)	**21-WC-028714**
STATE OF ILLINOIS/ILLINOIS	)	
DEPARTMENT OF TRANSPORTATION,	)	
	)	
Employer/Respondent	)	

FINDINGS OF FACTS

These claims came before Arbitrator Linda J. Cantrell for trial in Herrin on March 24, 2022. On April 11, 2017, Petitioner filed an Application for Adjustment of Claim alleging injuries to his neck, right shoulder, and body as a whole as a result of transferring a sign from one truck to another on August 25, 2016. (Case No. 17-WC-010976). On November 28, 2018, Petitioner filed an Application for Adjustment of Claim alleging injuries to his back, neck, head, right shoulder, right wrist/thumb, and body as a whole as a result of an automobile accident on May 22, 2018. (Case No. 18-WC-017670). At arbitration, Petitioner moved to amend the Application to include his right foot as a body part affected by the accident. On October 14, 2021, Petitioner filed an Application for Adjustment of Claim alleging injury to his right shoulder and body as a whole as a result of lifting, jacking, and cranking on a dump truck tire on September 14, 2021. (Case No. 21-WC-028714). The cases were consolidated on March 14, 2022.

The issues in dispute in Case No. 18-WC-017670 are causal connection with regard to Petitioner's cervical spine, medical bills related to Petitioner's cervical spine surgery on 9/25/20 and subsequent treatment, including an MRI spectroscopy, and the nature and extent of Petitioner's injuries. The parties stipulate that all temporary total disability benefits have been paid and there is no overpayment or underpayment of TTD benefits claimed. All other issues have been stipulated. The Arbitrator has simultaneously issued separate Decisions in Case Nos. 17-WC-010976 and 21-WC-028714.

TESTIMONY

Petitioner was 33 years of age, single, with one dependent child at the time of accident. Petitioner has been employed by Respondent for over twelve years as a Highway Maintainer.

Petitioner testified that on 8/25/16 he attempted to lift a tripod out of a truck that was entangled. He jerked the tripod loose and felt immediate pain in his right shoulder and neck/trapezius area. Petitioner sought treatment with Dr. Wong who placed him off work and ordered physical therapy. Petitioner testified that therapy improved his symptoms and he returned to work. Petitioner stated his symptoms increased upon returning to work, including pain in his right neck, shoulder, trapezius, and down into his fingertips. Petitioner treated with Dr. Mall and Dr. Gornet. He underwent physical therapy and injections that temporarily alleviated his symptoms. Dr. Mall performed a right shoulder surgery. Petitioner testified that approval for postoperative physical therapy was delayed, and Dr. Mall ordered him to perform exercises at home and the gym that increased his pain. Petitioner testified that Dr. Gornet ordered cervical spine injections that temporarily improved his symptoms.

Petitioner testified that on 5/22/18 he was involved in a motor vehicle accident where he was rear-ended by a pickup truck. He stated he injured his body all over and was transported by ambulance to St. Francis Medical Center. Petitioner returned to Dr. Gornet with increased neck and low back pain. Dr. Gornet placed Petitioner off work and ordered an MRI. Petitioner testified he never had treatment to his low back prior to his May 2018 accident. He underwent injections and physical therapy that provided temporary relief.

Dr. Kutnik performed surgery to repair a right thumb fracture and torn ligament. Petitioner is right-hand dominant. He testified that surgery improved his condition. Dr Kutnik referred Petitioner to Dr. Bradley for a right foot injury. Petitioner testified he never had any injuries or treatment to his right thumb, right foot, or cervical spine prior to his work accidents. He was working full duty without restrictions prior to his accident on 8/25/16.

Dr. Gornet performed disc replacements at L4, L5, and S1. Prior to his surgery, Petitioner testified he had intense low back pain that radiated down his left leg to his toes. His symptoms improved with surgery, and he was released to full duty work in September 2020. Petitioner testified that his neck pain increased when he returned to work, particularly with shoveling, using a chainsaw, chipping wood, and repetitive activities. Dr. Gornet ordered a repeat cervical MRI and performed a disc replacement at C5-6 on 9/25/20. Petitioner testified that prior to his cervical surgery he had intense, constant pain in his neck, shoulder, and trapezius on the right side. He had significant improvement from surgery, and he was released at MMI in September 2021.

Petitioner sustained a third work accident on 9/14/21 when he lifted a tandem dump truck tire into a truck. He stated he felt immediate pain in his right shoulder. Petitioner returned to Dr. Bradley who ordered an injection that significantly improved his symptoms. Dr. Bradley released Petitioner at MMI in December 2021 and he has not returned since.

Petitioner testified he continues to have back pain with repetitive activities, including prolonged standing. Flagging duty at work and washing dishes at home aggravates his condition. Petitioner's low back pain increases with prolonged walking. He continues to perform his job duties as a highway maintainer. He takes Meloxicam twice daily, as well as Flexeril, Wellbutrin, and Ambien. He stated he never took any of these medications prior to his work accidents. Petitioner testified he works 12-hour shifts when snow plowing. Absent bad weather, his normal

shift is 7:00 a.m. to 3:30 p.m. He stated snow plowing is rough on his body and he has to pull over and take breaks.

Petitioner testified he is rarely allowed to participate in concrete pours because his production hinders the rest of the team. He stated the jerking motion necessary to start a chainsaw increases his pain. His right shoulder pain increases when he raises his arm over his head. His cervical pain increases with looking down or to the right, and his lumbar pain increases with bending over. He stated that Respondent works with him and his limitations. He testified he used to operate heavy equipment such as a skid steer loader that is operated with hand and foot controls, but the numbness in his left ankle and toes and decreased strength prevents him from operating the equipment. Petitioner testified he has a six-year old daughter who can no longer jump into his arms and he cannot play active with her.

On cross-examination, Petitioner testified he has been released to full duty work without restrictions for all of his injured body parts. He last saw Dr. Gornet in September 2021 and Dr. Bradley in December 2021. Petitioner testified he has not returned to either doctor since. He uses a treadmill for light exercise and gets a good workout performing his job duties. Petitioner testified he has received performance evaluations since returning to work and they have all been lower than they were prior to his accidents. He testified he is the only person in his shop that has never received a bonus. He stated bonuses are based on production or annual performance and he has never received a bonus since the program started in 2016.

MEDICAL HISTORY

On 8/25/16, Petitioner presented to Community Health & Emergency Services where he saw Dr. Nelson Wong. Petitioner reported he injured his right shoulder and neck that morning while lifting a 30-pound tripod out of a truck. (PX3) The records document that he dropped the tripod immediately and was unable to pick it back up. Petitioner reported he continued to work that day and was unable to operate a tractor because he could not turn his head or move his neck to drive. He rated his pain at 10/10, with burning in the right side of his neck. Physical examination revealed muscle spasm, reduced range of motion, pain in the cervical spine, and tenderness in the right trapezius. X-rays were normal. An injection was performed, and Petitioner was taken off work for two days. He was prescribed pain medication and muscle relaxants.

On 8/29/16, Petitioner returned to Dr. Wong and reported slight improvement in his condition but he was still experiencing significant neck pain and was unable to get comfortable, turn his head, or lift his 13-pound child without pain. (PX3) Dr. Wong kept Petitioner off work and referred him for physical therapy.

Petitioner continued to follow up with Dr. Wong and advised he was awaiting approval from workers' compensation to begin physical therapy, but he was engaging in home exercise. He reported continued symptoms, including flare-ups during which he almost went to the emergency room, along with stiffness and difficultly dressing himself. (PX3) Dr. Wong continued Petitioner off work pending therapy.

On 9/20/16, Petitioner was evaluated for physical therapy and rated his neck and bilateral shoulder pain at 8/10, which affected all of his daily activities and disrupted his sleep. (PX5). Examination revealed decreased range of motion and strength, poor posture, poor scapular stabilization and rhythm, and decreased sensation and reflexes. Petitioner underwent 12 weeks of physical therapy which improved his pain and range of motion.

In November and December 2016, Dr. Wong noted Petitioner continued to have pain with lifting and activity but overall improved with therapy. Petitioner requested to return to work and Dr. Wong placed him on restricted duty for two weeks followed by regular duty.

Upon returning to work Petitioner experienced increased pain and presented to the emergency room at St. Francis Medical Center on 1/19/17. (PX6) It was noted that Petitioner's onset of injury had occurred at work in August 2016 and there had been no new injury since. Petitioner reported that since returning to work he had persistent pain in his neck, upper back, and shoulders along with intermittent numbness and tingling into the right arm, hand, and fingers. Physical examination revealed reduced cervical range of motion, pain, tenderness and spasm in the right trapezius, and numbness and tingling in his right fourth and fifth digits with extension of the cervical spine. He was prescribed different muscle relaxants and pain medications as his current medications had not been helpful. He was instructed to follow up with his doctor and a neurosurgeon.

Petitioner underwent a cervical spine MRI at Southeast Health that revealed a disc herniation at C5-6 and a bulge at C6-7.

On 2/28/17, Petitioner was examined by Dr. Nathan Mall who noted a history of injury on 8/25/16 while lifting a tripod. Dr. Mall noted Petitioner's current symptoms of cervical spine and trapezius pain, numbness into his fingers, burning and shooting pain from his neck down into his elbow and hand, and deep-seated right shoulder pain. Physical exam revealed a positive flexion compression test and Tinel's sign on the right elbow, positive dynamic labral compression and O'Brien's testing on the right shoulder, trapezial pain, pain with Spurling's maneuver to the right, and limitation of rotation to the right. Shoulder x-rays were normal. Dr. Mall reviewed the cervical MRI and opined Petitioner sustained a protruded/herniated disc at C5-6. He noted Petitioner's mechanism of injury was consistent with a superior labral tear and ordered an MRI arthrogram. Dr. Mall also referred Petitioner to Dr. Gornet to further evaluate his cervical spine and placed Petitioner on work restrictions.

On 4/25/17, Dr. Mall opined the MRI arthrogram revealed a clear superior labral tear in the right shoulder. (PX8) He administered a cortisone injection and ordered physical therapy.

On 5/15/17, Petitioner was examined by Dr. Gornet. (PX9) Dr. Gornet documented the history of Petitioner's work injury, conservative treatment, and ongoing symptoms of neck, right trapezius and right shoulder pain, headaches, and tingling down the right arm. He noted Petitioner had not suffered from any significant neck or shoulder problems prior to his work injury. Physical examination revealed neck pain on the right, right trapezius and shoulder pain, tingling in the forearm that was consistent with the C7 distribution, and decreased sensation at the C7 dermatome. Dr. Gornet reviewed the cervical MRI dated 2/15/17 and ordered a repeat

MRI with foraminal views which revealed a large foraminal herniation and annular tear at C5-6. (PX9, 10) Dr. Gornet recommended a steroid injection at C5-6 and continued light duty restrictions.

On 6/27/17, Petitioner followed up with Dr. Mall for his right shoulder SLAP tear. (PX8). He noted Petitioner initially gained some relief from the shoulder injection, but his pain returned. Dr. Mall noted Petitioner had a markedly positive O'Brien's test and positive dynamic labral compression test. On 9/28/17, Dr. Mall performed a right shoulder arthroscopy, subacromial decompression and acromioplasty and open biceps tenodesis. (PX12) Intraoperatively, Dr. Mall noted objective findings of a superior labral tear. The superior labrum and subacromial space were debrided and a biceps tenodesis was performed.

Dr. Mall ordered post-operative physical therapy that was delayed, resulting in stiffness in Petitioner's shoulder. Dr. Mall recommended aggressive therapy and a cortisone injection due to the delay. (PX8, 15) The injection improved Petitioner's condition but he reported soreness after going to the gym at Dr. Mall's direction. (PX8). At Petitioner's final visit with Dr. Mall on 2/8/18, he had stiffness with full forward elevation and external rotation. Dr. Mall instructed Petitioner to continue a home exercise program and released him at MMI.

During the time Petitioner treated with Dr. Mall, he continued to follow up with Dr. Gornet. (PX9) Despite undergoing the cervical injection, Petitioner was still persistently symptomatic and had since returned to work on a trial basis. (PX9) On 2/8/18, Dr. Gornet recommended an additional steroid injection at C5-6. He stated that if Petitioner did not improve he would consider surgical intervention. Petitioner underwent the repeat injection on 3/8/18 that provided temporary relief. On 4/5/18, Dr. Gornet noted persistent neck, right trapezius, and right shoulder pain with headaches. Dr. Gornet recommended a new MRI and plain CT scan.

On 5/22/18, Petitioner was involved in a work-related motor vehicle accident. Petitioner pulled off on the shoulder of the road to pick up road signs. (PX13, 23) Before he could put his vehicle in park and while still wearing his seatbelt, Petitioner's truck was rear-ended by a pickup truck resulting in entrapment. The responding paramedics noted Petitioner had neck and low back pain and dizziness. (PX13) Petitioner reported he struck his head on the steering wheel. He was placed in a C-collar and taken to St. Francis Medical Center.

At the hospital, Petitioner reported injuries to his head, neck, torso, shoulder/arm, right wrist, right thumb, and back. (PX6) His symptoms included pain and tenderness in his right shoulder, right wrist, right hand, and cervical, thoracic, and lumbar spines with headache. He underwent x-rays of his chest, pelvis, right shoulder, right wrist, right fingers, and CT scans of his chest, abdomen, pelvis, head, thoracic spine, lumbar spine, and cervical spine. Imaging showed no fractures or hemorrhages with the exception of the right hand x-ray that revealed a nondisplaced fracture of the right thumb. Final diagnoses were lumbar spine stenosis, acute right wrist, right shoulder, thoracic spine, and back pain, cervicalgia, nondisplaced fracture of the right thumb, and a closed head injury. Petitioner was given injections for pain, a splint, and discharged with pain medications. He was instructed to follow up with his physician and a hand specialist.

Petitioner contacted Dr. Gornet's office to report his recent accident. On 6/4/18, Petitioner underwent the recommended cervical MRI and CT scan and followed up with Dr. Gornet. Dr. Gornet reviewed video footage of the motor vehicle accident and stated the property damage was severe and Petitioner's truck was pushed quite some distance from the point of impact. (PX9, 24) Petitioner reported increased neck pain, right trapezius and shoulder pain with headaches, and stated his symptoms were worse than prior to the vehicle accident. Petitioner had new symptoms of low back pain into the left buttock and hip, with tingling into his left foot and burning in his toes bilaterally. Examination revealed decreased left plantar flexion and EHL function and decreased sensation in the S1 dermatome on the left. Dr. Gornet reviewed the cervical MRI and noted a disc injury at C5-6 which was aggravated by the 5/22/18 accident. Dr. Gornet opined Petitioner suffered a potential new disc injury in his lumbar spine as a result of the accident. He recommended a course of physical therapy for back pain, which was performed at Diversified Rehab, and a motion analysis on his cervical spine. Dr. Gornet referred Petitioner to Dr. Shawn Kutnik for his thumb injury. Dr. Gornet ordered a lumbar MRI that was preformed on 6/25/18 and revealed herniations at L4-5 and L5-S1, with annular fissures and mild deflection of the dura at L4-5. (PX10)

On 8/20/18, Petitioner was examined by Dr. Kutnik who noted prior immobilization of his right thumb with splinting. (PX16) Petitioner reported no injuries to his hand or fingers prior to 5/22/18. He complained of severe, sharp pain at the radial border of the right thumb joint which was aggravated by motion. Petitioner also reported pain in the big toes of both feet that began a few days following the vehicle accident. Dr. Kutnik's exam of Petitioner's toes revealed tenderness to palpation over the first MT joint without clear instability. X-rays showed concentric joint reduction but no fracture. Physical examination of Petitioner's thumb revealed obvious deformity to the MP joint, ulnar deviation of the thumb, laxity of the radial collateral ligament with flexion and extension, and tenderness to palpation over the radial border of the MP joint. X-rays of Petitioner's thumb showed a healed fracture, but a clear subluxation at the MP joint consistent with a ligament tear.

Dr. Kutnik assessed a right thumb chronic radial collateral ligament tear and bilateral toe pain. He recommended that Petitioner follow up with a foot and ankle specialist. With regard to Petitioner's thumb, Dr. Kutnik opined that Petitioner had an obvious tear that had remained persistent and severe despite immobilization, which was causally related to the accident on 5/22/18 and required surgical intervention.

On 9/6/18, Petitioner returned to Dr. Gornet who noted Petitioner's neck and right upper extremity pain and headaches seemed to be trending more positively; however, his low back pain had increased. (PX9) Dr. Gornet recommended additional cervical and lumbar steroid injections at L4-5, L5-S1, and C5-6.

On 11/8/18, Petitioner returned to Dr. Gornet and reported the injections helped his back for a week, but the pain returned, and the neck injection provided only transient relief. Petitioner reported his neck and upper extremity symptoms seemed to be more tolerable than his low back symptoms, which affected all aspects of his life. Dr. Gornet recommended a CT discogram and MRI Spectroscopy to assess Petitioner's back pain.

On 11/13/18, Dr. Kutnik performed a right thumb radial collateral ligament reconstruction with palmaris autograft. (PX12) Intraoperatively, Dr. Kutnik noted obvious insufficiency of the collateral ligament with marked attenuation along the radial border for poor residual integrity.

Petitioner was fitted for a splint at Apex Network Physical Therapy and he underwent physical therapy at Diversified Rehab. (PX17) Follow up visits note Petitioner's thumb was doing well, except for some numbness and residual stiffness. (PX16)

Dr. Kutnik referred Petitioner to Dr. Matthew Bradley for bilateral ankle and great toe pain. On 12/31/18, Dr. Bradley noted the history of Petitioner's 5/22/18 accident and subsequent ankle and toe pain. (PX18) Petitioner reported no prior injuries and he had a dull and aching pain that he rated at 4/10 which was made worse by walking and daily activities. Physical examination of the ankles and toes revealed tenderness and pain with extension bilaterally. Bilateral x-rays and ultrasounds revealed dorsal osteophytes at the distal dorsal first metatarsal. Dr. Bradley assessed sub-acute hallux rigidus status post motor vehicle collision. He recommended inserts and potential injections, or surgery should the condition fail to improve.

The CT discogram and MRI spectroscopy of Petitioner's lumbar spine revealed a provocative disc at L4-5 with a posterior annular tear, and painful chemicals at L4-5 and L5-S1. (PX9, 10, 14, 19, 26) Dr. Gornet recommended surgery.

Prior to lumbar spine surgery, Petitioner returned to Dr. Kutnik who referred him to formal work conditioning on his thumb due to the heavy labor nature of Petitioner's job. However, due to his pending lumbar surgery the therapist was concerned about him over-stressing and the work conditioning was not performed. (PX16)

At his final visit with Dr. Kutnik on 2/27/19, Petitioner reported tightness with the use of his hand and thumb, particularly with heavy use and pinching activities. Overall, Petitioner was doing well and Dr. Kutnik released him at MMI.

On 2/27/19, Petitioner followed up with Dr. Bradley and noted his bilateral toe pain significantly improved with medication. (PX18) Petitioner still had some pain with extension of the right great toe, but overall Dr. Bradley felt that his condition was resolving and released him from care.

On 3/19/19, Dr. Gornet performed an anterior decompression and disc replacement at L4-5 and L5-S1. (PX19, 20) Intraoperative findings included a large central annular tear and central disc herniation at L5-S1, and a large central herniation and annular tear at L4-5. Discectomies were performed and prostheses were inserted.

On 5/2/19, Petitioner was examined by Dr. Michael Chabot pursuant to Section 12 of the Act. (RX4) Dr. Chabot reviewed Petitioner's MRI scans from 2/15/17, 5/15/17, and 6/4/18, and opined Petitioner had a disc protrusion and bulge at C5-6; however, he did not appreciate an annular tear. He agreed there was a causal relationship between Petitioner's objective findings and the accident, and that the medical treatment Petitioner received to date had been reasonable

and necessary. However, Dr. Chabot believed Petitioner suffered only a strain injury to his neck and right shoulder as a result of the 8/25/16 accident, and a subsequent strain injury to his neck as a result of the 5/22/18 accident. Dr. Chabot did not believe Petitioner's cervical or right shoulder conditions required further treatment. He noted he was not asked to comment on Petitioner's lumbar spine condition.

At post-operative visits with Dr. Gornet, Petitioner reporting doing well but he had continued pain in his hips and lumbar spine on the right. A post-op lumbar CT scan was normal and Dr. Gornet referred Petitioner for physical therapy on 7/1/19. Dr. Gornet noted Petitioner was still suffering from neck and shoulder pain with headaches and his cervical treatment had been placed on hold due to lumbar surgery. Dr. Gornet ordered a cervical MRI that revealed disc protrusions at C3-4, C4-5, and C5-6, along with a fragment at C5-6, a small annular tear at C4-5, and a herniation at C3-4. (PX9, 10) In comparison with Petitioner's prior MRI, C5-6 showed some improvement, but C3-4 had progressed. Dr. Gornet continued to place Petitioner's cervical treatment on hold while his lumbar spine healed. On 9/19/19, Petitioner reported his low back pain was improved, but he still had some pain on the right that radiated into his buttock. Dr. Gornet recommended medial branch blocks and facet rhizotomies and kept Petitioner off work.

On 10/17/19, Petitioner was examined a second time by Dr. Chabot pursuant to Section 12 of the Act. (RX5) Dr. Chabot interpreted the pathology on Petitioner's MRI reports as showing a disc protrusion and herniation at C5-6, and a herniation at C6-7. He noted that Petitioner rated his neck and shoulder pain at 5/10. Dr. Chabot opined that the motor vehicle accident of 5/22/18 aggravated or exacerbated Petitioner's prior cervical complaints associated with the 8/25/16 injury. Dr. Chabot noted that Petitioner clearly had an increase in back pain following his 5/22/18 injury which aggravated or exacerbated his back condition. Dr. Chabot opined that Petitioner's cervical and lumbar spine treatment to date had been reasonable and necessary; however, did not feel that further cervical spine treatment was warranted. Dr. Chabot believed that the prior diagnostic studies failed to document that a disc injury at C5-6 was the source of Petitioner's complaints.

Petitioner underwent the medial nerve branch blocks and rhizotomies with Dr. Blake. He reported some relief but had continued lumbar pain on the left side. (PX9, 11, 12)

On 12/12/19, Dr. Gornet noted that while Petitioner had a protrusion/annular tear at C5-6, which he stated was readily seen on all objective studies, he advised surgery was a last resort. He returned Petitioner to work with the understanding he may still require treatment in the future.

On 6/15/20, Petitioner returned to Dr. Gornet and reported improvement in his low back pain, and pain with some activities such as shoveling. (PX9) Petitioner's chief complaint was continued neck pain with headaches, and pain into his right trapezius and shoulder. Dr. Gornet placed Petitioner at MMI with regard to his lumbar spine and encouraged Petitioner to try to live with his cervical symptoms. He ordered Petitioner to follow up for a repeat cervical MRI if he remained symptomatic.

On 8/4/20, it was noted Petitioner returned to work and his neck pain, right shoulder radiculopathy, and headaches increased with activities such as mowing, which required him to

turn around and look behind him. (PX9) He underwent a repeat cervical MRI that revealed an annular tear and herniation at C5-6 and a protrusion at C3-4. (PX9, 10)

On 9/25/20, Dr. Gornet performed a cervical disc replacement at C5-6. (PX19) Intraoperatively, Dr. Gornet visualized a large central annular tear, which propagated to the back of the disc, and a herniation within the tear itself. An intraopeative video was performed that showed the nerve hook within the tear, and a second video was performed of the tear all the way back at the posterior annulus. (PX19, 25) The area was debrided and the prosthesis was placed.

On 10/8/20, Petitioner reported a tremendous difference in his pain and was already symptomatically improved. At his three-month follow up, Petitioner reported some sharp pain on occasion when he rotated his head, but overall he was doing very well. A post-operative CT scan was normal and Dr. Gornet returned Petitioner to work full duty without restrictions on 1/7/21.

On 1/13/21, Petitioner was examined a third time by Dr. Chabot pursuant to Section 12 of the Act. (RX6) Dr. Chabot reviewed the medical records from Dr. Gornet, including the operative report dated 9/25/20. He did not comment on the objective intraoperative findings or video taken during surgery that showed Petitioner's large annular tear. Dr. Chabot opined that the medical treatment incurred to date had been reasonable and necessary. He opined that Petitioner had reached MMI and could return to full duty work.

Petitioner underwent physical therapy and followed up with Dr. Gornet on 4/8/21. Petitioner reported some residual cervical symptoms while driving, looking behind him, bending, and lifting, but he was overall improvement.

On 8/18/21, Dr. Chabot issued an addendum report. (RX7) Dr. Chabot concluded that Petitioner's 5/22/18 accident aggravated his neck complaints from his prior injury of 8/25/16. Although in his 1/13/21 report, Dr. Chabot noted that all of Petitioner's medical treatment had been reasonable and necessary, he stated in his addendum report there was no need for cervical disc replacement as the result of either work injuries. He opined that the surgery was performed primarily to address degenerative changes at C5-6 that were never confirmed to be the source of Petitioner's complaints.

Petitioner last saw Dr. Gornet on 9/9/21 and reported that his neck and back had significantly improved, although he experienced some residual symptoms. CT scan showed no evidence of lucency or subsidence, and he was released at MMI.

Shortly following his release, Petitioner suffered another work injury on 9/14/21 while lifting a dump truck tire into a truck. On 9/23/21, Petitioner reported to Dr. Bradley he felt a sudden tearing pain in the lateral aspect of his right shoulder. (PX18) Petitioner stated he attempted activity modification, icing, and Meloxicam, none of which significantly improved his symptoms. Petitioner reported his symptoms increased with elevation above shoulder level and when carrying objects away from his body. Dr. Bradley noted Petitioner's prior shoulder surgery with Dr. Mall in 2017. Physical examination was positive for impingement syndrome. X-rays and an MRI arthrogram were performed which did not reveal evidence of any major pathology. (PX18) Dr. Bradley assessed a right shoulder sprain and impingement. (PX18) He recommended

a home exercise program, ice, activity modification, and anti-inflammatory medications and instructed Petitioner to follow up in four to six weeks.

On 10/14/21, Petitioner reported to Dr. Bradley he had no significant change in his symptoms, and he was experiencing a sharp pinch and pain when using his shoulder overhead along with some difficulty sleeping. (PX18) Dr. Bradley performed a right shoulder steroid injection and encouraged Petitioner to continue anti-inflammatories and home exercises.

On 12/9/21, Petitioner reported significant improvement following the injection, although he could still feel a pinching pain with above-the-shoulder activities. (PX18) Dr. Bradley prescribed Meloxicam to take on an as-needed basis, encouraged Petitioner to continue home exercises, and released him at MMI.

Dr. Chabot testified by way of evidence deposition on 10/22/21. (RX8) He testified that Petitioner was cooperative with his examinations and no symptom magnification or malingering was detected. He agreed that he had no records or indication that Petitioner suffered from any cervical spine symptoms prior to 8/25/16. He opined that Petitioner sustained injuries to his cervical spine, shoulder region, and right trapezius area during his initial accident of 8/25/16, and the 5/22/8 accident aggravation his injuries. He testified that the mechanisms of injury for both accidents could cause injury to Petitioner's cervical spine.

Petitioner's spine questionnaire that he completed for Dr. Chabot on 5/2/19 indicated he suffered from neck and right shoulder pain that had been present for two years and nine months. He indicated the pain fluctuated from moderate to severe, and it was stabbing, burning, numb, tingling, aching, and dull. Dr. Chabot noted that at the time of his 10/17/19 exam, Petitioner was still suffering from the same type of symptoms in his neck and right shoulder, and that his physical examination showed Petitioner's cervical range of motion was reduced by 25%. Dr. Chabot conclude that Petitioner was at MMI with regard to his cervical spine condition.

Dr. Chabot agreed with both Dr. Gornet and the radiologist, Dr. Ruyle, that there was disc bulging at C5-6 on Petitioner's 5/15/17 MRI. Regarding Petitioner's 9/19/19 cervical MRI, Dr. Chabot testified that it was unclear that the diminished appearance of the protrusions meant he was healing; and that the difference could represent an interval change, a variation, a difference in MRI studies, or could mean that the disc was undergoing changes. He testified he did not appreciate an annular tear on Petitioner's imaging, but if he had, he still would not have recommended surgery, despite Petitioner's ongoing neck symptoms, because he felt that there was no way to confirm that C5-6 was the source of Petitioner's complaints.

Dr. Chabot testified that he reviewed the cervical spine operative report of 9/25/20 to see what type of operation was performed but had not reviewed any other details regarding same. When asked about Dr. Gornet's intraoperative findings of a large annular tear at C5-6, Dr. Chabot stated, "I'm just not sure how he sees an annular tear… But if that's what he said he saw, I don't deny that's what he saw." Dr. Chabot did not give any indication that he reviewed the operative videos. Dr. Chabot testified that Petitioner reported to him during the 1/13/21 examination that his trapezius and shoulder pain persisted, but it was not as bad as it was prior to

the surgery. Dr. Chabot testified that he believed Petitioner's lumbar disc replacement surgery was warranted as a result of the 5/22/18 accident.

Dr. Gornet testified by way of evidence deposition on 12/16/19. (PX26) He testified that Petitioner's physical examination yielded objective findings that were consistent with the C7 distribution, which correlated with the findings of the 2/15/17 MRI. He testified that the MRI demonstrated clear and objective disc pathology at C6-7 and more obviously at C5-6. Specifically, the sagittal image number 7 of the MRI films showed a protruding disc at C5-6, and the axial imaging number 20 showed a fragmented disc, which was impacting the cord on the right side. He testified that the 5/15/17 MRI showed a protrusion at C5-6. He felt that these findings had clinical significance as they correlated with Petitioner's physical examination and subjective complaints.

Dr. Gornet opined that Petitioner suffered a disc injury at C5-6 and potentially at C6-7 as a result of the 8/25/16 accident, and that the injury was the source of Petitioner neck pain, headaches, and a portion of his shoulder pain. He based his opinion on a combination of Petitioner's history, physical examination, and objective pathology on diagnostic studies. He testified that the objective disc pathology was consistent with Petitioner's physical symptoms of referred pain to the shoulder/arm, neck pain, and headaches.

Dr. Gornet testified that Petitioner's neck symptoms and headaches continued throughout subsequent follow-up appointments and increased following his 5/22/18 motor vehicle accident, after which he also developed lumbar spine pain. Dr. Gornet testified that although Petitioner had ongoing pain in his neck, right trap, right shoulder, and headaches, his low back was trending worse. Regarding the lumbar CT discogram and MRI spectroscopy, Dr. Gornet testified that the correlation between the two has been shown to indicate a 95-plus percent chance that the patient would have substantial clinical improvement. He testified that Petitioner's discogram and MRI spectroscopy revealed a correlation of painful chemicals and provocative discography which gave him a high level of confidence that treatment at L4-5 and L5-S1 would benefit Petitioner. He testified that the intraoperative pathology that he observed correlated very well with the MRI and CT discogram, and that more importantly, Petitioner improved following surgery.

Dr. Gornet testified he disagreed with Dr. Chabot's diagnosis of a shoulder and neck strain, as a cervical disc herniation was noted by Dr. Chabot, and Dr. Mall's diagnosis of shoulder pathology was clear and objective on the MRIs and intraoperative findings. Regarding the fact that Dr. Chabot did not appreciate the presence of an annular tear at C5-6 or C6-7, Dr. Gornet stated the annular tear is clearly seen on image number 20 of the 2/15/17 MRI and on image 11 of 13 there is a tear within the disk herniation. He stated the tear is clearly seen as a bright white line, and sometimes you can have a herniation where you do not see objectively a brighter appearance. He stated Petitioner had both which is also identified by the radiologist.

Dr. Gornet testified there was no explanation for Petitioner's cervical spine complaints other than the work injuries. Petitioner had clear objective pathology on multiple scans. Dr. Gornet testified that the 8/25/16 accident was responsible for Petitioner's cervical symptoms, which were aggravated by the 5/22/18 accident that also caused his lumbar spine condition.

CONCLUSIONS OF LAW

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

Respondent stipulated that Petitioner's current conditions of ill-being in his lumbar spine, right thumb, and bilateral great toes are causally connected to his work accident of 5/22/18. Respondent disputes that Petitioner's cervical spine condition is casually connected to the work accident.

Based on the Arbitrator's finding that Petitioner's current condition of ill-being in his cervical spine is causally related to his work accident on 8/25/16, and benefits were awarded accordingly in Case No. 17-WC-010976, the Arbitrator finds that Petitioner's current condition of ill-being in his cervical spine is not causally connected to his accident of 5/22/18.

Although Petitioner's cervical spine symptoms and headaches increased following his 5/22/18 motor vehicle accident, Dr. Gornet opined that the 8/25/16 accident was responsible for Petitioner's cervical condition, which was aggravated by the 5/22/18 accident. Dr. Chabot testified that the 5/22/18 accident aggravated Petitioner's cervical condition that was caused by the accident on 8/25/16. The Arbitrator notes that Petitioner underwent significant conservative treatment following his 8/25/16 accident and was actively undergoing treatment for his cervical spine at the time of his 5/22/18 motor vehicle accident. Petitioner underwent numerous cervical injections, physical therapy, work duty modifications, and medication directed by Dr. Wong and Dr. Gornet. Petitioner attempted to return to work in January 2017 and reported persistent pain in his neck, upper back, and shoulders along with intermittent numbness and tingling into the right arm, hand, and fingers. Objective medical evidence revealed disc pathology at C5-6 and C6-7 prior to Petitioner's accident on 5/22/18. In February 2018, Dr. Gornet recommended additional steroid injections at C5-6 and opined that if Petitioner did not improve, he would consider surgical intervention. Petitioner reported the repeat injection provided only temporary relief. At Petitioner's last visit with Dr. Gornet prior to his 5/22/18 accident, Petitioner complained of persistent neck, right trapezius, and right shoulder pain with headaches and Dr. Gornet recommended a new MRI and plain CT scan. Further treatment of Petitioner's cervical spine was placed on hold while he treated for multiple injuries following his 5/22/18 accident, including right thumb surgery, conservative treatment for his bilateral toes, and lumbar spine surgery.

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

Respondent stipulated that Petitioner's current condition of ill-being with respect to his lumbar spine, right thumb, and bilateral great toes are causally connected to his work accident of 5/22/18. Therefore, Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's Group Exhibit 1 as they relate to Petitioner's lumbar spine, right hand/thumb, and bilateral great toes. Respondent shall pay the medical expenses directly to the medical providers pursuant to the Illinois medical fee schedule or PPO agreement, whichever is less, as provided in Section 8(a) and Section 8.2 of the Act. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits. The parties

stipulate that Respondent shall receive credit allowed under Section 8(j) of the Act for any medical expenses paid through Respondent's group medical plan.

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

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment**: Neither Party submitted an AMA rating. Therefore, the Arbitrator gives no weight to this factor.

(ii) **Occupation**: Petitioner continues to work full duty as a highway maintainer for Respondent; however, his ability to perform his job duties has been significantly affected, as he is unable to participate regularly in certain activities, such as concrete pours, operating a jackhammer, and operating a skid steer loader. He has to take several breaks while operating a snowplow. Petitioner credibly testified that his performance reviews prior to his work accident were at the top of the list and since his accident they are at the bottom. Petitioner testified that Respondent works with his limitations, though Petitioner was not placed on permanent restrictions. The Arbitrator places greater weight on this factor.

(iii) **Age**: Petitioner was 33 years of age on the date of accident. He is a young individual and must live and work with his disabilities 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 Petitioner was younger [46 years of age] and would have to work with his disability for an extended period of time). The Arbitrator places greater weight on this factor.

(iv) **Earning Capacity**: There is no direct evidence Petitioner's accident resulted in a reduced earning capacity. Petitioner testified that bonuses are given out based on annual production and performance, and Petitioner testified his annual performance reviews have been negatively affected due to his injuries. He testified that he is the only employee in his shop that has not received a bonus since the program began in 2016, which is the year of his first work accident. However, there was no evidence admitted at arbitration that Petitioner did not receive annual bonuses specifically due to his work injuries. The Arbitrator places some weight on this factor.

(v) **Disability**: Petitioner sustained injuries to his lumbar spine, right thumb, and bilateral great toes as a result of the accident. Petitioner underwent a radial collateral ligament reconstruction with palmaris autograft of the right thumb, and an anterior decompression and disc replacement at L4-5 and L5-S1. He was diagnosed with sub-

acute hallux rigidus of the bilateral great toes which was treated with medication. Petitioner testified he still experiences pain with activities of daily living, such as standing, walking, and bending down. He also experiences increased pain while performing flagging duty, repetitive work, driving a snowplow, and operating a chain saw. He rarely participates in concrete pouring and jackhammering and is no longer able to operate a skid steer due to his symptoms. Petitioner testified that his employment performance reviews have been consistently lower since his accident. His ability to play with his six-year-old daughter has been adversely affected. Petitioner manages his symptoms with Meloxicam, Flexeril, Wellbutrin and Ambien. Petitioner testified he has been released to full duty work without restrictions for his injuries and Respondent works with his limitations. The Arbitrator places greater weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 20% loss of Petitioner's body as a whole with regard to his lumbar spine, as provided under Section 8(d)2 of the Act, 22% loss of use of Petitioner's right thumb, as provided by Section 8(e) of the Act, 15% loss of use of Petitioner's right great toe, and 15% loss of use of Petitioner's left great toe, as provided by Section 8(e) of the Act.

Respondent shall pay Petitioner compensation that has accrued from 2/27/19, the date Dr. Kutnik and Dr. Bradley placed Petitioner at MMI with respect to his right thumb and bilateral great toes, through the date of arbitration on 3/24/22, and compensation that has accrued from 6/15/20, the date Dr. Gornet released Petitioner at MMI with respect to his lumbar spine, through the date of arbitration on 3/24/22, and shall pay the remainder of the award, if any, in weekly payments.

Arbitrator Linda J. Cantrell _____ DATE _____

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC028714
Case Name	Jason Cross v. State of Illinois – Illinois Department of Transportation
Consolidated Cases	17WC010976; 18WC017670;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0412
Number of Pages of Decision	10
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 10/25/2022

/s/Marc Parker, 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 WILLIAMSON	)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
			☐ PTD/Fatal denied
		☒ Modify down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jason Cross,

Petitioner,

vs. NO: 21 WC 28714

State of Illinois Department of Transportation,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission affirms and adopts the Arbitrator's award of 2% loss of body as a whole for Petitioner's right shoulder injury of September 14, 2021. However, the Commission finds the number of weeks which Respondent shall pay Petitioner permanent partial disability as a result of that injury should be ten (10), and not twelve-and-a-half (12½) as ordered by the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 2, 2022, is hereby modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of $803.74/week for a period of ten (10) weeks, as provided in Section 8(d)2 of the Act, because the right shoulder injuries sustained caused a 2% disability of the body as a whole.

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

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

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

October 25, 2022

MP:yl
o 10/20/22
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	21WC028714
Case Name	CROSS, JASON v. STATE OF ILLINOIS/ DEPARTMENT OF TRANSPORTATION
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 6/2/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 1, 2022 1.58%

/s/ Linda Cantrell, Arbitrator
Signature

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

June 2, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

JASON CROSS
Employee/Petitioner

v.

STATE OF ILLINOIS/
DEPARTMENT OF TRANSPORTATION
Employer/Respondent

Case # **21** WC **028714**

Consolidated cases:

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin, ILLINOIS**, on **March 24, 2022**. By stipulation, the parties agree:

On the date of accident, **9/14/21**, 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 $**69,657.07**, and the average weekly wage was $**1,339.56**.

At the time of injury, Petitioner was **36** years of age, ***single*** with **1** dependent child.

Necessary medical services and temporary compensation benefits have been **or will be** provided by Respondent. The parties stipulate that Respondent shall pay all medical expenses directly to the medical providers pursuant to the Illinois Medical fee schedule or PPO agreement, whichever is less. The parties stipulate that Respondent shall receive a credit for all medical expenses paid.

Respondent shall be given a credit of $**All Paid** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**All Paid**. The parties stipulate that all TTD benefits have been paid and no overpayment or underpayment of TTD benefits is claimed.

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 $**803.74**/week for a period of **12.5** weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused permanent partial disability to the extent of **2%** loss of use of his body as a whole related to Petitioner's right shoulder.

Respondent shall pay Petitioner compensation that has accrued from **12/9/21** through the date of arbitration on **3/24/22**, and shall pay the remainder of the award, if any, in weekly payments.

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

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

JUNE 2, 2022

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARIBTRATION DECISION
NATURE AND EXTENT ONLY

JASON CROSS,	)	
	)	
Employee/Petitioner,	)	
	)	
	)	**Case No.: 21-WC-028714**
v.	)	
	)	**Consolidated Case Nos.: 17-WC-010976**
	)	**18-WC-017670**
STATE OF ILLINOIS/ILLINOIS DEPARTMENT OF TRANSPORTATION,	)	
	)	
Employer/Respondent	)	

FINDINGS OF FACTS

These claims came before Arbitrator Linda J. Cantrell for trial in Herrin on March 24, 2022. On April 11, 2017, Petitioner filed an Application for Adjustment of Claim alleging injuries to his neck, right shoulder, and body as a whole as a result of transferring a sign from one truck to another on August 25, 2016. (Case No. 17-WC-010976). On November 28, 2018, Petitioner filed an Application for Adjustment of Claim alleging injuries to his back, neck, head, right shoulder, right wrist/thumb, and body as a whole as a result of an automobile accident on May 22, 2018. (Case No. 18-WC-017670). On October 14, 2021, Petitioner filed an Application for Adjustment of Claim alleging injury to his right shoulder and body as a whole as a result of lifting, jacking, and cranking on a dump truck tire on September 14, 2021. (Case No. 21-WC-028714). The cases were consolidated on March 14, 2022.

The sole issue in dispute in Case No. 21-WC-028714 is the nature and extent of Petitioner's injuries. The parties stipulate that all temporary total disability benefits have been paid and there is no overpayment or underpayment of TTD benefits claimed. All other issues have been stipulated. The Arbitrator has simultaneously issued separate Decisions in Case Nos. 17-WC-010976 and 18-WC-017670.

TESTIMONY

Petitioner was 36 years of age, single, with one dependent child at the time of accident. Petitioner has been employed by Respondent for over twelve years as a Highway Maintainer. Petitioner testified that on 9/14/21 he sustained injury to his right shoulder when he lifted a tandem dump truck tire into a truck. He stated he felt immediate pain and returned to Dr. Bradley who performed a right shoulder surgery in 2017. Dr. Bradley who ordered an injection that

significantly improved his symptoms. Dr. Bradley released Petitioner at MMI in December 2021 and he has not returned since.

Petitioner testified he has right shoulder pain when he raises his arm over his head. He continues to have difficulty with daily living and work activities that require over-the-shoulder motion. He testified that the jerking motion necessary to start a chainsaw increases his pain. Petitioner testified he was released to full duty work without restrictions for his right shoulder.

MEDICAL HISTORY

On 9/23/21, Petitioner reported a history of accident to Dr. Bradley and stated he felt a sudden tearing pain in the lateral aspect of his right shoulder. (PX18) Petitioner stated he attempted activity modification, icing, and Meloxicam, none of which significantly improved his symptoms. Petitioner reported his symptoms increased with elevation above shoulder level and when carrying objects away from his body. Dr. Bradley noted Petitioner's prior shoulder surgery with Dr. Mall in 2017 that consisted of a right shoulder arthroscopy, subacromial decompression and acromioplasty and open biceps tenodesis. Dr. Mall ordered post-operative physical therapy that was delayed, resulting in stiffness in Petitioner's shoulder. Dr. Mall recommended aggressive therapy and a cortisone injection due to the delay. At Petitioner's final visit with Dr. Mall on 2/8/18, he had stiffness with full forward elevation and external rotation. Dr. Mall instructed Petitioner to continue a home exercise program and released him at MMI.

Dr. Bradley's physical examination was positive for impingement syndrome. X-rays and an MRI arthrogram were performed which did not reveal evidence of any major pathology. Dr. Bradley assessed a right shoulder sprain and impingement. He recommended a home exercise program, ice, activity modification, and anti-inflammatory medications and instructed Petitioner to follow up in four to six weeks.

On 10/14/21, Petitioner reported to Dr. Bradley he had no significant change in his symptoms, and he was experiencing a sharp pinch and pain when using his shoulder overhead along with some difficulty sleeping. Dr. Bradley performed a right shoulder steroid injection and encouraged Petitioner to continue anti-inflammatories and home exercises.

On 12/9/21, Petitioner reported significant improvement following the injection, although he could still feel a pinching pain with above-the-shoulder activities. Dr. Bradley prescribed Meloxicam to take on an as-needed basis, encouraged Petitioner to continue home exercises, and released him at MMI.

CONCLUSIONS OF LAW

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS

305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment**: Neither Party submitted an AMA rating. Therefore, the Arbitrator gives no weight to this factor.

(ii) **Occupation**: Petitioner continues to work full duty as a highway maintainer for Respondent. Petitioner testified he has difficulty with activities that require over-the-shoulder motion and has pain lifting his right arm above his head. He testified that the jerking motion necessary to start a chainsaw increases his pain. The Arbitrator places greater weight on this factor.

(iii) **Age**: Petitioner was 36 years of age on the date of accident. He is a young individual and must live and work with his disabilities 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 Petitioner was younger [46 years of age] and would have to work with his disability for an extended period of time). The Arbitrator places greater weight on this factor.

(iv) **Earning Capacity**: There is no direct evidence Petitioner's right shoulder injury that occurred on 9/14/21 resulted in a reduced earning capacity. Petitioner continues to work full duty without restrictions for Respondent and Petitioner testified that Respondent works with his limitations. The Arbitrator places some weight on this factor.

(v) **Disability**: Dr. Bradley assessed a right shoulder sprain and impingement for which he recommended a home exercise program, ice, activity modification, and anti-inflammatory medications. Petitioner underwent a right shoulder steroid injection that significantly improved his symptoms, although he had continued pinching pain with above-the-shoulder activities. On 12/9/21, Dr. Bradley released Petitioner at MMI and prescribed Meloxicam to take on an as-needed basis. Petitioner testified he has difficulty with activities that require over-the-shoulder motion and has pain lifting his right arm above his head. He testified that the jerking motion necessary to start a chainsaw increases his pain. The Arbitrator places greater weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 2% loss of his body as a whole related to Petitioner's right shoulder, as provided under Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 12/9/21 through the date of arbitration on 3/24/22, and shall pay the remainder of the award, if any, in weekly payments.

_____ _____

Arbitrator Linda J. Cantrell DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC023671
Case Name	Kari Lawrence v. FedEx Ground
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0413
Number of Pages of Decision	12
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Richard Victor
Respondent Attorney	Diandra Abate

DATE FILED: 10/25/2022

/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

Kari Lawrence,
Petitioner,

vs. NO: 19 WC 23671

FedEx Ground,
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 causal connection, and permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 4, 2022 is hereby affirmed and adopted.

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

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

Bond for 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.

October 25, 2022
o: 10/20/22
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

DECISION SIGNATURE PAGE

Case Number	19WC023671
Case Name	LAWRENCE, KARI v. FEDEX GROUND
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	Richard Victor
Respondent Attorney	Diandra Abate

DATE FILED: 5/4/2022

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

/s/ Rachael Sinnen, 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

Kari Lawrence
Employee/Petitioner

v.

FedEx Ground
Employer/Respondent

Case # **19** WC **23671**

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 **Rachael Sinnen**, Arbitrator of the Commission, in the city of **Chicago**, on **2.23.22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **3.15.19**, 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 $**15,753.40**; the average weekly wage was $**302.95**.

On the date of accident, Petitioner was **27** 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 $**0.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services of $2,066.80 (See Px. 4), as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $220.00 a week for 30 weeks, because the injuries sustained caused the 6% loss of use of the person as a whole, as provided in §8d(2) of the Act. See Conclusions of Law for Arbitrator's considerations under §8.1b(b) of the Act.

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

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

_____ **MAY 4, 2023**

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Kari Lawrence,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 19WC023671
FedEx Ground	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on 2/23/22 in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing. Issues in dispute include accident, notice, causation, unpaid medical bills, and nature and extent of injury (AX. 1).

Petitioner was hired by as a part-time package handler at FedEx Ground on 8/7/18 (RX. 3). Petitioner was 27 years old at the time of her alleged 3/15/19 work accident (AX. 1; RX. 4). Petitioner did not testify to any of her job duties. Petitioner testified that she worked an additional job and worked with children (T. 12).

Petitioner testified that on 3/12/19, she was called to another person's trailer to help load a package that required a team lift (T. 8). Petitioner testified that she picked up the package from "basically the front, going backwards," and another girl picked the package up from the side. *Id.* Petitioner testified that she was walking "almost like sideways backward like and [her right] foot fell into their crack between the dock and the truck." *Id.* Petitioner testified that she "fell into the hole" and hit her elbow on a roller. *Id.* Petitioner testified that her whole leg fell into the hole between the dock and the trailer (T. 8-9).

Petitioner testified that Anthony from Respondent spoke to her, saw her elbow bleeding, and she related to him where she had pain. Petitioner's "shoulder and arm" tightened, and her pain increased. Petitioner spoke to Johnny and a First Report of Injury was completed by Respondent (T. 8-10; RX3). Petitioner acknowledged that the Form 45 on listed a right elbow injury but testified that she told Respondent that her right knee, hip, and arm to her shoulder was injured as well. (T. 9). Petitioner also testified that she saw a therapist at FedEx's onsite ATI facility (T. 11). No records from said facility were submitted into evidence.

On 3/19/19, Petitioner first sought treatment at South Shore Hospital (T. 12; PX. 1). She testified that she reported her right shoulder/elbow pain. *Id.* Petitioner was discharged from care that day (T. 12).

On 7/10/19, almost 4 months later, Petitioner sought treatment with her primary care physician at Chicago Family Health Center (T. 12; T. 26; PX. 2). Their records also document Petitioner's work accident and pain, including her right shoulder. When asked why she waited so long to treat, she testified that "the pain persisted" (T. 13). Petitioner returned on 8/7/19 and she was referred to an orthopedic physician, Dr. Chandler, at South Shore Orthopedic Specialists (PX. 2).

Petitioner commenced treatment with Dr. Chandler on 9/16/19. Dr. Chandler's records document Petitioner's work accident and pain on her right side, including her shoulder, as a result of the accident. He diagnosed Petitioner with a right shoulder strain, brachial plexus injury, and scapular winging of the right shoulder Petitioner was given work restrictions and referred for an MRI that she underwent on 9/13/19, which was negative for any pathology. Petitioner was kept on work restriction for the 10/14/19 visit and on 12/2/19 Petitioner was told to have home exercises and follow-up in 4 months. (T. 13, 28; PX. 3). There was no treatment between 10/14/19 and 12/2/19 (T. 30).

Due to persistent pain, Petitioner returned to Dr. Chandler on 2/6/20 and reported pain in her "right buttock and back of right thigh near her knee." She was referred for physical therapy, which she began on 2/18/20 and reported pain in the posterior/lateral hip, posterior thigh, tightness in the calf/shin down to her toes and throbbing to the right side of her vagina. Petitioner stated that she had pain in the leg at the time of her fall, but it wasn't too bad. Once it got cold, her pain flared up in the leg (PX. 3).

Petitioner was seen again by Dr. Chandler on 4/6/20 where right knee pain was documented. Petitioner stated she had right knee pain since her fall but that the pain is worse when squats or climbs stairs. (T. 14; T. 30; PX. 3) Petitioner had an MRI on 4/14/20 that was negative for knee pathology. Petitioner also had an EMG of lower extremity on 4/23/20, showed right tibial nerve irritation. (T. 15).

Dr. Chandler discharged Petitioner to full activities on 9/1/20 (PX. 3). On cross-examination, Petitioner denied being released to full duty activities (T. 33).

Petitioner testified that subsequent to the work accident, her employment with Respondent was terminated, and she is now self-employed (T.33). Petitioner testified she has not had other injuries to her right knee, hip, arm, including her right shoulder.

She continues to notice right shoulder, right leg, and right hip. She notices pain when sitting too long, standing too long, doing her hair, reaching and "overreaching." She notices pain in her right arm with working out, exercising, and walking. (T. 16-19). When asked about exercising, Petitioner said she could do 3-5 reps of weightlifting movement that including stretching her arms to her sides (T. 36). Petitioner testified she takes prescription ibuprofen for the pain, which helps provide relief (T. 16-19).

At the time of her accident and during treatment, Petitioner worked with children in "after care" meaning she watched children from pre-K to third grade Her job duties included helping with homework, snack duty, and going outside to play. Petitioner testified that she would play with the children when they went outside. (T. 27).

CONCLUSIONS OF LAW

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

Issue C, whether the accident arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. McAllister v. Illinois Workers' Compensation Comm'n, 2020 IL 124848, ¶ 34. A compensable injury occurs 'in the course of' employment when it is sustained while he performs reasonable activities in conjunction with his employment. Id.

"The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." Id. at ¶ 36. To determine whether a claimant's injury arose out of his employment, the risks to which the claimant was exposed must be categorized. Id. The three categories of risks are "(1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." Id. at ¶ 38. "A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." Id. at ¶ 46.

Petitioner was hired by as a part-time package handler at FedEx Ground at the time of her alleged 3/15/19 work accident (See AX. 1; RX. 4). Petitioner credibly testified that on the date of accident she was called to another person's trailer to help load a package that required a team lift. She testified that she picked up the package from "basically the front, going backwards," and another girl picked the package up from the side. Petitioner testified that she was walking "almost like sideways backward like and [her right] foot fell into their crack between the dock and the truck." Petitioner testified that she "fell into the hole" and hit her elbow on a roller. Petitioner testified that her whole leg fell into the hole between the dock and the trailer (See T. 8-9).

The Arbitrator finds that Petitioner's accident arose out of and in the course of her employment with Respondent.

Issue E, whether timely notice of the accident was given to Respondent, the Arbitrator finds as follows:

Pursuant to Section 6(c) of the Act, a claimant is required to give notice to his or her employer within 45 days of a work-related accident. 820 ILCS 305/6(c). The failure to give the statutorily required notice is a bar to recovery under the Act. Silica Sand Transport, Inc. v. Industrial Comm'n, 197 Ill. App. 3d 640, 651, 554 N.E.2d 734, 143 Ill. Dec. 799 (1990). Notice to agents of the employer (i.e. supervisors or foremen) can constitute notice to the employer. See McLean Trucking Co. v. Industrial Comm'n, 72 Ill. 2d 350, 354, 381 N.E.2d 245, 21 Ill. Dec. 167 (1978).

The purpose of the notice requirement is to enable the employer to investigate the employee's alleged industrial accident. White v. Illinois Workers' Compensation Comm'n, 374 Ill. App. 3d 907, 911, 873 N.E.2d 388, 313 Ill. Dec. 764 (2007). Giving notice of an injury is insufficient if the employer is not apprised that the injury is work related. Id. Because the legislature has mandated a liberal construction on the issue of notice, if some notice has been given, although inaccurate or defective, then the employer must show that it has been unduly prejudiced. Eileen Farina v. State Farm Mutual Insurance, 2014 Ill. Wrk. Comp. LEXIS 205, *9-10, 14 IWCC 210; See Gano Electric Contracting v. Industrial Comm'n (Moore), 260 Ill. App. 3d 92, 631 N.E.2d 724 (4th Dist. 1994).

Petitioner credibly testified that she spoke with Anthony and Johnny regarding her accident and a First Report of Injury was completed by Respondent on 3/22/19 (See T. 8-10; RX3). Petitioner testified that her right elbow was bleeding, and the Form 45 (which is not signed or drafted by Petitioner) reflects a right elbow injury. Petitioner credibly testified that she also told Respondent that her right knee, hip, and arm to her shoulder was injured as well. (See T. 9).

The Arbitrator finds that timely notice of the accident was given to Respondent.

Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

When Petitioner was seen again by Dr. Chandler on 4/6/20, right knee pain was documented. An MRI on 4/14/20 was negative (See T. 15; Px. 3).

Respondent does not dispute Petitioner's right elbow injury (See Ax. 1). Although Respondent's First Report of Injury only lists the right elbow as the affected body part, Petitioner did not sign or draft any statement contained within the report (See Px. 3). Petitioner's complaints of right shoulder pain has been consistent from the onset of treatment starting just days after the accident (See Px. 1).

The Arbitrator acknowledges the gaps in time between treatment visits but does not find that they defeat Petitioner's claim with regards to her right hip. Petitioner credibly testified that she saw her primary care physician almost 4 months post-accident because her pain persisted. The Arbitrator places great weight on Petitioner's 7/10/19 visit as it documents that Petitioner fell on her hips at work and she reported pain to the right shoulder and back (See Px. 2.) At Petitioner's follow up appointment with Dr. Chandler on 2/6/20, she complained of pain in her "right buttock and back of right thigh near her knee" that she attributed to her fall at work. As a result, her physical therapy focused on her right hip, pelvis, and hamstring. (See Px. 3).

For Petitioner's right knee, complaints of knee pain or documentation that Petitioner hurt her right knee appear for the very first time in Dr. Chandler's records on 4/6/20, over a year post accident. Petitioner's knee MRI was negative, ruling out any type of meniscus injury (See Px. 3). With regards to her right knee, Petitioner fails to show a subsequent injury resulting in disability. See International Harvester., 93 Ill. 2d at 63.

The Arbitrator finds that Petitioner has met her burden in proving that her current condition of ill-being with regards to her right elbow, right shoulder and right hip is causally related to the injury.

Issue J, whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

Section 8(a) of the Act states a Respondent is responsible "…for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See Gallentine v. Industrial Comm'n, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

Overall, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment.

As the Arbitrator has found that Petitioner's right knee injury is not related, medical treatment related solely to the right knee is denied. The Arbitrator finds that this only applies to Petitioner's 4/14/20 MRI. Petitioner moved into evidence a lien from Equian totaling $2,066.80 and the ledger does not contain charges related to the 4/14/20 MRI (See Px. 4).

As such, the Arbitrator orders Respondent to pay Petitioner directly for the $2,066.80 Equian Lien (Px. 4), pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Issue L, the nature and extent of the injury, the Arbitrator finds as follows:

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n, 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b).

Under Section 8.1b(b)(i), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. See Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n, 2015 IL App (5th) 140445WC, ¶ 17, 43 N.E.3d 556. Therefore, the Arbitrator gives no weight to this factor.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner worked as a package handler at the time of her injury. However, Petitioner no longer works for Respondent and is now self-employed. The Arbitrator therefore gives little weight to this factor.

Under Section 8.1b(b)(iii), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 27 years old at the time of the accident and thus likely has decades of working years before her. The Arbitrator gives moderate weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes there is no evidence of loss of earnings. Petitioner was released to work full duty. The Arbitrator gives little weight to this factor.

Under Section 8.1b(b)(iv), evidence of disability corroborated by the treating medical records, the Arbitrator give great weight to this factor. Petitioner was diagnosed with a right shoulder strain, brachial plexus injury, scapular winging of the right shoulder, and hip strain. Petitioner treated conservatively with physical therapy. Petitioner was returned to work fully duty. She continues to notice pain to her right shoulder and right hip. She notices pain when sitting too long, standing too long, and reaching overhead. She notices pain in her right arm with exercising. Petitioner testified she takes prescription ibuprofen for the pain, which helps provide relief (See T. 16-19).

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 6% loss of use of the person as a whole pursuant to §8d2 of the Act which corresponds to 30 weeks of permanent partial disability benefits at a minimum weekly rate of $220.00.

It is so ordered:

Arbitrator Rachael Sinnen

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC021065
Case Name	Kevin Zimmerman v. Superior Asset Management LLC, Bank of America NA, Safeguard Properties Management & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0414
Number of Pages of Decision	23
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Richard Victor
Respondent Attorney	William Jensen, Thomas Owen, Michael Manseau

DATE FILED: 10/25/2022

/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

Kevin Zimmerman,
Petitioner,

vs. NO: 16 WC 21065

Superior Asset Management, LLC, Bank of America N.A., Illinois State Treasurer as Ex Officio Custodian of The Injured Workers' Benefit Fund and Safeguard Properties Management ,
Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, employment relationship, statute of limitations, causal connection, average weekly wage, temporary total disability, and permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 26, 2022 is hereby affirmed and adopted.

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

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

No bond is required for 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.

October 25, 2022
o: 10/20/22
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

DECISION SIGNATURE PAGE

Case Number	16WC021065
Case Name	ZIMMERMAN, KEVIN v. SUPERIOR ASSET MANAGEMENT, LLC. BANK OF AMERICA, N.A., ILLINOIS STATE TREASURER AS EX OFFICIO CUSTODIAN OF THE INJURED WORKERS' BENEFIT FUND AND SAFEGUARD PROPERTIES MANAGEMENT
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Richard Victor
Respondent Attorney	William Jensen, Thomas Owen, Michael Manseau

DATE FILED: 4/26/2022

THE INTEREST RATE FOR THE WEEK OF APRIL 26, 2022 1.37%

/s/ Jeffrey Huebsch, Arbitrator

Signature

K. Zimmerman v. Superior Asset, etc., et al, 16 WC 021065

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Kevin Zimmerman Case # **16 WC 021065**
Employee/Petitioner

v.
Superior Asset Management, LLC, Bank of America, N.A., Illinois State Treasurer as Ex Officio Custodian of The Injured Workers' Benefit Fund and Safeguard Properties Management
Employers/Respondents

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 **08/16/21**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

B. ☒ Was there an employee-employer relationship?

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

D. ☒ What was the date of the accident?

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

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

G. ☒ What were Petitioner's earnings?

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

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

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

K. ☒ What temporary benefits are in dispute?

☐ TPD ☐ Maintenance ☒ TTD

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

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

N. ☒ Is Respondent due any credit?

O. ☒ Other: Statute of Limitations as to Safeguard Properties Management, Liability of the IWBF

K. Zimmerman v. Superior Asset, etc., et al, 16 WC 021065

FINDINGS

On 4-30-16, Respondent-Employers ***were*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship did ***not*** exist between Petitioner and Respondent-Employers.

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

Timely notice of this accident was given to Respondent-Employer Superior.

In the year preceding the injury, Petitioner earned ***$0.00***; the average weekly wage was ***$0.00***.

On the date of accident, Petitioner was ***50*** years of age, ***Married***, with ***0*** children under 18.

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

Respondent-Employers ***have not*** paid all appropriate charges for all reasonable and necessary medical services.

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

ORDER

Claim for compensation denied. Petitioner failed to prove an employee/employer relationship existed between him and any of the named Respondent-Employers. As such, no liability attaches to the IWBF.

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

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest of 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 Huebsch

Signature of arbitrator

APRIL 26, 2022

PROCEDURAL HISTORY

Petitioner, Kevin Zimmerman ("Petitioner"), filed an Application for Adjustment of Claim on July 11, 2016, alleging a Wokers' Compensation claim against Respondents, Superior Asset Management, LLC ("Superior") and Bank of America, N.A. ("BOA") ("Respondent-Employers"). Petitioner filed his First Amended Application on August 24, 2016, to include the Illinois State Treasurer as Ex Officio Custodian of the Illinois Injured Workers' Benefit Fund as a Respondent. Petitioner then filed his Second Amended Application on February 5, 2020, to include Safeguard Properties Management ("Safeguard") as the third Respondent-Employer.

The Parties proceeded to trial on June 14, 2021, but the matter was bifurcated and continued to August 16, 2021. The trial was concluded on August 16, 2021 and proofs were closed. All Parties were represented by counsel at trial, except Superior, who failed to appear on both hearing dates. As the matter included a claim against the IWBF, all issues were in dispute. The primary dispute between Petitioner and Respondent-Employers was the issue of employee-employer relationship. Another issue in dispute was whether Petitioner's Application as to Safeguard was filed within the statute of limitations. (Arb. Ex. 3)

FINDINGS OF FACT

Petitioner testified that his date of birth is December 7, 1965, so he was 50 years old on April 30, 2016. He testified that, at that time, he was married and had no children under the age of 18.

Petitioner testified that he owns a heating and cooling business, Comfort Star, LLC ("Comfort Star"). Comfort Star installs furnaces, boilers, and does duct/vent work and service work. Comfort Star is a Wisconsin corporation that was opened and organized in 2007. On the date of accident, Comfort Star was in good standing in Illinois. Zimmerman testified he received customers through advertisement, but mostly by word of mouth. He testified that his company has a website that is controlled by his wife, who is also a partial owner of Comfort Star.

Petitioner testified that, as an employee of Comfort Star, he paid himself by writing checks from Comfort Star's account to himself. He testified that if there was cash flow at the end of the year, it was carried over into his personal account. He testified that Comfort Star had one other employee between April 2015 and April 2016.

Petitioner testified that during the period between May 6, 2015 through April 28, 2016, he earned about $900.00 a week working for Superior. Petitioner testified that he also worked other jobs during that time period.

Petitioner testified regarding his 1040 tax forms for the years 2015 and 2016. He testified that in 2015, he earned $33,692.00 in wages. He testified that in 2016, he earned $13,451.00 in wages. On cross-examination, Petitioner testified that the 2015 and 2016 wages set forth in his tax returns also included wages paid to his wife. The tax forms, admitted as PX 12A and PX 12B also show "business income" on line 12 of PX 12A, but there is no Schedule C attached, so we don't know if this was income from Comfort Star. The Arbitrator notes that PX 12A and PX 12B contain SSN information in violation of SCR 138. The Arbitrator has redacted said information.

Petitioner testified that from April 30, 2015, through April 30, 2016, he opted out of workers' compensation insurance for himself. He further testified that, as of April 30, 2016, Comfort Star did not have Illinois workers' compensation insurance. Petitioner testified that in 2016, Comfort Star had workers' compensation insurance in Wisconsin through a company called Society.

Petitioner testified that he installed furnaces, air conditioners and boilers for Superior. He testified that their relationship began sometime around April 2015. He testified that he was contacted by the owner of Superior, Paul Julian ("Mr. Julian"), to install two furnaces at a bank-owned property in Milwaukee, Wisconsin. Petitioner testified that it sounded like Mr. Julian was soliciting his business.

Petitioner testified that Mr. Julian scheduled the work, provided the location and defined the work to be performed. Petitioner testified that, in terms of the job assignments from Mr. Julian, Mr. Julian was the only contact that would explain what jobs he was supposed to do. Petitioner testified that he provided his own tools and transportation for the jobs that he did for Mr. Julian.

Petitioner testified he could not recall any kind of written agreement between Comfort Star and Superior. He did not have any specific information about any written agreement that may or may not exist. On further cross-examination, Petitioner testified that a typical written agreement would be that he would perform the work requested by Mr. Julian and that Mr. Julian would pay the amount due. He testified that the agreement would also authorize Petitioner to be at the jobsite to do the work.

No Party submitted any written agreement between Comfort Star and Superior into evidence.

Petitioner admitted that his biggest client was Superior. He testified that he did approximately $178,000.00 in work for Superior, including jobs completed in Illinois and Wisconsin from May of 2015 through April of 2016. He testified that the charges included labor and equipment costs for items such as heating, air conditioning and boiler units. Superior was Comfort Star's most profitable client for the period of May 6, 2015 through April 30, 2016. (BOA RX 12)

Petitioner testified that if he had another job with another company at the same time as a job with Mr. Julian, he would not necessarily be able to tell Mr. Julian that he was unavailable to do the job. Petitioner testified that Mr. Julian was his best customer based on the volume of work he did for him. He testified that Mr. Julian was the type that, if one did not do as Julian said, he may not get paid the money he was owed.

Petitioner further testified that Mr. Julian had the ability to discipline him or terminate him if he was not satisfied with the work or if the work was not getting done on time. He testified that Mr. Julian could discipline him by reducing the jobs he assigned or by firing him. Petitioner testified that there was nothing about Mr. Julian's ability to reduce his jobs or fire him set forth in the written agreement that he had supposedly had with Superior. Comfort Star was free to do jobs for entities other than Superior, as is shown by BOA RX 12.

Petitioner testified that he was on a job at the request of Mr. Julian on April 30, 2016. The work was on a duplex property located at 7106 South Union Avenue in Chicago, Illinois. As to the scope of the job, he testified that he was hired to install two furnaces and two hot water heaters. The invoice for the job runs from Comfort Star LLC to Superior Asset. (PX 2)

On cross-examination, Petitioner agreed that nobody from Safeguard or Bank of America contacted him or solicited him to perform the job at 7106 South Union Avenue. Furthermore, Petitioner testified that as of April 30, 2016, neither he nor his company had any type of contractual relationship with Safeguard or Bank of America in regards to the job at 7106 South Union Avenue. The date of the installation was dictated by Mr. Julian. Petitioner had no contact with Safeguard or Bank of America regarding the job and there were no representatives form any of the Respondent-Employers on the job site.

Petitioner testified that it was his understanding that Mr. Julian received his jobs from Safeguard. He testified that the properties at which he worked were bank foreclosures and usually in very poor condition. He testified that the particular property at 7106 South Union Avenue had missing steps and no electricity. The building had a walkway at the basement level between units with half a tree laying in it. He further testified that the properties that he worked at usually had kicked in doors and broken windows.

Petitioner testified that before the 7106 South Union Avenue job was begun, he had a telephone conversation with Mr. Julian regarding the same. Petitioner testified that he did not intend to do the job because a permit needed to be pulled. Petitioner testified that there was a deadline requested by BOA and if Petitioner did not timely complete the job, Mr. Julian essentially stated that Petitioner was not going to get paid money that he was owed.

Petitioner testified that he wanted to go to the job site with his other employee at the time because there was a lot of work to do. Petitioner testified that he wanted to complete the job on the following Monday, but Mr. Julian insisted that it be done on Saturday. Petitioner testified that if the job was not completed, Mr. Julian would be subject to penalties and would make Petitioner responsible for the same.

On cross-examination, Petitioner further testified that if he did not do what Mr. Julian wanted him to do by a certain date, as with the job in question, he would withhold pay. Petitioner testified that Mr. Julian controlled him and forced him to come down from Wisconsin to do the job by the particular date in question. Petitioner also

testified that no one from Safeguard imposed a deadline on the work that he did on the April 30, 2016, Union Avenue job.

The Arbitrator notes that neither Mr. Julian nor a representative from Superior appeared at trial on either hearing date and did not present any evidence or testimony to refute Petitioner's testimony.

Petitioner testified that he drove down from Wisconsin to Chicago by himself to do the job on April 30, 2016. He testified that the job consisted of installing two furnaces and two hot water heaters. He testified that he brought the equipment down from Wisconsin to the job site. He testified that Comfort Star purchased the furnace and water heater units.

Neither BOA, nor Safeguard provided any tools or direction regarding the 7106 South Union job.

Petitioner testified that he began the 7106 South Union Avenue job around 10:00 a.m. and that it was his only job for the day. Petitioner testified that Mr. Julian knew he was at the 7106 South Union property, as they had spoken a couple of times over the phone during the course of the day. Mr. Julian was not actually at the job site on the date of accident.

Petitioner testified that, at the end of the day, there was garbage from the job that had to be thrown away. Petitioner testified that he took the trash to the alleyway dumpsters to be picked up by the City of Chicago because it was his responsibility to clean up after himself. He testified that he does not haul the trash in his van if there is trash pickup available. He testified that Mr. Julian instructed him to get rid of the trash, as he had to clean up his work area.

Petitioner testified that it was raining outside and, after he got the boxes to the garbage, he went back down to the basement. There were steps that went down to the basement level and a doorway that crossed between the two buildings to the front yard. He testified that when he was on the top of the step, he slipped and his body fell forward. He testified that he flew the entire length of the steps. He testified that his body went through the door opening and his right knee hit the brick wall and his quad muscle started spasming like a rubber band for

about 15 minutes. Petitioner testified that after the fall his entire leg was in a lot of pain, including his knee area.

Petitioner testified that at the time of the fall, the stairs were wet. He testified that he was not carrying anything, as he had just come back from disposing the garbage. Petitioner testified that the accident occurred at 8:30 p.m. and, at the time, it was dark outside. There were no other witnesses to the fall.

Petitioner testified that as he was laying on the ground, he called Mr. Julian and told him that he fell and was injured. Petitioner testified that he told Mr. Julian that he was at the 7106 South Union job site at the time of the injury. Petitioner testified that, other than Mr. Julian and his wife, he did not tell anyone else that he was injured.

Petitioner testified that Comfort Star was paid $4,610.00 for the April 30, 2016 job by Superior about four months after the accident. (PX 2) Petitioner admitted that neither he nor his company were paid by Safeguard or BOA for the job. PX 2 shows that Comfort Star LLC was paid $4,610.00 by Superior Asset for travel, 2 furnaces, a return drop, 2 water heaters and associated labor regarding the 4/30/2016 job at 7106 S. Union in Chicago.

Petitioner further testified regarding Comfort Star's statement of account for Superior. (PX 11) He testified that PX 11 documents the jobs that he and Comfort Star did for Superior from May 6, 2015 through April 28, 2016. Petitioner testified that the work consisted of installation of furnaces, boilers, ductwork and air conditioning units.

Petitioner testified that Mr. Julian was aware that he worked other jobs. The only Illinois work that Comfort Star did was for Superior.

Petitioner testified that he did have contact with Mr. Julian following alleged injury. Petitioner testified that the last time he spoke with Mr. Julian was, at most, a year after the injury occurred. Petitioner testified that he no longer does jobs for Mr. Julian and no longer speaks with him.

Petitioner testified that between April 30, 2016 and May 16, 2016, he did not seek medical care for his knee injury, but simply laid in bed. He further testified that there would have been other Comfort Star jobs

between April 30, 2016 and May 16, 2016, but he would not have completed them. Petitioner testified that his employee at the time would have completed those jobs.

Petitioner testified that he waited two weeks to seek treatment because he was hoping his injury would heal itself. Petitioner testified that his injury did not get better and that his wife forced him to seek treatment.

Petitioner testified that he began treatment with Dr. Kaiser at Issac Coggs Health Center on May 16, 2016. Petitioner reported an injury to his right leg after he fell down a flight of stairs a couple weeks earlier. Dr. Kaiser noted that Petitioner fell from an open doorway and somehow struck the front and medial aspect of his right thigh on a wall at the bottom of the stairs. Dr. Kaiser diagnosed Petitioner with quadriceps weakness and an MRI of the right knee was recommended. (PX 5)

Petitioner testified that he had an MRI of his quadriceps tendon on May 25, 2016. The interpreting radiologist concluded that Petitioner had a partial distal quadriceps tear and a horizontal tear of the medial meniscal posterior horn extending into the meniscal body. Additionally, Petitioner had mild to moderate tri-compartmental osteoarthritis, most pronounced in the patellofemoral compartment. (PX 6)

Petitioner testified that he saw an orthopedic surgeon, Dr. McCarty, on June 2, 2016, at which time there was a recommendation for surgery for the quadriceps tear. In connection with this visit, Petitioner completed a handwritten document in which he listed his employer's name as self-employed. (PX 6)

Petitioner testified that he saw Dr. Kaiser again on June 20, 2016. Dr. Kaiser diagnosed Petitioner with a ruptured quadriceps tendon. He recommended that Petitioner undergo the proposed surgery as soon as possible. (PX 5)

Petitioner testified that he then sought treatment at Aspen Orthopedics with Dr. Kehoe, who is another orthopedic surgeon. He saw Dr. Kehoe for the first time on July 17, 2016 and again a week later. Dr. Kehoe reviewed Petitioner's MRI and noted it revealed a high grade partial thickness quadriceps tendon tear, although a few fibers were intact. He also noted that there was retraction of the tendon. Additionally, Dr. Kehoe noted that the MRI revealed a medial meniscus tear. Dr. Kehoe diagnosed Petitioner with right thigh pain, a right quadriceps

tendon rupture, and a right medial meniscus tear. Dr. Kehoe noted that the quadriceps tendon tear was causing persistent issues with stairs. Dr. Kehoe noted that the meniscus would be addressed arthroscopically and the quadriceps tendon repair would be an open procedure. Dr. Kehoe ultimately recommended a new MRI to evaluate the status of Petitioner's knee, along with the retraction of the quadriceps tendon. Petitioner was instructed to follow up after the MRI. In the interim, Petitioner was given work restrictions, including no climbing ladders or kneeling. (PX 7)

Petitioner testified that he developed some unrelated orthopedic problems involving his right shoulder and neck. He testified that, during the course of that treatment for these body parts, he continued to see Dr. Kehoe in October 2017 and then again on February 13, 2018. He testified that he ended up having surgery on the right shoulder on February 25, 2018. He testified that he had another RLE MRI performed on March 26, 2018. (PX 7)

According to the interpreting radiologist, the March 26, 2018 MRI demonstrated a chronic tear of the quadriceps tendon. Petitioner also had degeneration of the posterior horn and body segments of the medial meniscus that had progressed since the 2016 MRI scan. Additionally, Petitioner had progressive, severe chondromalacia of the patellofemoral compartment. He also had mild chondromalacia of the medial and lateral femoral compartments. (PX 7)

Petitioner testified that he had quadriceps surgery by Dr. Kehoe on May 4, 2018. (PX 10) According to Dr. Kehoe's operative report, he performed a right quadriceps tendon reconstruction. The preoperative and postoperative diagnoses were a chronic right quadriceps tendon tear. Dr. Kehoe was able to repair and reattach the torn tendon without doing any type of grafting procedure. Petitioner tolerated the procedure well and was discharged without any complications. (PX 10) Petitioner testified that he had no other surgeries to his right knee.

Petitioner testified that after this surgery, he did not perform any work for two weeks, or from May 4, 2018 through May 18, 2018. He testified that he was unsure as to when he went back to performing physical work and did more supervising of jobs.

Petitioner testified that he underwent postoperative therapy from August 21, 2018 through November 7, 2018 at the Orthopedic Hospital of Wisconsin. (PX 10)

Petitioner testified that he had another MRI of his right knee on November 13, 2018. (PX 7) According to the interpreting radiologist, there was no evidence of a full-thickness quadriceps tendon rupture. However, there were evident post-surgical changes. The superficial fibers of the quadriceps tendon appeared stretched and thin, but were still intact. Additionally, there was fluid between the superficial layers and the middle and deep layers. Furthermore, the interpreting radiologist found tendinosis in the middle and deep fibers of the quadriceps tendon. Lastly, there was an abnormal medial meniscus. (PX 7)

Petitioner testified he followed up with Dr. Kehoe to on November 15, 2018. The records indicate Dr. Kehoe reviewed the MRI scan and felt it showed fluid around the quadriceps tendon without obvious significant re-tearing. Dr. Kehoe recommended that Petitioner resume physical therapy for his right knee. (PX 7)

Petitioner testified he returned to Dr. Kehoe on February 26, 2019. The chart states that Petitioner had been working HVAC without issue. Petitioner's pain and weakness had been fairly minimal. Although Dr. Kehoe noted Petitioner had complaints of pain, weakness and quadriceps muscle atrophy following his surgery, he was still able to do his job despite these deficits. He was to continue with a home exercise program as needed and follow up as necessary. (PX 7)

Petitioner testified that Comfort Star's health insurance was through "Obama Care." He testified that his bills were paid through that insurance. Petitioner testified that he is unaware of any bills that have been placed in collections. PX 8 was a Statement of Benefits regarding the health insurance payments. PX 9 was evidence of out of pocket payments.

Petitioner testified that he had no other injuries or accidents involving his right quadriceps or his right knee. He did tear his medial meniscus (as a result of the 4/30/2016 fall), but never he actually had it repaired. Petitioner testified it was his understanding that repairing the meniscus could actually make it worse. Petitioner testified that his doctor was the one who made the decision on not proceeding with the meniscus repair surgery.

As to his current condition, Petitioner testified that he has stiffness, swelling and aching. He testified that he occasionally loses strength in the muscle. His symptoms are intermittent and they only occur a few times a month. Petitioner testified that he has difficulty with stairs. He testified that he is still performing the same kind of work with Comfort Star, although it is limited. He testified that he does not like driving a car where he has to bend his knees for long periods of time.

The Arbitrator notes that Petitioner drove from Milwaukee to Chicago and back on both hearing dates and that each way was approximately 1 hour and 40 minutes.

Petitioner further testified that walking too much or standing too long gives him problems. Petitioner also testified that he limps at times, but that it depends a lot on exhaustion.

Petitioner testified that he does not take prescription medication, but does take 8 to 16 over the counter Ibuprofen a day to help with inflammation.

On cross-examination, Petitioner admitted that, despite his symptoms of swelling, stiffness and pain, he has not seen a doctor for his knee since February 26, 2019. He has no future appointment scheduled with Dr. Kehoe. Petitioner also agreed that he is not currently wearing a brace or using a cane or any type of other device to help him walk.

Petitioner testified that he is working outside of the restrictions that his doctor placed on him. He testified that he still has to perform physical labor because he has no choice and he has to make a living. He could not remember if Dr. Kehoe ever imposed any permanent work restrictions. Dr. Kehoe did not impose any restrictions at Petitioner's last visit on February 26, 2019. (PX 7)

At the second portion of the trial on August 16, 2021, Yousif Bahi testified on behalf of Safeguard. He testified that he is currently employed by Safeguard, which is a property preservation company. He testified that Safeguard manages and maintains bank-owned properties throughout the country.

Mr. Bahi testified that in April of 2016, one of Safeguard's clients was BOA. He testified that Safeguard would perform a variety of services, but mostly preservation work, which included securing properties, repairs

and "trashing out." Mr. Bahi explained that trashing out is removing all of the personal property and debris from a property. He testified that the services provided by Safeguard depend on the work order that was prepared by BOA.

Mr. Bahi testified that the condition of the properties would vary, although most of the time they would be in poor condition. For example, the properties could require repairs, be flooded, have mold, unsecured damage, or be missing pipes and mechanicals.

Mr. Bahi testified that, in April 2016, Safeguard had a contractual agreement with a vendor, Superior. Safeguard had a Master Services Agreement with Superior, which was basically their vendor contract. He testified that the contract between Safeguard and Superior was dated October 17, 2014. (Safeguard RX 1) Mr. Bahi testified that the Master Services Agreement covered the entirety of the contractual relationship between Safeguard and Superior. The Master Services Agreement (Safeguard RX 1) was in full force and effect on April 30, 2016.

Mr. Bahi testified that, pursuant to the Master Services Agreement, Superior was required to perform mortgage field services for Safeguard. Mr. Bahi testified that the services varied between work orders. He testified that most work orders had to be completed within three to five days. However, Mr. Bahi testified that if it was an intensive job, which the particular property in question was, it might be a bit longer. He testified that the vendor is assigned a job to be completed in a certain amount of time and it is expected that the work will be completed. Mr. Bahi testified that the vendor completes the work, takes photos of the property before, during and after the work is completed, and electronically submits the photos to Safeguard. Mr. Bahi testified that once they verify the work is completed, the vendor would be paid.

According to Paragraph 5 of the Master Services Agreement, Superior was solely responsible for the purchase and maintenance of any and all equipment, tools, and supplies necessary for performing the agreed services and for completing each work order. (Safeguard RX 1)

Pursuant to Paragraph 8 of the Master Services Agreement, Superior was solely responsible for obtaining and assigning the personnel needed to fulfill the requirements of each work order, either by assigning its own employees or by utilizing subcontractors. Moreover, Superior was solely responsible for hiring, terminating, and supervising the personnel designated to complete the work orders. (Safeguard RX 1)

Superior was also solely responsible for supervising the work of its personnel in accordance with Paragraph 9 of the Master Services Agreement. (Safeguard RX 1)

The Master Services Agreement, Paragraph 11, contains an independent contractor provision, which states that neither Superior nor any of the subcontractors were employees of Safeguard. Rather, they would be considered independent contractors. Within its discretion, Superior was solely responsible for securing all licenses, permits and/or certifications required to perform any portion of the services or work order before such work was commenced. (Safeguard RX 1)

Pursuant to Paragraph 12 of the Master Services Agreement, work orders accepted by Superior remained its primary responsibility, regardless of whom it decided to engage to perform the mortgage field services (i.e., whether it be its own employee or a subcontractor). (Safeguard RX 1)

Mr. Bahi testified that all work orders have a due date unless there are special circumstances. While Superior did have to meet the deadline specified in each work order, it retained discretion as to when the work would be completed as outlined in Paragraph 13 or the Master Services Agreement. (Safeguard RX 1)

The Arbitrator notes that pursuant to Paragraph 14 of the Outsourcing Agreement between BOA and Safeguard, Safeguard was responsible for securing and continuously maintaining workers' compensation insurance. (BOA RX 1) Paragraph 19 of the Master Services Agreement also contains a workers' compensation provision that indicates Superior was solely responsible for maintaining workers' compensation coverage, including payment of all premiums or taxes sufficient to cover any injury to any personnel working on any matter for Safeguard. Additionally, Superior agreed to indemnify and hold Safeguard and its clients harmless in the event

of any negligence claim, workers' compensation claim, or any other claim by any of the said personnel against Safeguard and/or any of its clients. (Safeguard RX 1)

Mr. Bahi testified that Safeguard was responsible for providing property preservation services for a property owned by BOA, located at 7106 South Union Avenue in Chicago, Illinois in April 2016. Mr. Bahi testified about the scope of the repairs at this property. He testified that the scope of repairs document outlined what needed to be done, where, the dimensions, along with the pricing. (Safeguard RX 2) He testified that the document was prepared on October 2, 2015. Mr. Bahi further testified that there were over 140 line items in this document, which meant there was a lot of work that needed to be done on the property. He testified that the property was in poor condition. He testified that the repairs included some HVAC work. He testified that this included furnaces, hot water heaters and some duct work.

Mr. Bahi testified that the work order was approved by BOA. He testified that BOA would send Safeguard a request to have the work completed. In turn, he testified, that Safeguard would send out the work to a vendor to complete, which in this case was Superior.

Mr. Bahi also testified about the work order for the 7106 South Union Avenue property that was prepared on April 24, 2016. (Safeguard RX 3) Mr. Bahi testified that the completion date for the work order was May 20, 2016. Mr. Bahi testified that Superior was responsible for completing the work order. He testified that Superior had the option to hire a subcontractor, pursuant to the Master Services Agreement, to perform the work order, which included the necessary HVAC work.

Mr. Bahi testified that no representative from Safeguard hired Petitioner or Comfort Star to install the furnaces and hot water heaters at the 7106 South Union Avenue duplex on April 30, 2016. He further testified that neither Petitioner nor his company had to fill out a job application or job bid to complete the furnace and hot water installation at the 7106 South Union Avenue property on April 30, 2016.

Mr. Bahi testified that neither he nor any representative from Safeguard had to secure any licenses or permits in connection with the job in question. Instead, Mr. Bahi testified that it was Superior's responsibility to do so.

Mr. Bahi testified that Safeguard did not have a contractual relationship with Petitioner or Comfort Star.

Mr. Bahi testified that neither he nor any representative from Safeguard was present at the 7106 South Union Avenue duplex on April 30, 2016. He testified that, pursuant to the Master Services Agreement between Safeguard and Superior, it was the responsibility of Superior to supervise the work that was being performed.

Mr. Bahi testified that the deadline for completion of the HVAC work in question was agreed to between BOA and Safeguard. However, he testified that neither he nor any representative from Safeguard managed, supervised or otherwise regulated the installation of the hot water heaters and furnaces by Petitioner or his company. In fact, he testified that this was Superior's responsibility.

Mr. Bahi testified that neither he nor any representative from Safeguard had the ability to terminate or discipline Petitioner or his company if the job was not sufficient. He testified that this was Superior's responsibility.

Mr. Bahi testified that Superior was responsible for paying Comfort Star's invoice for the work that was completed on April 30, 2016. He testified that it was Superior's responsibility to take out taxes or deductions on Comfort Star's earnings.

Mr. Bahi testified that Safeguard was under the assumption that Superior had workers' compensation coverage for the property in question. Mr. Bahi testified that there was no provision in the Master Services Agreement that Safeguard had to verify that Superior had workers' compensation coverage.

CONCLUSIONS OF LAW

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

Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d). To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim. (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980) 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 (A), WAS RESPONDENT OPERATING UNDER AND SUBJECT TO THE ILLINOIS WORKERS' COMPENSATION OR OCCUPATIONAL DISEASES ACT, AND ISSUE (B), WAS THERE AN EMPLOYEE-EMPLOYER RELATIONSHIP, THE ARBITRATOR FINDS:

There are three named Respondent Employers, Superior, BOA and Safeguard. Additionally, Petitioner's testimony establishes that he was an employee of Comfort Star, LLC, a company that Petitioner owned.

Petitioner testified that he opted out of workers' compensation coverage for himself under Comfort Star's WC policy. Thus, any claim against Comfort Star is barred by §3(20) of the Act.

As to Superior, BOA and Safeguard, they are operating under the Act, pursuant to §§3(1) and (17)(a) of the Act.

Petitioner failed to prove that any employee-employer relationship existed between him and the three named Respondent-Employers.

First, Petitioner's testimony establishes that Comfort Star, Petitioner's employer, had workers' compensation insurance and Petitioner opted out of coverage for himself under that policy. The Arbitrator finds that in such a situation automatic coverage liability for any Respondent-Employer is not afforded under §1(a)(3) of the Act. Petitioner is not a statutory employee of any of the Respondent-Employers.

According to the Supreme Court, an employment relationship is a prerequisite for an award of benefits under the Act. A fact specific inquiry is required to determine whether an employment relationship exists. The Parties designation of their relationship is not controlling, but may be considered, along with the following other factors:

1.) Respondent's right to control the manner in which Petitioner performs the work; 2.) Does Respondent dictate Petitioner's schedule? ; 3.) Is Petitioner paid hourly, or on a per job basis? ; 4.) Are taxes and social security withheld from the payments to Petitioner? ; 5.) Does Respondent's business encompass Petitioner's work? 6.) Can Petitioner be discharged at will? . Roberson v. The Industrial Commission, 225 Ill. 2d 159 (2007)

After considering all of the evidence adduced and the above factors, the Arbitrator finds that Petitioner failed to prove that he had an employee/employer relationship with any Respondent-Employer.

It is noted that Comfort Star was in the HVAC business and Petitioner was working for Comfort Star, installing 2 furnaces and water heaters in a property that was owned (or about to be owned) by BOA, pursuant to a foreclosure. Superior was a subcontractor of Safeguard, which had contracted with BOA to manage and maintain foreclosed properties. Comfort Star contracted with Superior to sell Superior the furnaces and water heaters and to install them. Respondent-Employer's businesses do not encompass Petitioner's work. Respondent-Employers contract with third parties, such as Comfort Star, to provide HVAC equipment and installation services.

Petitioner's testimony was that he was an employee and the owner of Comfort Star. The tools that he used and the van that he carried his tools and the equipment form Milwaukee to 7106 South Union were owned by Comfort Star. There was no evidence that any of the Respondent-Employers controlled the manner in which Petitioner installed the furnaces and water heaters. Indeed, there was no evidence that anyone from Superior, Safeguard or BOA was ever on the jobsite. There was no evidence of any contact that petitioner had with Safeguard or BOA.

The evidence was that Julian required Comfort Star/Petitioner to install the equipment on April 30, 2016, but the start and stop time was not specified. This is not an indication that Superior dictated Petitioner's schedule.

Petitioner was not paid anything by the Respondent-Employers. Comfort Star received payment for the travel, labor and equipment that was provided. The payment to Comfort Star was on the basis of the job, not an hourly rate. Comfort Star was paid the $4,610.00 for the job, with no taxes being withheld. As to discharge,

Superior could likely kick Comfort Star off the job, but there was no persuasive evidence that Superior could discharge Petitioner.

As is shown in PX 11, Comfort Star provided HVAC equipment and services to many entities. This weighs against the existence of an employee/employer relationship with Superior.

Petitioner has the burden of proof on the issue of employee/employer relationship and the Arbitrator finds that the preponderance of the evidence does not support a finding that such a relationship existed between Petitioner and any of the Respondent-Employers.

The claim for compensation is, therefore, denied. As the claim for compensation is denied, the IWBF has no liability.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT, THE ARBITRATOR FINDS:

Petitioner's testimony and the medical records establish that Petitioner suffered an accidental injury on April 30, 2016 when he slipped and fell down the basement stairs at 7106 S Union in Chicago. As there was no employment relationship with any of the named Respondent-Employers, the injury did not arise out of and was not in the course of employment by any of the Respondent-Employers.

WITH RESPECT TO ISSUE (D), WHAT WAS THE DATE OF THE ACCIDENT, THE ARBITRATOR FINDS:

April 30, 2016.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO RESPONDENT, THE ARBITRATOR FINDS:

Timely notice was given to Paul Julian at Superior.

WITH RESPECT TO ISSUE (F), IS PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS:

Based upon the testimony of Petitioner and the medical records, Petitioner's current condition of ill-being

regarding his right leg (to wit: surgically repaired torn quadricep and torn medial meniscus) is causally related to the injury.

WITH RESPECT TO ISSUE (G), WHAT WERE PETITIONER'S EARNINGS, THE ARBITRATOR FINDS:

The evidence adduced does not support a finding on Petitioner's AWW.

WITH RESPECT TO ISSUE (H), WHAT WAS PETITIONER'S AGE AT THE TIME OF THE ACCIDENT, AND ISSUE (I), WHAT WAS PETITIONER'S MARITAL STATUS AT THE TIME OF THE ACCIDENT, THE ARBITRATOR FINDS:

Petitioner was 50 years old and married with no dependent children on the date of accident.

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, ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, ISSUE (N), IS RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS:

As the Arbitrator has found that Petitioner failed to prove that an employee-employer relationship existed between him and any of the Respondent-Employers, the Arbitrator needs not decide the above issues.

WITH RESPECT TO ISSUE (O), STATUTE OF LIMITATIONS AS TO THE CLAIM AGAINST SAFEGUARD AND LIBILITY OF THE IWBF, THE ARBITRATOR FINDS:

As Petitioner failed to prove that he was an employee of Superior (uninsured in Illinois for Workers' Compensation on the accident date, per PX 4), the IWBF has no liability herein.

Petitioner filed his Second Amended Application for Adjustment of Claim, naming Safeguard, on February 5, 2020, more than 3 years after the accident date of April 30, 2016. As no §1(a)3 liability has been established as to Safeguard (it is not a statutory employer), the claim against Safeguard is barred by §6(d) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC021418
Case Name	Juan De Dios Cardenas v. Fuller Car Wash
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0415
Number of Pages of Decision	14
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Adam Rosner
Respondent Attorney	PETER SINK

DATE FILED: 10/25/2022

/s/Christopher Harris, 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 WILL	)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
			☐ PTD/Fatal denied
		☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JUAN DE DIOS CARDENAS,

Petitioner,

vs. NO: 19 WC 21418

FULLER'S CAR WASH,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under Section 19(b) of the Act by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care and temporary total disability (TTD) benefits, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission hereby remands this case to the Arbitrator for further proceedings and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Indus. Comm'n*, 78 Ill. 2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 7, 2022 is hereby affirmed and adopted.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

October 25, 2022

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

CAH/pm
O: 10/20/22
052

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC021418
Case Name	CARDENAS, JUAN DE DIOS v. FULLER CAR WASH
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	Adam Rosner
Respondent Attorney	Peter Sink

DATE FILED: 1/7/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 4, 2022 0.22%

/s/ Roma Dalal, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

JUAN DE DIOS CARDENAS
Employee/Petitioner

v.

FULLER'S CAR WASH
Employer/Respondent

Case # **19** WC **021418**

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 **Roma Dalal**, Arbitrator of the Commission, in the city of **Joliet**, on **November 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. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, **June 13, 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 $**470.65**; the average weekly wage was $**24,473.80**.

On the date of accident, Petitioner was **33** 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 $**n/a** for TTD, $**n/a** for TPD, $**n/a** for maintenance, and $**n/a** for other benefits, for a total credit of $**n/a**.

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

ORDER

Temporary Total Disability
Respondent shall pay temporary total disability for the periods of June 21, 2019 through July 19, 2019. The total TTD period is 4 weeks, at a rate of $313.76, totaling $1,255.04 as provided in Section 8(b) of the Act.

Medical Benefits
Respondent shall pay reasonable and necessary medical expenses incurred in connection with the care and treatment of his causally related condition pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid.

Prospective Medical
The Arbitrator orders Respondent to authorize and pay the recommended lumbar decompression and stabilization with instrumentation as recommended by Dr. Kevin Koutsky.

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.

JANUARY 7, 2022

Signature of Arbitrator
ICArbDec19(b)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION
IN THE STATE OF ILLINOIS

Juan De Dios Cardenas	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 19 WC 21418
Fuller Car Wash,	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

Juan De Dios Cardenas (hereinafter referred to as Petitioner) had been employed by Fuller Car Wash (hereinafter referred to as Respondent), for approximately fifteen years as the date of trial. (Tr. 8-9). Petitioner had several jobs working for Respondent including washing cars, shoveling snow, transporting clients, and occasionally assisting mechanics with installations of auto washes. (Tr. 9). Petitioner testified that his job duties have remained the same over the past fifteen years while working for Respondent. (Tr. 9). Petitioner testified when he was cleaning cars, he utilized towels and Windex and would clean them by hand. (Tr. 10).

On June 13, 2019 petitioner advised that he was feeling fine when he woke up. He noted that he was moving equipment and lifted a roll of hoses and injured his back. (Tr. 12). He noted the roll of hoses weighed about 70 pounds. (Tr. 11-12). He waited to report the injury as he thought it would go away. (Tr. 13). Eventually he presented to his primary care physician on June 18, 2019.

The medical records indicated petitioner had preexisting back pain. On February 2, 2016 petitioner presented to Pillars Community Health for upper back pain for the last month. The doctor noted it was due to his coughing and allergies. (PX 1, p. 28). On June 15, 2016 petitioner presented to Pillars Community Health complaining of back pain since yesterday. He noted that it started hurting while at work with no trauma. Petitioner was advised to ice and was given medication. (PX 1, p. 26). On January 2, 2018 petitioner presented with mid back pain. Petitioner was given medication. (PX 1, p. 20). Petitioner presented again on August 28, 2018 at Pillars Community Health. He noted he pulled on a heavy chain at work and sustained acute severe pain. Petitioner was diagnosed with acute bilateral low back pain without sciatica. Petitioner was provided medication.

After the injury, petitioner presented to Dr. Hussain on June 18, 2019. He noted he had low back pain that started five days ago after setting up new equipment and lifting heavy equipment. Dr. Hussain diagnosed petitioner with acute back pain and was provided medication. He was given restrictions of no lifting more than 25 lbs. (PX 1, p. 7-8).

On June 21, 2019 Petitioner presented to La Clinica with persistent low back pain. He reported he was injured at work on June 13, 2019 while installing heavy machinery for a car wash and lifted a heavy rolled metal hose. He reported that his main job was driving and delivering soap to different work sites but occasionally he had to install machinery which was usually when he developed low back pain. (PX 2). He reported that his last flare-up was eight months earlier which got better with rest, but this time it was not getting better despite taking medication and being off work. Petitioner's past medical history was significant for about four low back injuries since his 13 years working for Respondent. The pain would improve with a couple days off and taking over-the-counter medications but this time it was not improving, and he was experiencing numbness to his right leg. The diagnoses were a lumbar sprain/strain, lumbosacral root disorder and

myospasms. Dr. Zaragoza prescribed physical therapy and recommended Petitioner be off work. He opined Petitioner's injury and conditions identified were directly related to the work-related injury of June 13, 2019. (PX 2). Petitioner underwent chiropractic care from June 21, 2019 through March 30, 2020.

In a July 5, 2019 follow up with Dr. Zaragoza, D.C., petitioner stated his pain varied from no pain to up to an 8/10. Petitioner was to undergo an MRI.

Petitioner underwent an MRI on July 10, 2019. The MRI impressions were at (1) L4-L5, there is a 6-7mm broad-based subligamentous posterior disk herniation with an extruded nucleus pulposus, which elevates the posterior longitudinal ligament and intents the ventral surface of the thecal sac with generalized spinal stenosis and bilateral neuroforaminal narrowing; (2) at the L5-S1 level, there is a 4-5mm broad-based subligamentous posterior disk herniation with an extruded nucleus pulposus and a small posterior annular tear, which also elevates the posterior longitudinal ligament and indents the ventral and slightly right side of the thecal sac with posterior and right-sided spinal stenosis and bilateral neuroforaminal narrowing seen, greater on the right, exacerbated by some ligamenta flava hypertrophy. (PX 2 and PX 3).

Petitioner returned to Dr. Zaragoza, D.C., on July 19, 2019. Petitioner recently returned to work as they could not follow any kind of work restrictions. Petitioner was to continue with therapy. (PX 2). Petitioner had several follow up appointments with Dr. Zaragoza on August 19, 2019, September 23, 2019, November 11, 2019, and January 6, 2020. Petitioner was recommended ongoing therapy. In a February 24, 2020 follow up petitioner noted he felt the same. He reported that his low back pain varied from no pain to a 7 out of 10. At this point petitioner had plateaued with therapy. He was to continue treating with Dr. Koutsky. (PX 2).

On July 22, 2019 petitioner presented to Dr. Arkadiusz Grochowski at Chicago Interventional Pain Medicine. Petitioner reported a traumatic work accident. Petitioner was prescribed Mobic and Flexeril and was recommended an epidural steroid injection at L4-L5. (PX 5).

On September 5, 2019, Petitioner received an injection at L4-L5 on the right side by Dr. Grochowski. (PX 5).

Petitioner followed up on September 26, 2019 with Dr. Grochowski. Petitioner advised he had less than 50% improvement for two weeks then deteriorated. Petitioner was to follow up in a month.

Petitioner followed up with Dr. Grochowski on November 4, 2019. Petitioner noted he had less than 50% improvement with the first injection and then the pain returned. Petitioner wanted to try another injection. Petitioner was to undergo the same. (PX 5).

On November 21, 2019, Petitioner underwent a L4-L5 LESI on the right and right and left medial branch blocks at L3-L5. (PX 5).

On December 5, 2019 petitioner presented to Dr. Koutsky. Petitioner complained of low back pain with radiation to the buttocks and thighs. He noted this began after a work-related injury. Dr. Koutsky reviewed the lumbar spine MRI. His assessment was Petitioner had L4-L5 and L5-S1 disc herniations and extrusions, and mechanical axial back pain. Dr. Koutsky discussed further workup with a lumbar discogram. He also discussed possible surgery to include a decompression with stabilization with instrumentation. (PX 2).

On December 11, 2019 petitioner returned after his second injection with Beverly Knigge, APN. Petitioner was recommended an EMG and discogram. (PX 5). Petitioner underwent an EMG on December 14, 2019. The EMG showed evidence of a left peroneal neuropathy with increased take off latency. (PX 2).

On December 30, 2019 Petitioner underwent a lumbar discography. (PX 2). Petitioner then underwent a post-diskogram CT scan of the lumbar spine which revealed (1) L5-S1 level demonstrates a grade IV tear extending to the posterior aspect of the annulus from 6 o'clock to 7 o'clock with a right paracentral disk herniation indenting the anterolateral aspect of the thecal sac and producing compression upon the exiting S1 nerve root on the right; (2) the L4-L5 level demonstrates grade IV annular tear, with contrast amorphously extending throughout the annulus, particularly posterior

aspect from 3 o'clock to 9 o'clock, and a broad-based bulging disk indenting the ventral aspect of the thecal sac with some spinal canal stenosis seen. (PX 2).
Petitioner followed up with Dr. Koutsky on January 23, 2020. He noted Petitioner had failed conservative management including medications, therapy, and injections, and Petitioner's lumbar discogenic pain at L4-5 and L5-S1 was consistent with his MRI pathology. Based on the same, Dr. Koutsky recommended a decompression with stabilization with instrumentation. (PX 2).

Petitioner followed up with Dr. Koutsky on March 19, 2020 and May 14, 2020. Dr. Koutsky maintained his surgical recommendation. (PX 2).

On June 17, 2020, Petitioner presented to Dr. Kern Singh at Midwest Orthopaedics at Rush for a Section 12 examination. Petitioner was a 34-year-old male who worked for Fuller's Car Wash. The doctor went over petitioner's medical records and reviewed the actual MRI. Petitioner reported his back pain was an 8-10/10. Petitioner noted his pain was constant. Dr. Singh examined petitioner noting a normal physical examination with negative Waddell Findings. Dr. Singh diagnosed petitioner with a lumbar muscular strain and degenerative disc disease at L4-L5 and L5-S1. Dr. Singh noted petitioner sustained a soft tissue muscular sprain of the spine which was causally connected to the injury. No further treatment was necessary. He noted treatment had been excessive and prolonged in nature. Petitioner should have undergone four weeks of therapy, three times a week. Petitioner had reached maximum medical improvement and could return to full duty work.

Petitioner followed up with Dr. Koutsky on July 23, 2020. Dr. Koutsky reviewed Dr. Singh's Section 12 report. He disagreed with Dr. Singh's opinion noting petitioner still had ongoing mechanical pain symptoms. Given petitioner's degenerative changes coupled with his grade 4 annular tears and recreation of pain upon undergoing lumbar discogram, standard care would dictate not only decompression but also stabilization with instrumentation. Dr, Koutsky opined the need for the surgery would be causally and directly related to his work injury. He further opined petitioner was unable to work full duty but could work with a 25 lb. lifting restriction. Petitioner was not at MMI. (PX 2).

Petitioner continued to follow up with Dr. Koutsky, now at DuPage Spine & Orthopaedics, on December 28, 2020, January 25, 2021, February 22, 2021, March 22, 2021, April 19, 2021, September 21, 2021, and November 1, 2021 with continued low back pain with pain radiating into the buttocks and thighs including numbness and tingling. Dr. Koutsky noted similar physical examination findings during those visits. Each visit note is the same in that the plan for Petitioner was to continue with therapy exercises at home, refill his medications, continue with the same work restrictions. Petitioner was still waiting for surgery authorization. (PX 3).

Petitioner testified consistently with the medical records. (Tr. 13-25).

Depositions of Experts

The parties proceeded with the evidence deposition of Dr. Kevin Koutsky on November 23, 2020. Dr. Koutsky began treating petitioner on December 5, 2020. He testified petitioner was a patient from the chiropractic clinic, La Clinica. He would go there occasionally to evaluate patients. (PX 14, p. 6). Petitioner presented with low back pain radiating into the buttocks and thighs. Petitioner noted his injury occurred while working when he was lifting a rolled-up metal hose. (PX 14, p. 7). Petitioner underwent an MRI which revealed a disc herniation with an extruded component at L4-5. He also had a disc protrusion noted at L5-S1. (PX 14, p. 8). Based on the same, the doctor noted petitioner had primarily mechanical low back pain. The doctor discussed surgery and recommended a lumbar discogram. (PX 14, p. 9-10).

Dr. Koutsky testified he ordered a lumbar discogram for Petitioner. (PX 14, p.10). He explained a lumbar discogram is a provocative test performed usually by pain clinic physicians that inject some dye into the discs. (PX 14, p.10). It is not so much of the radiographic appearance of what happens to the dye, although that is a component of it, but it is whether or not the patient experiences their usual pain upon increasing the pressure within those discs. (PX 14, p.10). Dr. Koutsky testified that a surgery recommendation depended on whether or not the patient's symptoms were recreated after injection at the discs that showed the disc herniations and abnormalities on MRI scan, and if his symptoms remained refractory to conservative management. (PX 14, p.10-11). He also recommended an EMG and continued physical therapy. (PX 14, p.11). Dr. Koutsky noted the discogram revealed concordant pain after the injection at L4-L5 and L5-S1

which was consistent with his MRI findings. (PX 14, p. 13). The EMG showed evidence of a nerve not working correctly in his leg, but it was due to something that was happening in his leg and not the spine. (PX 14, p. 13). At this point petitioner suffered from mechanical discogenic lower back at L4-5 and L5-S1. Based on the same Dr. Koutsky recommended a decompression and stabilization with instrumentation or a lumbar fusion at L4-L5 and L5-S1. (PX 14, p. 14). When describing how a discogram is used, Dr. Koutsky indicated that it's "not a perfect test, it's certainly a good piece of the puzzle to perform a discogram when you suspect [discogenic pain], especially prior to discussing surgical treatment options." (PX 14, p. 14). Dr. Koutsky testified the purpose and how he would perform a lumbar fusion. (PX 14, p. 14-15). Dr. Koutsky further advised he recommended surgery because of petitioner's symptoms. He also based surgery due to the diagnostics, including the MRI scan findings, the discogram findings, coupled with the EMG findings. While the EMG findings didn't show any nerves being pinched in his back, the findings of peripheral neuropathy and not a radiculopathy were consistent with Dr. Koutsky's hunch that he was experiencing a condition of discogenic pain, because in discogenic pain, you don't really see any evidence of radiculopathy. He noted all these symptoms continued to interfere with his function despite exhausting universally accepted conservative means like medications, therapy, and injections. (PX 14, p.15-16).

Dr. Koutsky testified that he disagreed with Dr. Singh's opinion and felt Petitioner had a condition that was well beyond a simple strain. (PX 14, p.17-18). Dr. Koutsky opined Petitioner had more than a simple strain as he had symptoms for a year or so, coupled with MRI findings. (PX 14, p.18). Dr. Koutsky testified he felt Petitioner was a reasonable candidate for surgery being his condition was refractory to all conservative measures. (PX 14, p.18). He testified he disagreed with Dr. Singh's opinion that Petitioner could return to regular duty work and petitioner was not at MMI. (PX 14, p.18-19).

On Cross-Examination, Dr. Koutsky testified he could not tell whether the July 10, 2019 MRI findings were acute or chronic in nature. (PX 14, p.20). Dr. Koutsky further noted they should not hold off on surgery to see if the extruded discs may retract or correct themselves because petitioner's symptoms interfere with his function and could cause impairment. He noted he was hoping to improve symptoms to a point where Petitioner can function at a higher level because he had failed all conservative management. (PX 14, p. 21). Dr. Koutsky further stated he was unaware of Petitioner's prior low back complaints. (PX 14, p. 22). He noted it would not surprise him as some of those changes on the MRI scan were degenerative, however, there would be no question the trauma that occurred at the time of his work injury at least aggravated his condition or possibly caused the condition of discogenic mechanical back pain. (PX 14, p. 22). He opined the work injury "tilted the scales to a point where now, he's in a situation where he would benefit from surgical fusion." (PX 14, p. 22-23).

The parties proceeded with Dr. Kern Singh's evidence deposition on February 17, 2021. Dr. Singh testified he examined petitioner on June 17, 2020 and reviewed medical records. Dr. Singh testified Petitioner reported a work accident with back pain at an 8 out of 10. He testified Petitioner's range of motion of the lumbar spine was normal and revealed no spinal cord compression signs. (RX 2, p.10-11). Dr. Singh reviewed the actual MRI showing a disc protrusion at L4-5 without nerve compression and at L5-S1 there was a decreased disc signal intensity which means there's a loss of water content but no collapse of the disc space itself. (RX 2, p. 11-12). Dr. Singh testified Petitioner had a normal examination and the MRI correlated with the normal examination and ultimately correlated with a normal EMG. (RX 2, P.12). He explained that nerve compression can produce pain in a particular pattern in the leg or the arm depending on cervical or lumbar and a correlating loss of reflexes in that particular distribution, a loss of sensation, and strength loss. (RX 2, p.12-13). Dr. Singh could not objectify Petitioner's pain complaints as they did not correlate with the nerve root pattern or with the imaging studies. (RX 2, p.13). Dr. Singh diagnosed Petitioner with a lumbar muscular strain and degenerative disc disease at L4-5 and L5-S1. (RX 2, p. 13). He opined that an extruded disc or a protruding disc cannot cause any symptoms if there is no nerve compression. (RX 2, p.14). Based on the same no further treatment was necessary. He further opined petitioner's treatment had been excessive in nature indicating petitioner required only four weeks of physical therapy. (RX 2, p. 14).

Dr. Singh opined Petitioner could work full duty without restrictions, and he had attained maximum medical improvement. (RX 2, p.15-16). He further opined that he did not agree with the surgical recommendation. (RX 2, p.17). His reasoning was based on Petitioner's normal examination, minimal to no nerve root compression on MRI, and a normal EMG. (RX2, p.17). He opined if there was no nerve root compression, he did not see any indication for the surgical recommendation. (RX 2, p.17). For a report of back pain or a lumbar strain, he testified the accepted treatment is anti-inflammatories, typically over the counter, and potentially prescription strength for a course of six to eight weeks.

(RX 2, p.18). Dr. Singh testified he believed Petitioner to have a pre-existing degenerative condition in the lumbar spine that was not symptomatic. (RX 2, p. 18). Dr. Singh testified the work accident did not cause a temporary aggravation of Petitioner's pre-existing degenerative lumbar condition. (RX 2, p.18-19). He advised that he did not review the discogram report from December 30, 2019 as it is no longer accepted as standard of care. (RX 2, p. 19).
On Cross-Examination Dr. Singh advised that he did not put much weight into Petitioner's prior back treatment from 2017. (RX 2, p. 22). He further noted the Waddell tests he performed were negative stating Petitioner gave forth a reasonable exam. (RX 2, p. 23-24). Dr. Singh indicated lumbar muscular strains resolve in two to four weeks and do not typically take two years to resolve. (RX 2, p. 25). He testified the L4-L5 and L5-S1 disc degeneration on the lumbar MRI were incidental findings as he had a normal physical examination. (RX 2, p. 25-26). Dr. Singh testified he examined petitioner once and the exam was approximately 5 to 7 minutes. Dr. Singh also testified the mechanism of injury, lifting heavy machinery weighing approximately sixty pounds, theoretically would be enough to cause disc herniations or aggravate a pre-existing condition of the lumbar spine. (RX 2, p. 29). Dr. Singh testified when diagnosing a patient, one looks to a correlation between diagnostic studies, physical examinations, and subjective complaints. (RX 2, p. 29).

At trial, Petitioner testified he was off work for about month and half to two months after the accident. (Tr. 15). Petitioner was then placed on light duty and has been working light duty since which did not require as much heavy lifting. (Tr. 15). In addition, he does not have to shovel snow by hand or help with installations of auto washes. (Tr. 17).

Petitioner testified he still wants to proceed with the recommended surgery. (Tr. 25). He advised that he still feels like he is a strong man at this point. He does not want to go into his old age taking medication and feeling pain. He believes that he has a better chance of recovering now. He also noted he does not want his pain. (Tr. 25). Petitioner further testified that he still has pain while working light duty. (Tr. 26). He continues to work because he has to pay his bills. (Tr. 26).

Petitioner acknowledged he had prior back treatment. (Tr. 27). He noted, however, he never underwent physical therapy for the same and the pain resolved on its own. (Tr. 28). Petitioner testified that his previous pain was "just passing by" but this time after the injury his pain has not gone away. (Tr. 29-30). Petitioner further testified he is unable to play soccer anymore as the result of the accident. (Tr. 30). Regarding medication he takes pain medication two or three times per week. (Tr. 31). He further stated during the Section 12 examination, Dr. Singh spent less than 5 minutes with him in the examination room. (Tr. 31-32).

On Cross-Examination, petitioner advised he did not hire an attorney for any previous accidents. He was referred to La Clinica by his sister's stepdaughter. (Tr. 34). Petitioner advised he treated with Dr. Zaragoza's office for about two years and it did not bring any resolution to his symptoms. (Tr. 35). He noted, however, the therapy and medications did reduce his symptoms. (Tr. 35). Petitioner noted Dr. Koutsky advised surgery would reduce the pain he was feeling but would not completely resolve it. (Tr. 35-36). Petitioner testified his brother witnessed him lift the roll of hoses on the accident date but was not there to testify. (Tr. 36). He also noted that he previously had to lift different sizes of rolls of hoses prior to the accident as part of his job. (Tr. 37). He testified no physician other than Dr. Koutsky had recommended surgery. (Tr. 37). Petitioner testified that his light duty work schedule is different than the full duty work schedule. He also noted heavy lifting of equipment and installing machinery is not the bulk of his job. (Tr. 37-39).

On Redirect Examination, Petitioner testified when they would install a new car was it would be a two to three-month job. (Tr. 39). Since he began light duty, he has not performed that part of his job. (Tr. 39). He further noted he does not want to go back to working that part of his job. (Tr. 40).

Testimony of Jose Flores

At trial, Respondent called Jose Flores who testified that he was employed by Frasco Investigative Services for the last eight years. (Tr. 41). As a field investigator he would go out and do field investigation and document any subjects conducting activity. (Tr. 42). Mr. Flores testified he was assigned to do field surveillance on Petitioner. (Tr. 42). Mr. Flores authenticated a video from May 21, 2021 showing Petitioner at Fuller's Car Wash performing his job duties.

On Cross-Examination, Mr. Flores testified Petitioner was drying off vehicles after the carwash with a rag in his hand. (Tr. 44). He estimated that the rag weighed about a few ounces. (Tr. 44). Mr. Flores further testified he was approximately a hundred feet away from petitioner. (Tr. 44). Mr. Flores noted he could not tell if Petitioner was in pain or not. He also noted Petitioner was not doing any type of heavy lifting. (Tr. 45).

Recall Testimony of Petitioner

Following Mr. Flores's testimony, Petitioner was recalled to testify. (Tr. 46). Petitioner testified that was him in the video. (RX 3, Tr. 46). He noted that he was using a spray and wiping down windows with no difficulty. (Tr. 47). He further noted washing and drying out of cars was part of his light duty job duties. (Tr. 48).

The Arbitrator notes the surveillance video shows petitioner drying off the vehicles and utilizing a spray bottle. (RX 3).

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds his testimony to be persuasive. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

Issue C, whether the accident arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

For accidental injuries to be compensable under the Workers' Compensation Act, a claimant must show such injuries arose out of and in the course of his or her employment. Navistar Intern. Transp. Corp. v. Industrial Com'n, 315 Ill.App.3d 1197 (2000).

After a careful review of the record, the Arbitrator finds Petitioner sustained a back injury on June 13, 2019 when he picked up a roll of hoses. Petitioner provided a consistent history to his medical providers and Section 12 examiner. This same history was consistent with the testimony provided at trial. In addition, Respondent did not provide any witnesses to rebut petitioner's testimony regarding accident.

Based on the same, the Arbitrator finds that the incident arose out of and in the course of Petitioner's employment and sustained a compensable accident.

With regard to (F), whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds the following:

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

In this case, the Arbitrator finds petitioner's current condition of ill-being is causally related to his work accident of June 13, 2019. This is based on petitioner's testimony, as well and medical opinions and diagnoses of Drs. Zaragoza, Grochowski, and Koutsky.

Petitioner testified on June 13, 2019 that he was lifting an approximately seventy-pound roll of hoses when he injured his back. The Arbitrator finds Petitioner truthful in his assertion that his back symptoms began on the date of accident. Even though petitioner had preexisting back treatment, the Arbitrator notes Petitioner was working full duty prior to the date of injury. The Arbitrator further notes petitioner consistently treated since the date in question with no gaps in treatment.

In reviewing the medical testimony, the Arbitrator finds the opinions of Dr. Koutsky more persuasive than those of Dr. Singh. Dr. Koutsy was the physician that examined petitioner from December 2020 through the present. Dr. Koutsy testified petitioner suffered from mechanical discogenic lower back at L4-5 and L5-S1. Based on the same Dr. Koutsky recommended a decompression and stabilization with instrumentation or a lumbar fusion at L4-L5 and L5-S1. (PX 14, p. 14). He noted this was based on petitioner's symptoms. He also based surgery on the diagnostics, including the MRI scan findings, the discogram findings, coupled with the EMG findings.

Dr. Koutsy reviewed the diagnostic tests, such as the MRI showing disc herniations, and utilized petitioner's consistent subjective complaints in recommending surgery. The Arbitrator agrees that petitioner has exhausted all conservative treatment.

The Arbitrator has also reviewed the opinions of Dr. Singh. Dr. Singh diagnosed petitioner with a low back strain and found petitioner was at maximum medical improvement and could work full duty. Dr. Singh could not objectify Petitioner's subjective complaints. The Arbitrator notes that although Dr. Singh diagnosed petitioner with a strain, Petitioner's testimony and medical records clearly demonstrate petitioner has had persistent low back pain with radiating pain into his buttocks and thighs for over two years. In addition, during the Section 12 examination, Petitioner was complaining of low back pain with radiating pain. The Arbitrator notes Petitioner testified that Dr. Singh only examined Petitioner for approximately 5 minutes one time. Dr. Singh also agreed examinations take approximately 5 to 7 minutes. He also did not provide any other explanation or treatment plan for petitioner's ongoing symptoms. Dr. Singh admitted the Waddell tests he performed were negative. He further noted that muscular strains resolved in two to four weeks and do not take two years to resolve. Dr. Singh further testified Petitioner's mechanism of injury of lifting the heavy roll of hoses could have aggravated or exacerbated Petitioner's pre-existing condition of his lumbar spine.

The Arbitrator agrees with Dr. Koutsy who disagreed with Dr. Singh's opinion, noting Petitioner had a much more significant injury than a muscular strain. As Petitioner credibly testified to his mechanism of injury without rebuttal to the contrary, Dr. Koutsky agrees and Dr. Singh "theoretically" agrees that Petitioner's current back condition was caused/aggravated or could have been caused/aggravated by the June 13, 2019 accident. The Arbitrator also notes that petitioner cannot work regular duty.

The Arbitrator acknowledges the surveillance entered at trial depicting Petitioner moving around, cleaning and drying off car windows and dashboards. The Arbitrator finds that this confirms the testimony that Petitioner was working light duty. The Arbitrator further notes that the surveillance was not viewed by either physician in regards to causation.

Based on the same, the Arbitrator finds Petitioner's current condition of ill-being is causally related to his June 13, 2019 work accident.

With regard to (J), whether medical services that were provided to Petitioner were reasonable and necessary, the Arbitrator finds the following:

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein. The medical records entered evidence demonstrate Petitioner sustained injuries to his low back. Based on the record in its entirety, the Arbitrator finds Petitioner's treatment to be reasonable and necessary. Given the Arbitrator's finding of causation between Petitioner's June 13, 2019 work accident and his condition of ill-being regarding his low back, Respondent is liable for reasonable and necessary medical treatment of the causally related condition.

The Arbitrator orders Respondent to pay Petitioner all other reasonable and necessary medical expenses incurred in connection with the care and treatment of his causally related condition pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid.

With respect to Issue (K) whether Petitioner is entitled to any prospective medical care, the Arbitrator finds the follows:

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein.

Regarding the issue of whether the Petitioner is entitled to any prospective medical care, following consideration of the testimony and evidence presented, the same is incorporated by reference, it is found that Petitioner's condition is causally related to his work accident and has not stabilized or otherwise reached MMI. Dr. Koutsy opined Petitioner had exhausted conservative treatment and recommended a lumbar decompression with stabilization with instrumentation. The Arbitrator agrees that petitioner has exhausted conservative treatment over nine months of physical therapy and injections. Based on the same. the Arbitrator finds that Petitioner is entitled to prospective medical care as recommended by his treating physicians with reliance on petitioner's medical records and Petitioner's testimony. For the reasons stated above, Respondent shall authorize and pay for this and such other reasonable medical treatment pursuant to the statutory fee schedule.

With respect to Issue (L), what temporary benefits are in dispute, the Arbitrator finds as follows:

To prove entitlement to TTD benefits, a claimant must establish not only that he did not work, but that he was unable to work. Sharwarko v. Illinois Workers' Compensation Comm'n, 2015 IL App (1st) 131733WC. An employee is temporarily totally disabled from the time that an injury incapacitates him from 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. Industrial Comm'n, 138 Ill. 2d 107, 118 (1990). Once an injured employee's physical condition stabilizes or he has reached MMI, he is no longer eligible for temporary total disability benefits. Archer Daniels Midland Co., 138 Ill. 2d at 118. A claimant reaches MMI when he is as far recovered or restored as the permanent character of his injury will permit. Nascote Industries v. Industrial Comm'n, 353 Ill. App. 3d 1067, 1072 (2004). Factors to be considered in determining whether a claimant has reached MMI include whether he has been released to return to work, medical evidence, testimony concerning the claimant's injury, the extent of his injury, and whether the injury has stabilized. Nascote Industries, 353 Ill. App. 3d at 1072. The period of time during which a claimant is temporarily and totally disabled is a question of fact to be determined by the Commission, and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. Archer Daniels Midland, 138 Ill. 2d at 119-20.

Petitioner is claiming TTD benefits beginning on June 21, 2019 through July 19, 2019. Petitioner was placed off work from Dr. Zaragoza at La Clinica during that time. As Petitioner testified to and the medical records corroborate, Petitioner returned to work in a light duty capacity and has been working light duty for Respondent since July of 2019. Based on the same, Petitioner is entitled to payment of TTD benefits from June 21, 2019 through July 19, 2019, a period of four weeks at the rate of $313.77. Respondent shall receive credit for amounts paid.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC013143
Case Name	Julie A Pattersoon v. State of Illinois – Department of Human Services
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0416
Number of Pages of Decision	20
Decision Issued By	Maria Portela, Commissioner, Thomas Tyrrell, Commissioner

Petitioner Attorney	Charles Delano
Respondent Attorney	Kayla Koyne

DATE FILED: 10/27/2022

/s/Maria Portela, Commissioner

Signature

DISSENT: /s/Thomas Tyrrell, Commissioner

Signature

22IWCC0416

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

JULIE A. PATTERSON,

Petitioner,

vs. NO: 17 WC 13143

STATE OF ILLINOIS – DEPARTMENT OF HUMAN 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, causation, medical expenses, temporary total disability benefits, 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 first sentence of the second paragraph on page 3 of the Arbitrator's decision, we change the word "cubical" to "cubicle".

In the seventh sentence of the third paragraph on page 6 of the Arbitrator's decision, we strike the date "2/21/18" and replace with the date "3/16/18".

In the first sentence of the fourth paragraph on page 14 of the Arbitrator's decision, we strike the date "6/20/17" and replace with the date "6/20/16".

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 14, 2021 is hereby affirmed and adopted, with the aforementioned modifications.

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

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

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

October 27, 2022

/s/ *Maria E. Portela*

MEP/dmm
O: 090622
49

/s/ *Kathryn A. Doerries*

DISSENT

I respectfully dissent from the opinion of the majority and would reverse the Decision of the Arbitrator. After carefully considering the totality of the evidence, I believe Petitioner met her burden of proving by a preponderance of the evidence that she sustained injuries to her bilateral hands and arms due to work-related repetitive trauma.

In the four years prior to June 20, 2016, the manifestation date of Petitioner's bilateral symptoms, Petitioner worked as a Disability Claims Adjuster. Petitioner credibly testified that her job duties included reviewing and summarizing medical records as well as using the telephone. She credibly testified that prior to the date of injury, she reviewed approximately 17 cases each week and that medical records for each case ranged from 200-1,000 pages. She testified that she generally reviewed 500 pages of medical records each day and that this would take approximately 30 minutes. Petitioner also explicitly told her treating doctors that she typed for most of her day and also used a computer mouse for several hours each day. For example, she told Dr. Greatting, her treating surgeon, that she used the keyboard for approximately five hours each day and used her mouse for approximately two hours each day. Petitioner also described in detail the setup of her workstation as well as the positioning of her hands, wrists, and arms while typing. Respondent did not offer any evidence that contradicted Petitioner's credible testimony regarding these key facts.

In my opinion, the majority's decision to affirm the Arbitrator's denial of benefits disregards the totality of the evidence generally, and specifically disregards the expert opinions submitted by both parties. Dr. Greatting is a highly respected surgeon and I believe he appropriately considered Petitioner's work duties as well as her history of complaints when making his causation opinion. He credibly testified that holding one's wrists in an extended position (as Petitioner described) for prolonged periods can increase the pressure in the carpal tunnel area. He

also credibly testified that placing the forearms or elbow areas on a hard surface for a prolonged period (again, as Petitioner described) could put pressure on the ulnar nerve and cause symptoms in that area. Notably, Dr. Sudekum, Respondent's Section 12 examiner, declined to make any opinions regarding the setup of Petitioner's workstation or the wrist and arm positioning Petitioner described. However, he admitted that holding one's wrist in a flexed position can put pressure on the median nerve and ultimately cause carpal tunnel symptoms. Likewise, he admitted that if someone rests their elbow in a certain position, they could cause irritation of the ulnar nerve. The majority opinion completely disregards Dr. Sudekum's agreement with Dr. Greatting on these critical issues.

For the forgoing reasons, I would reverse the Decision of the Arbitrator in its entirety.

/s/ *Thomas J. Tyrrell*
Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC013143
Case Name	PATTERSON, JULIE A v. ST OF IL-DEPARTMENT OF HUMAN SERVICES
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Charles Delano
Respondent Attorney	Kayla Koyne

DATE FILED: 9/14/2021

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 14, 2021 0.05%

/s/ Maureen Pulia, Arbitrator

Signature

CERTIFIED as a true and correct copy

pursuant to 820 ILCS 305/14

September 14, 2021

/s/ Brendon O'Rourke

Brendan O'Rourke, Assistant Secretary

Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JULIE A PATTERSON,
Employee/Petitioner

v.

STATE OF ILLINOIS-DEPARTMENT OF HUMAN SERVICES,
Employer/Respondent

Case # **17** WC **13143**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen H. Pulia**, Arbitrator of the Commission, in the city of **Springfield**, on **8/26/21**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **6/20/16**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

In the year preceding the injury, Petitioner earned $**82,570.09**; the average weekly wage was $**1,587.89**.

On the date of accident, Petitioner was **38** years of age, ***married*** with **1** dependent child.

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

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

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

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

ORDER

Petitioner's claim for compensation is denied because the petitioner has failed to prove by a preponderance of the credible evidence that she sustained an accidental injury to her bilateral hands and arms, due to repetitive work activities, that arose out of and in the course of her employment by respondent, and manifested itself on 6/20/16.

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

SEPTEMBER 14, 2021

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 38 year old left hand dominant Disability Claims Adjustor 1, alleges she sustained an accidental injury to her bilateral hands and arms due to repetitive work activities that arose out of and in the course of her employment by respondent and manifested itself on 6/20/16. Petitioner began working for respondent in April of 2012 as a Disability Claims Adjustor 1. Petitioner served in this capacity until the alleged date of injury. Just after the alleged date of injury petitioner was promoted to Disability Claims Adjustor 2, and was again promoted in 2020, and then in March of 2021 was promoted to Public Services Administrator Option 6.

Petitioner testified that when she began working for respondent in 2012 she worked in a cubical with a desk. On this desk was her computer, mouse and keyboard. Petitioner also sat in a new adjustable chair. Petitioner testified that although the chair was adjustable, every time she raised it, it would slide down. She did not report this issue with the chair to anyone, and testified that it remained this way at least until the alleged date of accident on 6/20/16. She testified that when she was typing at her desk, her hands were extended up to the keyboard, with her whole arms on the desk including her elbows. She testified that she was not provided with any padding.

Petitioner testified that prior to 6/20/16 she reviewed medical records as part of her job, and after she reviewed the records she would summarize them, and then bookmark them. She would then write a full summary of the medical records and send them to the doctor. She testified that on any given day she would read medical records, that were mostly on the computer, no more than 30 minutes a day. She also read some hard copy medical records. Petitioner testified that she reviewed medical records for 17 cases a week prior to the alleged accident as a Disability Claims Adjustor 1, and medical records for 20 cases a week after the alleged accident as a Disability Claims Adjustor 2. Petitioner testified that on average the medical records for a case could range from 200-1000 pages. However, all these pages were not read on the same day, given that she may not have all the records she needed at one time. She testified that the time needed to finish a claim could be from 1-100 days because often the medical records did not come in at one time, but rather over time. Petitioner testified that on average she would review 500 pages of medical records a day, and this would take only 30 minutes.

On 6/20/16 petitioner presented to her primary care physician, Dr. Larry Sapetti. Petitioner reported pain and numbness in her hands. She reported that she works on the computer all day. She noted that for the past year she had been experiencing symptoms of numbness and tingling in her fingers of both, which wake her up at

night, and the pain was distributed bilaterally in the distal radial of the forearm extending down into the thumbs. She reported that she has typed all day long for the about the last 4 years. Dr. Sapetti evaluated both hands and noted good grip and sensation. He also noted a positive Finkelstein's test on the left, but not on the right. Dr. Sapetti assessed bilateral wrist pain, and was of the opinion that her history was most consistent with carpal tunnel syndrome, although the exam was not spurring that at that time. He also assessed some possible Tinel synovitis bilaterally. He prescribed cockup splints and NSAIDS for a month.

Petitioner continued to follow-up with Dr. Sapetti and noted that the night splints and Naproxen were not helping, and her symptoms were unchanged. She noted that her symptoms were worse on the right and her clerical duties exacerbated her symptoms. On 9/30/16 Dr. Sapetti suspected carpal tunnel syndrome. He noted on exam a positive carpal compression test, as well as a positive Tinel's bilaterally in the wrists, and negative in the elbows. He recommended an EMG.

On 10/3/16 petitioner underwent an EMG of her bilateral upper extremities. The findings were consistent with left carpal tunnel syndrome. There was no evidence of any right carpal tunnel syndrome, bilateral ulnar mononeuropathies, bilateral brachial plexopathies, or cervical radiculopathies. These tests were performed by Dr. Becker.

On 10/3/16 petitioner completed the TriStar Workers' Compensation Employee's Notice of Injury. She alleged an injury on 6/20/16 at 11:15 am that was progressive. She indicated that she was "using computer - typing continuously all day – everyday," as what activities she was performing at the time of the injury. She identified the place where the injury occurred as "at my desk-5th floor Section A Unit 26." With respect to the details how the injury occurred, petitioner indicated "using computer, typing all day progressively became worse." She described the injury as "both wrist (sic), both hands (joints) and left elbow."

On 10/3/16 the TriStar Supervisor's Report of Injury or Illness regarding petitioner's injury was created. It was noted that petitioner reported this injury on 10/3/16 at 2:45 pm. The injury date was identified as "Progressive." The Job Description and/or Assigned Duties of Employee were noted as "Use computer to initiate cases, review medical records, prepare assessment forms, and make final decisions on disability claims. Use telephone to follow up with claimants, MDs and hospitals." The activity petitioner was doing at the time of the accident was identified as "Typing on computer. Impairment is progressive in nature." Both wrists, both hands, and left elbow." Description of the Accident/Incident was identified as "Her impairment is progressive and caused by continuous typing." The Description of the Injury was noted as "carpal tunnel involving the job

petitioner was in on the date of this report was Disability Claims Adjustor II for 3 months, and Disability Adjustor I for 4 years prior.

On 5/18/17 petitioner presented to Dr. Mark Greatting for evaluation of her bilateral upper extremity complaints. She complained of pain, tingling, and numbness in both hands, with worse pain in the right, and worse numbness in the left. She reported that her symptoms had been ongoing for about a year and were getting worse. She noted that her symptoms bothered her at night and significantly with her work activities, which included a significant amount of keyboarding, use of a mouse, and talking on the phone. She also noted symptoms with driving and reading. She reported that her work area was a desktop with no padding; works with her wrists in an extended position and her arms resting on the edge of her desk. She noted that during her workday, she types or keyboards about 5 hours a day, and uses the mouse about 2 hours a day. She also reported that she talks on the phone about 30 minutes a day. She reported that her hands were a little weak. She reported numbness and tingling sometimes involves her ring and small fingers, sometimes bothering her thumb, index, and middle finger, and sometimes bothering her whole hand. She stated that she wakes up about 2 times per night.

Dr. Greatting performed an examination and noted positive Tinel's test over both cubital tunnels, and a negative elbow flexion bilaterally; as well as a positive Tinel's over her right carpal tunnel (negative on the left), and a positive Phalen's and compression test bilaterally. No weakness was noted in either arm/hand. Dr. Greatting assessed bilateral carpal and cubital tunnel. He recommended a repeat EMG.

On 6/8/17 the petitioner underwent a repeat EMG of his bilateral upper extremities performed by Dr. Becker. The study was normal.

On 6/23/17 petitioner returned to Dr. Greatting. He reviewed the results of the EMG of 6/8/17 and noted that the results of that study were normal with no evidence of bilateral cubital or carpal tunnel syndrome identified. Despite these findings, Dr. Greatting noted that petitioner appeared to have carpal tunnel syndrome, and possibly some cubital tunnel syndrome, worse on the right. Dr. Greatting was of the opinion that it is possible to have peripheral nerve entrapment neuropathies with negative EMG nerve conduction studies. Dr. Greatting performed a corticosteroid injection into the right carpal tunnel.

On 8/2/17 petitioner followed-up with Dr. Greatting. She reported that the injection into her right carpal tunnel helped until 7/9/17 when her numbness started to return. Dr. Greatting recommended surgical intervention.

On 8/23/17 Dr. Greatting performed a left cubital and left carpal tunnel release. The petitioner followed up post-operatively with Dr. Greatting. On 9/6/17 petitioner noted marked improvement of her symptoms. Her incisions were well healed and her sutures were removed. On 9/11/17 petitioner returned to full duty work.

On 1/17/18 petitioner returned to Dr. Greatting to discuss the numbness and tingling into the right hand. She reported progressive worsening of the numbness and tingling into the right hand, affecting all fingers and worse at night. She also reported that her symptoms were somewhat exacerbated by typing at work and talking on the phone. She reported that she wanted to undergo surgery. An examination revealed positive right elbow flexion; negative Tinel's and Phalen's over the right carpal tunnel; and positive compression test over the right carpal tunnel. Dr. Greatting assessed clinical carpal tunnel and cubital tunnel syndrome on the right despite a negative EMG.

On 2/20/18 petitioner underwent a right carpal tunnel and cubital tunnel release on the right performed by Dr. Greatting. Petitioner followed up post-operatively with Dr. Greatting. On 3/15/18 petitioner reported that she was doing well and her numbness and tingling had completely resolved. She had no additional complaints or concerns. Her sutures were removed. She had full range of motion of the right elbow and wrist. She requested a return to full duty work release effective 2/21/18. Dr. Greatting provided her with this return to work note. Dr. Greatting released petitioner on an as needed basis.

On 8/21/18 the petitioner underwent a Section 12 examination with Dr. Anthony Sudekum for evaluation of her bilateral upper extremities, at the request of the respondent. Dr. Sudekum took a history from petitioner of her present illness. Petitioner reported that she first began experiencing intermittent sharp pain at the base of her right thumb, and pain in her bilateral wrists in 2014. She reported numbness, which affected all of her fingers on both of her hands, and occasional/rare pain in her left elbow. She denied any pain of her fingers or her right elbow. She reported that her symptoms got progressively worse over time and she had bilateral carpal and cubital tunnel releases. In addition to petitioner's history, Dr. Sudekum reviewed medical records for petitioner dating back to 9/18/07. The first indication in the records where petitioner reported experiencing any upper extremity problems was on 6/20/16. Dr. Sudekum noted that petitioner reported that her bilateral upper extremities were weaker now then they were before her surgeries. She reported that she was still able to grip and grasp objects, but felt that she had less strength and dexterity. She also reported occasional numbness in her bilateral ring and small fingers, but the numbness in the other fingers had completely resolved, and the pain she had prior to her surgery, had resolved.

Dr. Sudekum performed a physical examination and noted that petitioner had full range of motion of the bilateral elbows, forearms, wrists, thumbs and fingers, and normal sensation throughout both upper extremities in the radial, median and ulnar nerve distributions. Petitioner's Tinel and Phalen's signs were negative. Her grip and pinch strength were low normal and roughly asymmetrical.

Following his records review and examination, Dr. Sudekum opined that petitioner may been suffering from very mild/borderline left carpal tunnel syndrome at one time for which she underwent a left carpal tunnel release and her symptoms improved. He further opined that petitioner had subjective bilateral upper extremity complaints, but there was no objective evidence of right median neuropathy/carpal tunnel syndrome and/or ulnar neuropathy/cubital tunnel syndrome on either side. Therefore, he did not feel that petitioner was suffering from right carpal tunnel syndrome or cubital tunnel syndrome on either side.

With regards to causal connection, Dr. Sudekum was of the opinion that petitioner reported that the pain in her upper extremities occurred at home, at work, at night, and while driving, reading, typing, and/or talking on the phone. He noted that petitioner's job for respondent included typing and keyboarding intermittently throughout the day, as well as other clerical tasks. He opined that simply experiencing a symptom at work does not necessarily indicate that benign work activities, including regular manual activities such as typing, keyboarding, and/or clerical tasks in general, are the cause of her pathologic process. He referred to studies by occupational medicine and upper extremity specialists who examined the potential role of typing and keyboarding in the development of carpal tunnel syndrome, and that these have consistently failed to show any significant causal relationship between typing and keyboarding, up to 7 hours a day, and any increased likelihood for the development of carpal tunnel syndrome. He further noted that although petitioner had subjective complaints and symptoms throughout both upper extremities, she only had objective evidence of mild left carpal tunnel syndrome on an EMG in 2016, and no objective evidence of carpal or cubital tunnel on an EMG in 2017, which was the EMG closest in time to the surgeries. He identified her non work predisposing risk factors of cubital and carpal tunnel as being over 40 years old, obesity, and prior left wrist fracture. Dr. Sudekum was of the opinion that most carpal and cubital tunnel syndromes are most often idiopathic in origin and develop randomly and sporadically in the adult population. Dr. Sudekom opined that there is no objective evidence to support a finding that petitioner suffered from right carpal and/or bilateral cubital tunnel syndrome. He further opined that petitioner would have had the same symptoms and pathology affecting her upper extremities regardless of her employment activities for respondent. He opined that her job duties for respondent did not serve to cause or aggravate carpal tunnel syndrome and/or cubital tunnel syndrome in either upper extremity. Dr. Sudekum opined

that there was no evidence of left carpal tunnel syndrome when she underwent the left carpal tunnel release in 2017.

With regards to the treatment to petitioner's upper extremities, Dr. Sudekum opined that petitioner's possible mild left median neuropathy may have been treatable with a more comprehensive and prolonged conservative treatment program that may have included occupational therapy, steroid injections/medications, weight loss, and exercises. However, he found the left carpal tunnel release was reasonable on the basis of her ongoing severe subjective complaints combined with the previous EMG finding of mild left carpal tunnel syndrome. Dr. Sudekum was of the opinion that patients with subjective complaints with normal nerve conduction studies are the best candidates for conservative treatment and usually improve with that treatment. He noted that petitioner requested no conservative treatment be rendered on the right side. He opined that this is inappropriate, especially given the normal EMG on the right side. Dr. Sudekum opined that the cubital and carpal tunnel releases on the right were not reasonable and necessary. He opined that petitioner is not in need of any further medical treatment for her upper extremities, was at MMI, and could return to full duty work without restrictions.

On 1/31/19, the evidence deposition of Dr. Anthony Sudekum, an orthopedic surgeon, was taken on behalf of the respondent. Dr. Sudekum testified that petitioner told him she worked 7.5 hours a day doing clerical task and typing, as well as keyboard work on her computer at her desk workstation. He stated that petitioner told him her job involved summarizing medical records for doctors to review, and working on reconsiderations every 3-5 years to review claims. She estimated that she typed 15-20 pages per day on average. He further testified that petitioner reported that from 2012-2017 she worked as a Disability Claims Adjudicator I and her duties were the same as she just described.

Dr. Sudekum opined that he saw no injury to support her claim for a work injury to her bilateral upper extremities. He further opined that he did not feel her work duties were the cause of any pathology in either upper extremity. He opined that her bilateral cubital and carpal tunnel releases were not reasonable or necessary, and were very aggressive.

On cross examination Dr. Sudekum testified that he performs Tinel's and Phalen's test on patients that come to see him with carpal tunnel complaints. When asked to identify the studies that show that there is not a significant causal relationship between typing and keyboarding up to seven hours a day and carpal tunnel syndrome, he identified a very large study from the Mayo Clinic, and one from Europe, and provided the bibliography of those reports at the end of his deposition. Dr. Sudekum testified that he was not aware of a

specific study that looked at the position of the hands to the development or aggravation of carpal tunnel syndrome. He further testified that he had offered no opinions regarding petitioner's workstations, or her wrist posture when she typed. Dr. Sudekum was of the opinion that if a wrist is in a flexed position it can cause pressure on the nerve, but it would be quite unusual for someone to maintain that position if it was causing pain. He was of the opinion that if the wrist is in a flexed position long enough you could start to get carpal tunnel symptoms, but that is not going to cause carpal tunnel necessarily, but will cause a transient symptomatology of median nerve irritation. He testified the same with respect to cubital tunnel syndrome. Dr. Sudekum opined that simply resting your elbow on a hard surface for an extended period of time while you type would not cause or aggravate cubital tunnel syndrome unless you do not move your elbow while it is resting right on the ulnar nerve. Dr. Sudekum testified that he did not have any information concerning the surface petitioner's elbows rested on in conjunction with her work.

On 7/17/19 petitioner followed up with Dr. Greatting. At that time, petitioner reported that she was not really having any significant problems with her upper extremities. She also reported resolution of her numbness and tingling in both hands.

On 1/22/20 petitioner returned to Dr. Greatting complaining of some mild ongoing weakness in both of her arms and some shooting pain if she rests her elbows on hard surfaces. She denied any numbness or tingling. She reported that she was really there because she had questions about her WC case. Dr. Greatting reviewed the work activities she described on 5/18/17. Dr. Greatting noted that at that time petitioner reported that she had a significant increase in the symptoms in both her arms while doing her work activities. He noted that he had no other real description of her work activities, nor did he have a job description available to review. He noted that after her right carpal tunnel and cubital tunnel releases he released her to full duty work on 3/7/18. Dr. Greatting noted that petitioner was there because she had questions concerning whether or not her work activities were related to causing, aggravating or acceleratiing the activities of her bilateral cubital and carpal tunnel syndrome, and had questions about why the Section 12 examiner had a different opinion. He told her it was still his opinion that her work activities contributed to the development of, aggravated or accelerated the symptoms of her bilateral cubital and carpal tunnel syndrome. Dr. Greatting instructed petitioner to return on an as needed basis. He also noted that the symptoms she was having that day did not exist on 7/17/19.

On 6/14/21 the evidence deposition of Dr. Mark Greatting, an orthopedic surgeon, was taken behalf of the petitioner. Even thought the EMG only showed evidence of left carpal tunnel, Dr. Greatting opined that he arrived on the diagnosis of bilateral cubital and carpal tunnel syndrome based on her history and his examination. He noted that the EMG was 7 months before his examination and her symptoms had worsened by the time he

saw her. He was also of the opinion that a small percentage of patients with these same diagnoses will have negative EMGs and nerve conduction studies. Dr. Greatting opined that he does not make a diagnosis specifically based on an EMG or nerve conduction study, but opined that you have to account symptoms and exam findings. Dr. Greatting was of the opinion that since the injection into the carpal tunnel provided some temporary relief, that was another indication that she had carpal tunnel syndrome. He was of the opinion that the fact petitioner improved after her carpal and cubital tunnel syndrome releases indicates that she did have cubital and carpal tunnel syndrome. Dr. Greatting opined that if petitioner's wrists were in an extended position for significant periods of time, that can increase the pressure in the carpal tunnel area; and, if her forearms or elbow areas were on a hard surface, that could potentially put pressure on the ulnar nerve and cause issues in that area. Dr. Greatting opined that he could not say if petitioner's bilateral carpal tunnel syndrome or bilateral cubital tunnel syndrome was directly caused by her work activities, but he thought, based on her history and other medical history, that those activities would be an aggravating or accelerating factor which made the symptoms worse, and led to the treatment he performed. Dr. Greatting did not anticipate petitioner would need any further treatment as a result of her injury on 6/20/16.

On cross-examination, Dr. Greatting testified that it was his understanding that petitioner used a keyboard for typing 5 hours a day, used a mouse for 2 hours a day, and talked on the phone for 30 minutes a day at work. He testified that he did not know how many phone calls she would answer in a typical day; did not know if she used a handset or headset to answer the phone calls; and, did not mention if her typing was broken up throughout the day by her other job duties. Dr. Greatting believed her job duties were all intermittently mixed together. He testified that petitioner did not physically demonstrate how she would hold her hands or her arms at her desk while she was typing, using her mouse, etc. Dr. Greatting was not aware of what type of typing petitioner did. He also did not see any medical conditions that would predispose petitioner to the type of problems she had, other than being female, and mildly obese. Dr. Greatting agreed that carpal and cubital tunnel syndrome can be aggravated by an activity the longer someone does the activity, but he had no idea as to the number of times that an activity has to be performed for it to aggravate the carpal or cubital tunnel, finding that different patients have different tolerance levels to activities. Dr. Greatting agreed that it is not normal for patients to have normal EMGs and still have cubital and carpal tunnel syndromes severe enough to warrant surgery. Dr. Greatting opined that positive Tinel's, Phalen's and compression tests will cause symptoms with numbness/tingling in the distribution of the nerve that they are performed over, and the positivity is based solely on the patient's complaints.

Respondent offered into evidence the Job Description for Disability Claims Adjudicator I and Disability Claims Adjudicator II. From 2012 until the alleged date of accident petitioner worked solely as a Disability Claims Adjudicator I. This position required:

* 30% of the time spent examining and analyzing data recorded by Social Security field office obtained through an interview or internal application of clients who file for disability; determining proper jurisdiction and geographical assignment; supplementing this information by direct contact with clients or their designates representatives. Initiating requests and follows-up on a timely basis to obtain all daily activity information, vocational and medical evidence of record including diagnostic tests from all sources identified who have treated the individual for the alleged impairments for the 12 month period prior to specific dates. Making direct contact with physicians, clinics, hospitals, institutions, mental health facilities, VA Hospitals, vocational rehabilitation counselors, workshops, etc. Also contacting lawyers and other designated client representatives who are in a position to provide information necessary to delineate their client's condition and how it impacts on their ability to work.

* 20% of the time spent reviewing and assessing medical and lay evidence received through the paper or the electronic case process; applying this data to complex regulations and criteria mandated by the Social Security Administration to the Bureau. Utilizing the electronic case analysis tool (eCAT) to complete physical residual functional capacity forms and refer cases as needed for a psychiatric review. Preparing final determinations electronically on a personal computer. Analyzing deficiencies in evidence and proceeds towards resolving these problems. If presumptive allowance decision can be made while pursuing this information, preparing electronic paperwork for PD input. If highly technical medical information is not available from treating sources, initiates purchase of consultative medical examination (CE) with appropriate tests; applies sequential evaluation; consults with in-house medical consultants as necessary on problem issues; and prepares the determination and personalized letters of notification through the legacy system.

*10% of the time spent obtaining full job description of all relevant past employment. Analyzes all available vocational evidence to determine if client can return to past work as described by claimant. Utilizes Occubrowse and/or Dictionary of Occupations Titles to determine if client can return to work as commonly performed or other work. When necessary, refers the case to the Disability Claims Specialist for more intensive consideration on the transferability of skills.

*10% of the time spent reviewing regulatory changes, policy guidelines, procedures and transmittals received electronically from state and federal operations, keeps informed of professional and medical technological advances which affect adjudications.

5% of the time spent developing, updating, and maintaining skills necessary to generate changes in the interfaced state-federal data control system (coding, diary dates, capability alerts, messages, decisions, etc.

5% of the time is spent screening all final decisions; referring selected client to other Bureaus of DHS or the University of Illinois, Division of Specialized Care for Children. Provides special referral handling to SSA, Office of Disability as defined by SSA.

5% of the time spent communicating with claimants regardless of their language, educational level or type of impairment and effectively handle crisis. Handles inquiries from clients, representatives, lawyers, and public officials. Recognizes when to refer some issues to the Bureau's Fraud Unit or Program Coordination.

5% of the time spent providing input to update and maintain current information in the medical reference source book and assess effectiveness of the consultative examination panel physicians. Requests investigations by Medical Relations Unit.

5% of the time spent ensuring that proper disclosure rules are followed to preserve the confidentiality of the client's record following HIPPA guidelines. Takes steps to see that treating sources are advised if previously undiagnosed conditions are found on consultative examination within appropriate disclosure limitations.

5% of the time is spent performing other duties assigned.

Petitioner testified that following the first surgery she was authorized off work from 8/23/17 - 9/11/17, and after her second surgery she was off work from 2/20/18 – 3/7/18.

Currently, petitioner testified that with respect to her left arm she still has weakness in her grip, and difficulty opening jars and using power tools for her woodworking, which she has only been doing for about a year. She also reported difficulty lifting heavier items like milk. She reported left elbow pain if her left elbow is on something hard. With respect to her right arm, she reported that her right elbow is good, but her right hand symptoms are the same as her left hand. She testified that the numbness and tingling in her bilateral upper extremities had resolved. Petitioner testified that she is currently working full duty without restrictions. She

denied any problems doing her job since she returned to work. She testified that she needs no further treatment for her bilateral upper extremities.

Petitioner testified that she does not smoke, and does not take any medications for her bilateral upper extremities. She further testified that she does not use any braces on her bilateral upper extremities. Petitioner testified that prior to her alleged date of injury, she had symptoms with her bilateral upper extremities with activities outside of work that included waking up at night with numbness and tingling, and numbness in her hands when on the phone for a long time.

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?

Petitioner alleges that she sustained an accidental injury to her bilateral hands and arms, due to repetitive work activities, that arose out of and in the course of her employment by respondent, that manifested itself on 6/20/16. Respondent disputes this claim.

As a general rule, repetitive trauma cases are compensable as accidental injuries under the Illinois Worker's Compensation Act. In Peoria County Belwood Nursing Home v. Industrial Commission (1987) 115 111.2d 524, 106 Ill.Dec 235, 505 N.E.2d 1026, the Supreme Court held that "the purpose behind the Workers' Compensation Act is best serviced by allowing compensation in a case … where an injury has been shown to be caused by the performance of the claimant's job and has developed gradually over a period of time, without requiring complete dysfunction.." However, it is imperative that the claimant place into evidence specific and detailed information concerning the petitioner's work activities, including the frequency, duration, manner of performing, etc. It is also equally important that the medical experts have a detailed and accurate understanding of the petitioner's work activities.

Since petitioner is claiming injuries to her bilateral hands and arms, in Illinois, recovery under the Workers' Compensation Act is allowed, even though the injury is not traceable to a specific traumatic event, where the performance of the employee's work involves constant or repetitive activity that *gradually* causes deterioration of or injury to a body part, assuming it can be medically established that the origin of the injury was the repetitive stressful activity. In any particular case, there could be more than one date on which the injury "manifested itself". These dates could be based on one or more of the following, depending on the facts of the case:

1. The date the petitioner first seeks medical attention for the condition;
2. The date the petitioner is first informed by a physician that the condition is work related;
3. The date the petitioner is first unable to work as a result of the condition;

4. The date when the symptoms became more acute at work;

5. The date that the petitioner first noticed the symptoms of the condition.

In the case at bar, the petitioner's manifestation date is 6/20/16. Although petitioner testified that she had symptoms for over a year, 6/20/16 was the date petitioner fist sough medical attention for these conditions.

Petitioner is alleging that her injuries have been caused the performance of her job and developed gradually. However, case law dictates that it is imperative that the petitioner place into evidence specific and detailed information concerning her work activities, including the frequency, duration, manner of performing, etc.

In the case at bar, petitioner's testimony at trial, the history she provided her healthcare providers does not necessarily provide a consensus of the detailed and specific information regarding her work activities, especially as it relates to the frequency, duration, and manner of performing her job duties, etc. At trial petitioner testified that she would read on average 500 pages medical records a day. She stated that this would take her no more than 30 minutes. Not know how carefully petitioner had to read these pages, it is unknown if 30 minutes would be a sufficient amount of time to review 500 pages of medical records.

When petitioner presented to Dr. Sapetti on 6/20/17 she made no mention of reading medical records every day. Instead, she reported that she all she has done is type all day for the last 4 years. Then. when she completed the Employee's Notice of Injury on 10/3/16 she reported the same thing.

When petitioner presented to Dr. Greatting on 5/18/17 she reported that her work activities included a significant amount of keyboarding, use of a mouse, and talking on the phone. She noted that the typing or keyboarding comprised 5 hours of her day, the use of the mouse comprised 2 hours of her day, and she was on the phone 30 minutes a day. She made no mention of reviewing any medical records. Dr. Greatting had no idea how many phone calls petitioner would answer on a typical day; did not know if she used a handset or headset to answer the phone calls she answered on a typical day; and, did not know if petitioner's typing was broken up throughout the day by her other job duties. However, Dr. Greatting did believe her job duties were all intermittently mixed together. The arbitrator finds this understanding of petitioner's job description significant as it relates to the issue of accident.

On 8/21/18 Dr. Sudekum noted that petitioner's job duties for respondent included typing and keyboarding intermittently throughout the day, as well as other clerical tasks. At his deposition on 1/13/19 Dr. Sudekum testified that petitioner told him she worked 7.5 hours a day doing clerical tasks and typing, as well as keyboard work on her computer at her desk workstation. He also testified that petitioner told him that her job

involved summarizing medical records for doctors to review, and working on reconsiderations every 3-5 years to review claims. She estimated to him that she typed 15-20 pages per day on average.

The arbitrator finds it significant that neither Dr. Greatting or Dr. Sudekum knew the manner in which petitioner performed her work duties. Neither was aware of how she held her arms or hands while she worked at her workstation.

In addition to the job duties petitioner testified to and reported to her healthcare providers, respondent offered into evidence petitioner's actually job description for the Disability Claims Adjudicator I, which was the job petitioner was performing prior to the alleged injury. This job description includes 2 pages of detailed description of all the activities petitioner was required to perform as part of her job. However, given that it is not noted in the job description itself, and petitioner did not testify at trial to the specifics, the arbitrator has no idea how petitioner performed each of these tasks, be it manually or on the computer, and if they were all done intermittently, and how they affected the time she spent on and off the computer.

Based on the above, as well as the credible record, the arbitrator finds that although the petitioner did place into evidence some information concerning her work activities, the arbitrator finds she did not provide consistent and specific detailed information regarding these work activities to all the medical experts, and did not describe the manner in which she performed these activities, which both Dr. Greatting and Dr. Sudekum indicated would be important to know. This said, the arbitrator further finds the medical experts did not have a detailed and accurate understanding of the petitioner's work activities, which is also imperative to finding that that petitioner sustained an accidental injury due to repetitive trauma.

Taking the totality of evidence into consideration, the arbitrator finds that the petitioner has failed to prove by a preponderance of the credible evidence that she sustained an accidental injury to her bilateral hands and arms, due to repetitive work activities, that arose out of and in the course of her employment by respondent, and manifested itself on 6/20/16.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?
J. WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY? HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?
K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?
L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

Having found the petitioner has failed to prove by a preponderance of the credible evidence that she sustained an accidental injury to her bilateral hands and arms, due to repetitive work activities, that arose out of and in the course of her employment by respondent, and manifested itself on 6/20/16, the arbitrator finds these remaining issues moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC011493
Case Name	Mary Curtis v. Franklin Hospital
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0417
Number of Pages of Decision	22
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Brad Badgley, Sam Mitchell
Respondent Attorney	Brian Smith, Kevin L. Mechler

DATE FILED: 10/28/2022

/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

Mary Curtis,

Petitioner,

vs. NO: 16WC 011493

Franklin Hospital,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, temporary total disability, permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 4, 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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $8,700.00. 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.

October 28, 2022

o090622

MEP/ypv

049

/s/ *Maria E. Portela*

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC011493
Case Name	CURTIS, MARY v. FRANKLIN HOSPITAL
Consolidated Cases	No Consolidated Cases
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Brad Badgley
Respondent Attorney	D. Brian Smith

DATE FILED: 11/4/2021

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 2, 2021 0.06%

/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

MARY CURTIS
Employee/Petitioner

v.

FRANKLIN HOSPITAL
Employer/Respondent

Case # **16** WC **011493**

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 **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Collinsville**, on **6/14/21**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ 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 22, 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 **$20,146.42**; the average weekly wage was $**387.43**.

On the date of accident, Petitioner was **47** years of age, ***single*** with **no** dependent children.

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

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

Respondent shall be given a credit of $**5,572.38** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**5,572.38**.

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

ORDER

Respondent shall pay medical bills as listed in Petitioner's Exhibit 16, pursuant to the medical fee schedule as provided in Sections 8(a) and 8.2 of the Act. Respondent shall reimburse Petitioner for any copays or deductibles that she paid. Respondent shall have credit for any amounts already paid. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit, including the lien of Health Alliance, a.k.a. Conduent, as listed in Petitioner's Exhibit 7, as provided in Section 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits in the amount of $258.28 per week for 30 6/7 weeks, for the periods of January 22, 2016, through June 25, 2016, and November 22, 2018, through January 21, 2019, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $232.46 per week for 26.875 weeks, because the injuries sustained caused 12.5% loss of the leg, as provided in Section 8(e) of the Act.

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

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

Jeanne L. AuBuchon

Signature of Arbitrator, Jeanne L. AuBuchon

NOVEMBER 4, 2021

PROCEDURAL HISTORY

This matter proceeded to trial on June 14, 2021. The issues in dispute are: 1) the causal connection between the accident and the Petitioner's left knee condition; 2) liability for medical bills; 3) entitlement to TTD benefits from January 22, 2016, through June 25, 2016, and from November 22, 2018, through January 21, 2019; and 4) the nature and extent of the Petitioner's injury.

FINDINGS OF FACT

At the time of the accident, the Petitioner, who was 47 years old, was employed by the Respondent as a cook. (AX1, T. 14) The Petitioner testified that on January 22, 2016, she was pushing a cart loaded with 1,000 pounds of frozen food on an incline into a freezer when her left knee popped. (T. 14-15) She said she had not previously suffered any injuries to her left knee. (T. 16)

On the date of the accident, the Petitioner went to the Respondent's emergency room complaining of pain in the left knee, rating the pain as an eight on a ten-point scale. (PX8) She was able to ambulate with moderate difficulty and could partially bear weight. (Id.) Her symptoms were aggravated by movement, weight bearing and bending her knee. (Id.) X-rays of the knee revealed slight narrowing of the medial compartment but no fracture, malalignment or significant-sized joint effusion. (Id.) She was diagnosed with a knee sprain, given prescriptions for ibuprofen and Tylenol 4 and was ordered off work until January 26, 2016. (Id.)

The Petitioner went to the Respondent's Family Health Care Clinic on January 26, 2016, with sharp and aching knee pain radiating into the thigh, swelling, instability, decreased range of motion and decreased weight bearing. (PX12) She denied any prior knee injury. (Id.) A physical examination revealed swelling and tenderness over the lateral collateral ligament. (Id.) The

Petitioner had pain with full flexion but did have full flexion and extension. (Id.) Varus and Valgus tests were negative, and there was no pain over the posterior or anterior cruciate ligaments. (Id.) The Petitioner was referred to physical therapy, advised to take Tylenol or ibuprofen and given instructions for rest, ice, compression and elevation (RICE). (Id.)

On February 1, 2016, the Petitioner returned to the clinic with knee pain, stiffness, decreased range of motion, instability, difficulty bearing weight and difficulty ambulating. (Id.) She was using crutches. (Id.) She was given Tramadol and referred to orthopedics. (Id.)

The Petitioner saw Dr. Angela Freehill, at orthopedic surgeon at the Orthopaedic Center of Southern Illinois, on February 9, 2016. (PX1b) The Petitioner reported swelling and a sharp, aching pain that she rated as nine out of ten. (Id.) Bending the knee exacerbated her symptoms, and her symptoms improved with ice, elevation and medication. (Id.) A physical examination revealed full range of motion with pain during flexion. (Id.) X-rays were normal with no evidence of osteoarthritis, but Dr. Freehill noted that the views were non-weightbearing and not definitive for arthritis evaluation. (Id.) Dr. Freehill ordered an MRI, prescribed medication and kept the Petitioner off work. (Id.)

The Petitioner underwent the MRI on February 17, 2016. (Id.) Radiologist Dr. Roger Kerr found no evidence of meniscus or ligament tear but saw a small region of intrasubstance cartilage degeneration at the posterolateral weightbearing surface of the medial femoral condyle with a small underlying region of stress reaction. (Id.) He also saw chondral fissuring at the superior aspect of the patellar apex with underlying marrow edema and areas of intrasubstance degeneration within the medial and lateral patellar cartilage and the cartilage of the trochlear groove. (Id.)

Dr. Freehill saw the Petitioner again on February 23, 2016. (Id.) After reviewing the MRI, she diagnosed the Petitioner with an acute chondral injury to the undersurface of the patella. (Id.)

She gave the Petitioner a steroid injection, prescribed medication and physical therapy and ordered the Petitioner off work through April 5, 2016. (Id.)

The Petitioner underwent physical therapy at Franklin Hospital from January 27, 2016, through April 4, 2016, for 23 visits. (PX11) She continued to complain of high levels of pain under her kneecap but had full range of motion, full strength, normal gait pattern and no swelling, warmth or dislocation. (Id.)

On April 5, 2016, the Petitioner returned to Dr. Freehill and reported ongoing difficulty and pain. (PX1b) She informed Dr. Freehill that she had minimal relief from the injection and had a very difficult time doing stairs at physical therapy. (Id.) Dr. Freehill discussed continuing conservative treatment, including further physical therapy, bracing and possibly viscosupplementation. (Id.) The Petitioner wanted "more definitive" treatment. (Id.) Dr. Freehill informed the Petitioner that they could consider arthroscopy and patellar chondroplasty, but there was a 50 percent chance that would assist her with her symptoms, and a chance the surgery would make her condition worse. (Id.) They agreed to the surgery once it was authorized, and Dr. Freehill continued the off-work order. (Id.)

The Petitioner underwent a Section 12 examination with Dr. Richard Lehman on May 12, 2016. (RX1) Dr. Lehman reviewed records from Franklin Hospital, Franklin Health Care Clinic and Dr. Freehill; the January 22, 2016, X-ray; the February 17, 2016, MRI; and the physical therapy notes from Franklin Hospital. (Id.) Regarding his physical examination of the Petitioner, Dr. Lehman found no abnormalities and reported that the Petitioner appeared to have significant hypersensitivity to her knee, and her symptoms were out of character as they related to the examination. (Id.) He noted that the Petitioner had diffuse tenderness in the joint that generally would not be tender. (Id.) His findings on the imaging studies were the same as Dr. Kerr's. (Id.)

Dr. Lehman diagnosed the Petitioner with a left knee strain and quad strain. (Id.) He stated that the Petitioner's complaints of pain were not consistent with the findings in the imaging studies or his examination. (Id.) He characterized the findings in the imaging studies as chronic rather than acute and stated that there did not appear to be significant pathology suggestive of the Petitioner's reported symptoms. (Id.) He opined that the Petitioner had some mild degenerative arthritis in the anterior aspect of her knee that was long term and pre-existing, and the Petitioner's current complaints were unrelated to the work accident. (Id.) He wrote that the Petitioner having no improvement after physical therapy and an injection seemed "specious" and did "not medically make sense." (Id.) He found the Petitioner to be at maximum medical improvement and not in need of further care and treatment related to the work injury. (Id.) He believed the Petitioner was able to work without restrictions. (Id.)

The Petitioner testified that after Dr. Lehman issued his report, her TTD benefits were terminated and no further treatment was authorized. (T. 18) She returned to work because she needed the income and so she wouldn't lose her job. (T. 19) The Petitioner testified that in spite of still experiencing pain in her knee, she did not seek treatment until seven months later, because she had no health insurance through the Respondent and had to acquire her own. (T. 19-21) In a letter to the Petitioner's attorney January 26, 2017, Dr. Freehill wrote that she would see the Petitioner regardless of her insurance status but added: "We will be happy to provide treatment to the best of our ability within the confines of her Workmen's Comp restrictions." (PX15)

The Petitioner went to the Respondent's Family Health Care Clinic on January 18, 2017, asking for a re-evaluation of her knee because she was having pain with full extension and felt as though her knee would "give out" when bearing full weight. (PX12) She was again referred to Dr. Freehill. (Id.)

Dr. Freehill saw the Petitioner again on January 24, 2017, and diagnosed left knee pain secondary to patellofemoral pain syndrome and chondromalacia patella. (PX1b) Dr. Freehill gave the Petitioner another steroid injection and surmised that the Petitioner would have ongoing difficulty with her knee and may ultimately need an injection of viscosupplementation, arthroscopy and ultimately total knee arthroplasty. (Id.)

The Petitioner returned to Dr. Freehill on April 25, 2017, at which time she was diagnosed with left knee pain secondary to osteoarthritis and chondromalacia patella and given a steroid and viscosupplement injection. (Id.) She was ordered off work until July 28, 2017. (Id.)

Dr. Lehman issued a supplemental report on May 8, 2018, that contained his review of additional medical records since his initial evaluation. (RX2) This did not change his opinions. (Id.) He reiterated that the Petitioner's complaints were unrelated to an acute process but were related to underlying chondromalacia of the patella. (Id.) He believed that although Dr. Freehill's treatment recommendations were reasonable and necessary, they were unrelated to the work injury. (Id.)

At another visit with Dr. Freehill on July 28, 2017, Dr. Freehill diagnosed the Petitioner as having left knee primary age-related and obesity-related osteoarthritis and gave the Petitioner another steroid injection. (PX1b) On October 31, 2017, Dr. Freehill gave the Petitioner another viscosupplement injection as the first in a series of three such injections. (Id.) On November 7, 2017, the Petitioner reported no early relief from the first injection and received the second injection. (Id.) The Petitioner reported some relief at a visit to Dr. Freehill on November 17, 2017, and received the third injection. (Id.) On February 20, 2018, the Petitioner reported that the injections "never really helped" and received a steroid injection. (Id.) On June 27, 2017, Dr. Freehill gave the Petitioner an extended-release corticosteroid injection. (Id.)

On September 25, 2018, Dr. Freehill testified consistently with her reports at a deposition. (PX1) She explained that the chondral fissure seen on the February 17, 2016, MRI was a crack in the top of the kneecap cartilage and that the underlying marrow edema was concerning. (Id.) Although she could not determine when this injury happened, she concluded that because the Petitioner had no reported prior incident or difficulties with her knee, the work incident caused either an aggravation of an underlying patellar cartilage injury or an acute cartilage injury causing new pain. (Id.) In explaining her diagnosis changes in 2017 to include osteoarthritis, Dr. Freehill stated that the arthritis was a progression of the chondral injury. (Id.) She continued to believe that arthroscopy would give the Petitioner some benefit but stated that the procedure would not be the "end of the road" for her treatment and that she would probably have ongoing pain and difficulty. (Id.) Dr. Freehill testified that at that time, she was not recommending knee-replacement surgery. (Id.)

During her testimony, Dr. Freehill corrected the findings in her reports that the Petitioner was suffering from obesity-related osteoarthritis and stated that the Petitioner was not obese – having a body mass index of 27. (Id.) She also stated that she did not believe the Petitioner was purposefully magnifying her symptoms, but that she had poor pain tolerance. (Id.)

On cross-examination, Dr. Freehill testified that the slight narrowing of the medial compartment of the Petitioner's left knee as shown on the January 22, 2016, X-ray was a degenerative finding. (Id.) She also acknowledged degenerative findings on the February 17, 2016, MRI. (Id.) When confronted with aspects of Dr. Lehman's report, Dr. Freehill disagreed with Dr. Lehman's characterization of the Petitioner having "zero improvement" with conservative treatment, stating that the Petitioner did somewhat better – although not what she would have expected with a cortisone shot – and was able to go from not working to working. (Id.) She

characterized the Petitioner's improvement as "less than ideal." (Id.) However, Dr. Freehill maintained that the Petitioner was not at maximum medical improvement as of May 2016 because she was still experiencing pain. (Id.)

Dr. Freehill saw the Petitioner again on October 2, 2018, and took X-rays, which she said showed mild medial joint space narrowing and noted that the Petitioner's pain did not coincide with the findings on the X-rays. (PX15). Dr. Freehill ordered an MRI that was performed on October 10, 2018. (RX7) Radiologist Dr. Mark Awh found no evidence of a meniscal tear but did see a punctate chondral fissure with associated subchondral degenerative changes at the posterolateral weightbearing surface of the medial femoral condyle. (Id.) He noted that the subchondral degenerative changes in that area had decreased since the February 17, 2016, MRI. (Id.) Dr. Awh also saw moderate surface fibrillation of articular cartilage at the medial patellar facet that had increased in severity. (Id.) He noted full-thickness chondral fissures at the patellar median ridge and central trochlea, to which associated subchondral degenerative changes increased along the trochlear side. (Id.) He also found small effusion. (Id.)

At a visit on October 16, 2018, Dr. Freehill read the MRI as showing medial femoral condyle chondromalacia, significant chondromalacia of the undersurface patella, a subchrondral cyst, trochlear groove chondral malacia and advanced patellofemoral degenerative changes. (PX15) Dr. Freehill diagnosed the Petitioner with osteoarthritis developing in the patellofemoral joint. (Id.) Dr. Freehill reported that the Petitioner was "quite hostile and angry with me today." (Id.) Dr. Freehill told the Petitioner that she did not have a surgical problem and that treatment for her arthritis was anti-inflammatories, injection therapy and physical therapy. (Id.) According to Dr. Frehill, the Petitioner was not interested in those treatments and "was not listening." (Id.) Dr.

Freehill wrote that she and the Petitioner had a breakdown of patient and doctor communication and discharged the Petitioner from her care. (Id.)

The Petitioner testified that she stopped treating with Dr. Freehill because of a disagreement over treatment – Dr. Freehill wanted to continue with injections, but the Petitioner's knee was not improving. (T. 23-24)

Dr. Lehman testified consistently with his reports at a deposition on November 6, 2018. (RX3) He stated that the chondral fissuring shown on the Petitioner's February 17, 2016, MRI was not an acute injury because the mechanism of injury the Petitioner described was not consistent with an acute chondral fracture and because the MRI did not show fluid on the knee but showed an erosion rather than a fracture. (Id.) He stated that the fissuring is very common and takes a long time to develop. (Id.) Dr. Lehman characterized his physical examination of the Petitioner as normal and stated that he did not find indications of an acute injury, such as quadriceps atrophy nor altered patella tracking. (Id.) He opined that the work accident did not cause any of the pathology he saw on the MRI and that the accident did not cause any aggravation or exacerbation of the Petitioner's pre-existing left knee condition. (Id.) He also pointed to the lack of reported swelling in the emergency room records as further evidence of a chronic, rather than acute, injury. (Id.)

On cross-examination, Dr. Lehman testified that aside from the causation aspect of the Petitioner's condition, he had no dispute with the care and treatment the Petitioner had received nor with the prospective treatment Dr. Freehill was recommending. (Id.) However, he did not believe that arthroscopy would help the Petitioner because, historically, people don't do well after arthroscopy for degenerative processes. (Id.)

On October 31, 2018, the Petitioner went to SSM Health Medical Group seeking a referral to an orthopedist for a second opinion. (PX13) After a general examination, she was referred to orthopedics. (Id.)

On November 14, 2018, the Petitioner saw Dr. John Davis, an orthopedic surgeon at The Orthopaedic Institute of Southern Illinois, and his physician assistant, Jeremy Palmer. (PX2b) The Petitioner gave a consistent history of the injury and told Dr. Davis she was "tired of living with the pain." (Id.) A physical examination of the knee showed: no effusion; full extension; flexion to 130 degrees with some posteromedial pain on hyperflexion; tenderness along the medial joint line (especially posteromedial); pain with McMurray test (but no clicking); minimal tenderness along the lateral joint line; no significant patellofemoral crepitus; mild pain with patellar grind; no focal tenderness over the distal qual or patellar tendon; normal strength with resisted flexion and extension; stable Lachman test; stable anterior and posterior drawer; and no varus or valgus instability. (Id.) Dr. Davis reviewed the prior X-rays and saw mild tricompartmental osteoarthritis – greatest in the medial and patellofemoral compartments. (Id.) On the October 16, 2018, MRI, Dr. Davis saw evidence of a possible root tear, but this was not definite on the images. (Id.) He diagnosed left knee pain with primary osteoarthritis and a possible occult medial meniscus tear following a work injury. (Id.) Dr. Davis, PA Palmer and the Petitioner decided to proceed with a diagnostic arthroscopy, and Dr. Davis ordered the Petitioner off work. (Id.)

On November 27, 2018, Dr. Davis performed the following procedures: 1) arthroscopic extensive debridement of a medial femoral condyle cartilage defect, trochlear defect and lateral patella facet cartilage defect with extensive debridement of intraarticular adhesions; 2) arthroscopic complete synovectomy of the patellofemoral, medial and lateral compartments; 3)

arthroscopic removal of cartilaginous multiple loose bodies of 3-5 mm in diameter; and 4) a steroid injection. (PX9) The Petitioner was ordered off work until December 12, 2018, at which time she would be restricted to desk duty only. (Id.) On December 11, 2018, Dr. Davis ordered physical therapy and reiterated the light-duty restriction. (Id.)

The Petitioner had a follow-up visit with Dr. Davis and PA Palmer on January 16, 2019, and reported improvement, but she still had aches, pains and soreness that worsened with activity. (Id.) She was prescribed an anti-inflammatory and ordered off work. (Id.) The following day, the Petitioner requested a full release to keep her job and was returned to work without restrictions effective January 21, 2019. (Id.) The Petitioner underwent physical therapy at NovaCare Rehabilitation from December 17, 2018, to February 14, 2019 for 4 visits. (PX14)

At another follow-up on February 18, 2019, the Petitioner reported that she was not feeling like she was getting much better. (Id.) She received a viscosupplement injection on that date, as well as on February 25, 2019, and March 4, 2019. (Id.) By May 6, 2019, the Petitioner's pain had not improved, her range of motion had decreased, and she had minimal patellofemoral crepitus. (Id.) On June 6, 2019, she saw Dr. James Davis, another orthopedic surgeon at the Orthopaedic Institute of Southern Illinois, and he referred her to Dr. Tennyson Lee, a pain management specialist at the same office, for a nerve ablation. (Id.)

The Petitioner saw Dr. Lee on July 15, 2019, and he performed nerve blocks on July 24, 2019, and a genicular nerve radiofrequency ablation on August 21, 2019. (Id.) The Petitioner returned to Dr. Lee on September 9, 2019, complaining of right knee pain and locking/catching of the left knee. (Id.) Dr. Lee referred the Petitioner back to Dr. James Davis. (Id.)

At a deposition on November 3, 2020, Dr. James Davis testified consistently with his reports and the reports of the other practitioners at his office. (PX2) He stated that the Petitioner

had aggravated a pre-existing condition and he did not detect symptom magnification by the Petitioner. (Id.) On cross-examination, Dr. Davis admitted that he saw no acute injury but clarified that because he saw her years after the incident, any findings would have been, by definition, chronic. (Id.) He said his opinion that the Petitioner suffered an aggravation was based on her history, clinical findings during arthroscopy and office notes. (Id.) He did not review Dr. Freehill's records nor Dr. Lehman's report prior to the deposition. (Id.) By request of the Respondent's counsel during the deposition, Dr. James Davis reviewed Dr. Lehman's report but did not change his opinion. (Id.)

Regarding the arthroscopy performed by Dr. John Davis, Dr. James Davis testified that he would have performed the procedure as well because the Petitioner failed to respond to conservative treatment. (Id.)

The Petitioner testified that her knee was better after the surgery and ablation. (T. 25) She is now working in the kitchen at Sesser-Valier School. (T. 26) She said she has unpaid medical bills, and her health insurance company is seeking reimbursement for bills it paid. (T. 26-27)

CONCLUSIONS OF LAW

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?

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n,* 371 Ill. App. 3d 882, 888 (2007). A claimant with a preexisting condition may recover

where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill. 2d 30, 36 (1982).

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). 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).

The Petitioner had arthritis in her knee but had no complaints prior to the work accident. The doctors and radiologists agreed that the Petitioner had chondral fissuring but disagreed on whether that was acute or chronic. All, except Dr. Lehman, agreed that, at a minimum, the work accident had aggravated the degenerative condition of the Petitioner's knee.

Dr. Lehman found it significant that the Petitioner had no swelling in her knee at her emergency room visit. However, she did have swelling when she visited the clinic four days later and reported the swelling to Dr. Freehill a few days after that. Another apparent misconception in Dr. Lehman's opinion was his reporting that the Petitioner had no improvement with conservative treatment. Dr. Freehill testified that the Petitioner experienced some improvement, although not as much as she would have expected. Following conservative treatment, the Petitioner was able to work, although she still suffered pain.

Dr. Freehill's testimony was compelling in her explanation of the mechanism of injury and her emphasis on the marrow edema as an indicator of an acute injury. A comparison of the MRI reports also supports Dr. Freehill's conclusion that the injury resulted in further degeneration of the knee. In addition, the Arbitrator gives greater weight to the opinions of the treating physicians,

as they had more opportunity to observe the Petitioner's condition as they worked over a period of years to alleviate the Petitioner's pain.

The Arbitrator also finds that a significant theme throughout the Petitioner's treatment was her hypersensitivity to pain from her knee injury. In the face of what could be considered a minor injury, she continued to experience pain. It makes sense that the treatment that provided the most relief was the ablation. This hypersensitivity reinforces the causal connection between the work accident and the Petitioner's persistent condition.

Another issue that needs to be addressed is the delay in treatment between April 5, 2016, and January 18, 2017, that the Petitioner attributes to the denial of benefits by the Respondent and her inability to obtain health insurance during that period. Dr. Freehill did offer to see the Petitioner regardless of her insurance status. However, this invitation came on January 26, 2017 – after the Petitioner already acquired health insurance and resumed treatment.

For all of these reasons, the Arbitrator finds that the Petitioner has met her burden of proving by a preponderance of the evidence that the accident of January 22, 2016, was a contributing factor to her left knee condition.

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).

Despite his opinion regarding causation, Dr. Lehman stated that the treatment the Petitioner received until the time of his deposition on November 6, 2018, was reasonable and necessary. The question then arises as to whether the arthroscopy and ablation were reasonable and necessary.

The arthroscopy was a foreseeable treatment in Dr. Freehill's mind, although she gave the Petitioner only a 50 percent chance that it would be effective. In April 2016, Dr. Freehill was seeking approval for the surgery. Dr. James Davis (and presumably Dr. John Davis) similarly felt the procedure was necessary after years of conservative treatment failed. Regarding the ablation, the fact that the treatment did provide relief supports Dr. James Davis and Dr. Lee's decision to perform the procedure.

Based on the findings above regarding causation and the opinions of Dr. Freehill and Dr. James Davis, the Arbitrator finds that the treatment the Petitioner received was reasonable and necessary, and the Respondent has not paid the bills for this treatment. Therefore, the Respondent is ordered to pay the medical expenses contained in Petitioner's Exhibit 16 pursuant to Section 8(a) of the Act and in accordance with medical fee schedules. The Respondent shall reimburse the Petitioner for any copays or deductibles that she paid. The Respondent shall have credit for any amounts already paid. 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 January 22, 2016, through June 25, 2016, and November 22, 2018, through January 21, 2019.

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).

According to the Request for Hearing (AX1), the Respondent did not dispute that Petitioner was off work a period of 30 6/7 weeks between January 22, 2016 through June 25, 2016, and

November 22, 2018 through January 21, 2019. Respondent's dispute was on the basis of medical causation and the reasonableness and necessity of treatment.

Based on this and the findings above regarding causation and reasonableness and necessity of treatment, the Arbitrator finds that the Petitioner was entitled to TTD benefits from January 22, 2016, through June 25, 2016, and from November 22, 2018, through January 21, 2019.

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 continues to work as a school cook and faces the same physical challenges as he did prior to the accident. Therefore, the Arbitrator places significant weight on this factor.

(iii) **Age.** The Petitioner was 47 years old at the time of the injury. She has many work years left during which time she will need to deal with the residual effects of the injury. The Arbitrator places significant weight on this factor.

(iv) **Earning Capacity.** There was no evidence of limitation of the Petitioner's earning capacity. Therefore, the Arbitrator places no weight on this factor.

(v) **Disability.** The Petitioner testified that she is better after the surgery and ablation and has been working. The Arbitrator puts some weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 12.5 percent of the left leg.

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	19WC012657
Case Name	Alberto Arroyo Estrada v. Atlas Employment
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0418
Number of Pages of Decision	16
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Joel Herrera
Respondent Attorney	JASON ALLAIN

DATE FILED: 10/28/2022

/s/Maria Portela, 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

Alberto Arroyo Estrada,

Petitioner,

vs. NO: 19WC 012657

Atlas Employment,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 5, 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 $11,900.00. 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.

October 28, 2022

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/s/ *Maria E. Portela*

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC012657
Case Name	ARROYO ESTRADA, ALBERTO v. ATLAS EMPLOYMENT
Consolidated Cases	No Consolidated Cases
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	David Kane, Arbitrator

Petitioner Attorney	Joel Herrera
Respondent Attorney	JASON ALLAIN

DATE FILED: 10/5/2021

INTEREST RATE FOR THE WEEK OF OCTOBER 5, 2021 0.05%

/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
SECTION 19(B)

Alberto Arroyo Estrada Case # 19wc012657
Employee/Petitioner

v.

Atlas Employment
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 Arbitrator David Kane**, of the Commission, in the city of Chicago, on **August 26, 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 **August 17, 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's average weekly wage was **$457.67**.

On the date of accident, Petitioner was **24** years of age, single with 0 dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

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

Respondent shall be given a credit of - weeks of TTD, or **$40,673.15;** $**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 $5,150.20, as provided in Sections 8(a) and 8.2 of the Act directly to Petitioner. Additionally, Respondent shall pay for the trial spinal cord stimulator as prescribed by Dr. Amin.

Respondent shall pay Petitioner temporary partial disability benefits of $305.11/week for 155 weeks, commencing 8/21/18 through 12/22/18, 12/24/18 through 2/2/21 and 2/19/21 through 8/26/21, as provided in Section 8(a) of the Act. Respondent is entitled to a credit in the amount of $40,673.15 for TTD paid through date of hearing.

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

October 5, 2021

Alberto Arroyo Estrada v. Atlas Employment 19wc 012657

As additional findings, the Arbitrator finds as follows:

STATEMENT OF FACTS

At the time of the accident, Petitioner was a 24-year-old single male with no dependent children. He worked for Atlas Employment, a staffing agency, and was assigned to work at Home Chef where he made coolers and boxes. (Tr. p11)

On August 17, 2018, Petitioner was pulling a box weighing about 70 lbs. from overhead. The box fell quickly and forced his right thumb to hyperextend and his right wrist to bend backward. (Tr. p12) He commenced treatment at Concentra on August 20, 2018 on referral from his employer. (Px1b, p14) He was diagnosed with right thumb and wrist sprain and prescribed a wrist brace. (id, p14) A right wrist MRI performed on September 17, 2018, revealed a small focal erosion in the lunate. (Px2, p7-8) Following the wrist MRI, Petitioner was referred to Dr. Nicholas Speziale, a hand surgeon, at Concentra. He ordered a right thumb MRI which was performed on October 22, 2018. It revealed a focal erosion in the scaphoid and lunate bones along with a 7-8 mm ganglion cysts of the ventrolateral and ventromedial aspects of the intercarpal joints. (Px2, p10)

By October and November 2018, Petitioner continued with significant swelling and pain in the thumb region and Dr. Speziale administered a Kenalog injection in the flexor tendon sheath of the right thumb. (Px1, p72)

Petitioner testified that by December 2018, his symptoms began to spread into his right arm. (Tr. p14) His testimony was corroborated by the December 11, 2018 medical record where Dr. Speziale documented improved thumb pain following the injection but noted that the pain now

spread into the dorsum of his right hand, forearm and upper arm. Dr. Speziale imposed a five lb lifting restriction. (Px1A, p71).

On December 27, 2018, Petitioner had worsening symptoms with redness and warmth in his right hand. (Px1A, p70) He also had sweating on the palm and was quite sensitive to light touch. Dr. Speziale referred Petitioner to Dr. Murtaza, a pain specialist, to evaluate for complex regional pain syndrome (hereinafter CRPS). (Px1A, p70)

Petitioner saw Dr. Murtaza at Concentra on January 7, February 4, and March 4, 2019. He complained of worsening pain with associated numbness, burning and swelling that traveled up the right arm into his shoulder. Petitioner also reported color changes and constant sweating in his right hand. (Px1A, p68) On all three visits, Dr. Murtaza performed physical exams and found diffuse swelling along with temperature and color changes (redness) in the right hand. He further noted allodynia with limited range of motion along with sweating, weakness, and clamminess. (Px1A, p64-69). Petitioner exhibited all the classic signs and symptoms of CRPS and Dr. Murtaza administered a peripheral nerve block which provided significant but temporary relief. At his final visit in March 2019, Dr. Murtaza recommended a second nerve block injection along with a psychological evaluation. He opined that Petitioner would likely require a spinal cord stimulator and kept him on restricted work. (id. p64)

Petitioner testified that he was examined by Dr. Baylis at Parkview Orthopedics on May 3, 2019 at Respondent's request. (Tr. p15-16) Respondent did not offer Dr. Baylis' section 12 exam into evidence.

Petitioner then sought a second opinion with Dr. John Fernandez at Midwest Orthopedics at Rush on September 17, 2019. (Tr. p16) Dr. Fernandez found subtle amount of sweat with discoloration in the right

hand along with mild intermittent color and temperature changes. He ordered a bone scan and a CT scan and warned that if the scans were normal, Petitioner would likely require pain management. (Px4, p12-14) Dr. Fernandez imposed very light activities as Petitioner was "clearly limited with regards to use the right hand." (Px4, p14).

The CT Scan was performed on October 1, 2019. (Px2) Dr. Fernandez reviewed it on November 12, 2019 and indicated that the CMC joint looked relatively normal although it did reveal some mild spurring at the ends of the bone along the trapezium. Dr. Fernandez reiterated the need for the bone scan to evaluate for instability. He placed Petitioner on 5-10 lb. work restrictions. (Px4, p8-9).

The bone scan was performed on January 3, 2020 at Midwest Advanced Radiology. It did not reveal any bony abnormalities but clinically the hand appeared swollen. (Px5, p5) On March 20, 2020, Dr. Fernandez recommended pain management as there was nothing surgically to offer Petitioner. (Px4, p4)

On referral from Dr. Fernandez, Petitioner saw Dr. Sandeep Amin, a pain medicine physician, at Rush Pain Center on May 29, 2020. (Tr. p17-18) Petitioner complained of burning/knife like pain primarily in the hand with associated swelling, color changes, sweating and hypersensitivity. On exam, Dr. Amin noted allodynia, diminished strength, swelling and redness in the right hand. He diagnosed Petitioner with CRPS and prescribed sympathetic nerve blocks, occupational therapy and Lyrica. (Px6, p17-18)

Dr. Amin administered a series of Stellate Ganglion Block injections on June 3, June 15 and June 29, 2020. (Px6, p14-16) Petitioner reported improvement in the right shoulder, upper arm and forearm sensitivity following the injections, however, he continued to have significant allodynia

in the right hand. (Px6, p12) Dr. Amin diagnosed type 1 CRPS of the right upper limb and recommended a trial spinal cord stimulator with Boston Scientific system. He prescribed a refill of Lyrica and referred Petitioner to Dr. Merriman for a pre-stimulator psychological evaluation. (Px6, p13)

Dr. Patricia Merriman, a licensed clinical psychologist, administered the psychological exam on August 11, 2020. She found Petitioner to be an appropriate candidate for the trial stimulator. (Px6, p23-25).

Prior to approving the trial spinal cord stimulator, Respondent had Petitioner evaluated by Dr. Kenneth Candido on October 27, 2020 for a section 12 exam. (Rx1) Dr. Candido diagnosed right thumb pain following a hyperextension injury status post undisplaced avulsion fracture at the palmar aspect of the base of the distal phalanx of the thumb. (Rx1, p28) He found no color or temperature disparities, no abnormal growth of hair or nails, no tremor and no range of motion limitations of the wrist. In fact, Dr. Candido found no signs of CRPS but opined that the work injury was the cause of the current right wrist and thumb pain. (Rx1, p30) He recommended NSAID's and possibly local anesthetic lidocaine gel. (Rx1, p30) He opined that treatment had been reasonable but did not see a role for a spinal cord stimulator. He opined that Petitioner was capable of working in the medium physical demand level and indicated that an FCE would be appropriate if Petitioner was unable to resume full duty within three months. (Rx1, p35)

Dr. Candido's report was emailed to Petitioner's counsel on January 7, 2021 along with a job offer. (Tr. p21-22) Petitioner returned to work on February 3, 2021 and worked through February 18, 2021. The work exacerbated Petitioner's symptoms and he returned to Dr. Amin on February 19, 2021. (Tr. p24) Dr. Amin noted that Petitioner had an increase

in erythema, allodynia and hyperalgesia since his return to work. He placed him back off work and again recommended the trial spinal cord stimulator. (Px6, p8-9)

Petitioner testified that he attempted to return to Dr. Amin for a scheduled visit on March 26, 2021 but that appointment was canceled due to lack of approval. (Tr. p26) Petitioner has not been able to see Dr. Amin since that time but testified that he does wish to proceed with trial spinal cord stimulator. (Tr. p27)

The deposition of Dr. Candido was taken via Zoom on June 29, 2021.

At trial, Respondent offered the testimony of Jeffrey Aguinaga, a private detective, who performed 54 hours of surveillance over the course of two years and produced approximately 1 hour and 15 minutes of video. (Tr. p84) At the hearing, the parties watched five minutes of video footage recorded in June, July and August 2021. Surveillance video taken in 2019 and 2020 were tendered to Petitioner prior to the hearing and the parties stipulated that it was not necessary to replay it at trial. A thumb drive containing all the surveillance videos was admitted into evidence along with the reports authored by Jeffrey Aguinaga. (Rx2A-E)

The surveillance videos revealed that Petitioner uses his left hand regularly despite being right hand dominant. They showed Petitioner watering his garden, driving and carrying groceries using his left hand, consistent with his testimony. The surveillance videos corroborate Petitioner's testimony as to his limitations and as reported to his physicians.

ISSUES

With regards to the issue of Causation (F), the Arbitrator finds as follows:

Petitioner's right thumb and hand complaints commenced on August 17, 2018 following an impact and hyperextension injury when he was pulling a heavy box from above. All physicians, including section 12 examiners, found that Petitioner's right hand and right thumb condition is causally related to the work accident.

The only dispute as to causation is whether Petitioner developed CRPS. Petitioner testified that several months after the accident, his pain and symptoms began to spread into his right arm up to his right shoulder. Drs. Speziale and Fernandez each referred Petitioner to pain specialists, Drs. Murtaza and Amin, respectively. Both confirmed the CRPS diagnosis.

Respondent relied on its section 12 examiner, Dr. Kenneth Candido, who opined that Petitioner did not suffer from CRPS. At his deposition, Dr. Candido testified that CRPS can result from acute trauma and most often develops within three to six months from the date of trauma. (Dep. Tx. p40) He testified that common symptoms include abnormal temperature response, swelling and edema, sweating abnormalities and reduction in range of motion but the hallmark sign of the condition is pain to touch, known as allodynia. (Dep. Tx. p17, 45) Dr. Candido testified that CRPS symptoms manifest in a regional rather than isolated manner and typically affect an entire extremity. He testified that Petitioner's complaints were isolated to the thumb during his exam and found none of the classic signs of CRPS. (Dep. Tx. p46)

There are three important takeaways from Dr. Candido's testimony:

Timeframe

1. Dr. Candido testified that CRPS typically develops within three to six months from the date of trauma. (Dep. Tr. p40) In the case at hand, Petitioner began to exhibit signs and symptoms of CRPS in December 2018, four months after the accident, at which time he was referred to Dr. Murtaza to specifically evaluate for the condition. This timeframe is squarely in line with Dr. Candido's testimony.

Isolated v. Regional Symptoms

2. Dr. Candido testified that, by definition, CRPS does not manifest itself in an isolated manner. Rather, symptoms associated with CRPS are regional and typically affect an entire extremity. Petitioner's complaints fit that exact profile. During the November 11, 2018 exam, Dr. Speziale noted that Petitioner's pain was isolated primarily in the thumb. (Px1A, p72) However, at the next visit on December 11, 2018, the pain spread to the forearm and upper arm. (Px1A, p71) In early 2019, Dr. Murtaza found that Petitioner had the classic signs and symptoms of CRPS to the right hand, which "radiate up the right upper extremity." (Px1A, p69) At his initial consult, Dr. Amin noted that Petitioner had both right hand and right arm pain. (Px6, p17) He administered a series of Stellate Ganglion Block injections and noted that Petitioner obtained relief to his *right shoulder, upper arm and forearm* sensitivity with the injections. (Px6, p12) Interestingly, even Dr. Candido noted that Petitioner complained of pain that "was worse because it radiated into the shoulder at that time." (Rx1, p23) In short, Petitioner testified and multiple physicians confirmed that his symptoms spread throughout his entire right upper extremity consistent with Dr. Candido's expectations.

Hallmark Symptom

3. Dr. Candido testified that there are multiple signs and symptoms associated with CRPS and while there is no test to verify the condition, the hallmark symptom of CRPS is allodynia, sensitivity to light touch. (Dep Tr. p45) The record reveals that multiple doctors on multiple occasions found that Petitioner had the "hallmark" symptom commencing on December 27, 2018 when Dr. Speziale noted that Petitioner's right hand was "quite sensitive to light touch." (Px1A, p70). He also found temperature and color changes along with sweating in the palm. On January 7, 2019, Dr. Murtaza found "allodynia to the right hand with limited range of motion, worst at the first digit." (id, p69) He further found significant diffuse swelling, sweating and color changes to the right hand compared to the left hand, which was dry. On May 29, 2020, Dr. Amin noted that Petitioner had allodynia and hyperalgesia along with reddening of the skin, significant swelling, and decreased range of motion in the right hand. (Px6, p18) On February 19, 2021, Dr. Amin noted that Petitioner had increased allodynia and hyperalgesia since his return to work. (id, p 9)

Dr. Candido's inability to identify any signs of CRPS cast serious doubt as to his credibility when multiple physicians, including the pain specialists assigned to treat CRPS, consistently found otherwise, both before and after his evaluation. The evidence strongly supports a finding that Petitioner suffers from CRPS with an onset of symptoms developing in a timeframe consistent with Dr. Candido's testimony. For these reasons, the Arbitrator finds that Petitioner's current condition of ill-being as it relates to the right

thumb, right hand and ensuing development of CRPS are causally related to the work accident of August 17, 2018.

With regards to the issue of Medical Services & Prospective Medical Care (J & K), the Arbitrator finds as follows:

Having found in favor of Petitioner on the issues of Causation, the Arbitrator now finds that Respondent is liable for payment of the bills from Rush University Pain Centers in the amount of $605.00 and Rush Oak Park Hospital in the amount of $4,545.20.

In awarding the above charges, the Arbitrator notes that the balance from Rush University Pain Center arose from the psychological exam with Dr. Merriman to determine his candidacy for a trial spinal cord stimulator and the February 19, 2021 office visit with Dr. Amin. (Px6, p31) The balance from Rush Oak Park Hospital arose from the initial Stellate Ganglion Block injection administered by Dr. Amin. The Arbitrator finds that all treatment to date has been reasonable and necessary to cure Petitioner's CRPS condition. In sum, Respondent shall pay Petitioner $5,150.20 for reasonable and necessary medical services, subject to the Illinois Medical Fee Schedule.

With regards to the issue of prospective medical, the Arbitrator further finds that Respondent shall approve and pay for the trial spinal cord stimulator as ordered by Dr. Amin. In reaching this decision, the Arbitrator notes that Dr. Candido testified that a spinal cord stimulator is a well-known and reasonable treatment option to cure CRPS. (Dep. Tr. p39) The Arbitrator further considered that Petitioner failed other conservative measures and was found to be an appropriate candidate for this procedure after having passed the psychological exam. (Dep. Tr. p39)

With regards to the issue of TTD (L), the Arbitrator finds as follows:

The parties stipulated that the TTD periods are as follows: 8/21/18 – 12/22/18, 12/24/18 – 2/2/21 and 2/19/21 – 8/26/21. The parties stipulated that Respondent has paid $40,673.15 in TTD benefits to date. (Arb. Ex.1)

The evidence reveals that TTD benefits were terminated in January 2021 after Respondent extended a job offer together with Dr. Candido's report. (Tr. p40) Petitioner agreed to return to work but lack of communication from Respondent and his inability to work in a cold environment caused a delay in job placement. (Tr. p58, 60) He ultimately returned to work on February 3, 2021 at a company called Ruggable. (Tr. p41) He testified that he was initially assigned an "easy" task cutting carpet with the use of an automated device. That assignment did not require forceful use of his hands as the device would do the cutting. (Tr. p59-60) However, he wore a brace with a metal edge and after two days his right hand became swollen. He was then re-assigned to package carpet. (Tr. p42, 44-45) His pain and swelling increased in this new role and he returned to Dr. Amin on February 19, 2021. (Tr. p43, Px6, p8) Dr. Amin placed him back off work. (Px6, p9) A follow-up appointment in late March 2021 with Dr. Amin was canceled due to lack of approval.

Having found in favor of Petitioner on the issue of causation and crediting Petitioner for his genuine attempts to work, the Arbitrator finds that Petitioner is entitled to the entire TTD period stipulated by the parties (8/21/18 – 12/22/18, 12/24/18 – 2/2/21 and 2/19/21 – 8/26/21) totaling 155 weeks. At a TTD rate of $305.11, Respondent shall pay Petitioner a sum of $47,292.05. Respondent is entitled to a credit in the amount of $40,673.15. After credit is applied, Respondent shall pay Petitioner $6,618.90 in TTD benefits.