ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC037475
Case Name	Joseph Demauro v. State of Illinois – Illinois Department of Corrections
Consolidated Cases	15WC028825
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0340
Number of Pages of Decision	15
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Derek Dominguez
Respondent Attorney	Charlene Copeland

DATE FILED: 9/1/2022

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOSEPH DEMAURO,

Petitioner,

vs. NO: 12 WC 37475

STATE OIF ILLINOIS – DEPARTMENT OF CORRECTIONS,

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, TTD, and prospective medical, and being advised of the facts and law, affirms the Decision of the Arbitrator with an explanation stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Arbitrator found that Petitioner proved that stipulated work-related accidents on October 21, 2012 & April 22, 2015, caused a current condition of ill-being of his right knee. He also found that Respondent paid all current medical expenses, awarded Respondent credit of $70,562.80 for paid TTD, and ordered Respondent to authorize and pay for prospective treatment recommended by Dr. Levi including partial knee replacement and associated treatment. We agree with the reasoning, analysis, and the award of the Arbitrator and accordingly affirm and adopt the Decision of the Arbitrator.

However, the Commission notes that in Petitioner's brief, he argues that Respondent raised several new arguments not raised in its original proposed decision and these arguments should be disregarded as being outside the scope of the review. Petitioner then attached Respondent's proposed decision to its brief. For purposes of clarification the Commission notes that the Act mandates that "Decisions of an arbitrator or a Commissioner shall be based **exclusively** on evidence in the record of the proceeding and material that has been officially noticed." 820 ILCS 305/1.1(e), (emphasis added). Proposed decisions submitted by the parties are neither evidence in the record nor something about which the Commission can take official judicial notice. Therefore, the Commission did not consider any proposed decision submitted in these proceedings.

Finally, on a procedural/administrative note, the instant claim was consolidated and arbitrated with Petitioner's other claim in 15 WC 28825. The Arbitrator issued a single decision and Respondent filed a single Petition for Review in these cases. Nevertheless, the Commission has now instituted an electronic filing and a record keeping system coined CompFile. Because of our switching to that system, the Commission is required to issue separate decisions for each claim number that is under review by the Commission. Therefore, we issue two decisions, one for the instant claim and one for the consolidated case 15 WC 28825. These decisions each specify the entirety of benefits representing the awards for both work-related accidents and injuries the Arbitrator found in these consolidated claims. The Commission stresses that these decisions do not constitute individual awards that can both be collected separately.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator issued on June 8, 2020, is hereby affirmed and adopted with the explanation above.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for the prospective medical procedure recommended by Dr. Gabriel Levi, namely a partial knee replacement, and all reasonable and necessary ancillary and rehabilitative postoperative care.

IT IS FURTHER ORDERED BY THE COMMISSION that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that 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.

September 1, 2022

DLS/dw
O-7/13/22
46

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

/s/*Steven J. Mathis*
Steven J. Mathis

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

ILLINOIS WORKERS' COMPENSATION COMMISSION 22IWCC0340
NOTICE OF 19(b) ARBITRATOR DECISION

DEMAURO, JOSEPH
Employee/Petitioner

Case# **12WC037475**
15WC028825

ILLINOIS DEPT OF CORRECTIONS
Employer/Respondent

On 6/8/2020, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.17% 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:

1927 HUGHES SOCOL PIERS RESNICK
DEREK D DOMINGUEZ
70 W MADISON ST SUITE 4000
CHICAGO, IL 60602

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

1350 CENTRAL MANAGEMENT SERVICES
BUREAU OF RISK MANAGEMENT
801 S 7TH ST
SPRINGFIELD, IL 62794

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

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

JUN -8 2020

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

STATE OF ILLINOIS)

)SS.

COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

JOSEPH DEMAURO
Employee/Petitioner

v.

Illinois Department of Corrections
Employer/Respondent

Case # **12 WC 37475**

Consolidated cases: **15 WC 28825**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago**, on **10/1/2019**. 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. 19(b)

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 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 **10/21/2012 & 4/22/2015**, 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 accidents.

In the year preceding the injury, Petitioner earned **$87,362.00**; the average weekly wage was **$1,680.03**.

On the dates of accident, Petitioner was **47 & 50** 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 **$70,562.80** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$70.562.80**.

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

ORDER

Respondent shall authorize and pay for the prospective medical procedure recommended by Dr. Gabriel Levi, namely a partial knee replacement, and all reasonable and necessary ancillary and rehabilitative postoperative care.

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

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

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

Signature of Arbitrator

June 2, 2020
Date

JUN 8 - 2020

Joseph DeMauro v. State of Illinois Dept of Corrections
12 WC 37475, consolidated 15 WC 28825

INTRODUCTION

This matter proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were: ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***K:*** Is Petitioner entitled to prospective medical care?

FINDINGS OF FACT

Petitioner Joseph DeMauro is a parole agent for the State of Illinois Department of Corrections. He has held that same position for over 19 years. Petitioner's duties and responsibilities include monitoring incarcerated individuals that are on mandatory supervised release and assisting in the location and apprehension of parolees with active warrants. During his employment, Petitioner sustained two work-related injuries to his right knee: October 21, 2012 and April 22, 2015.

On October 21, 2012, Petitioner slipped on wet stairs while walking up to meet with a parolee for a mandatory face-to-face meeting. Petitioner was treated for this injury by orthopedic surgeon Dr. Gabriel S. Levi at the Orthopaedic and Rehabilitation Centers (PX #9). Dr. Levi diagnosed a non-displaced fracture of the lateral femoral condyle in the right knee.

Petitioner had previously suffered an injury to his right knee in high school in 1982 that required an arthroscopic knee surgery at that time due to meniscus problems. Petitioner testified that at the time of his injury on October 21, 2012, he was pretty much recovered from the 1982 injury and had no lingering issues from that injury.

Dr. Levi initially treated Petitioner conservatively. Dr. Levi noted that in the following months Petitioner was having increased pain when walking up stairs and pain with range of motion, as well as "popping" in the right knee. Dr. Levi diagnosed a right knee lateral meniscus tear that required surgery. On April 1, 2013 Dr. Levi performed an arthroscopic partial lateral meniscectomy. He also performed a chondroplasty of the lateral tibial plateau, medial tibial plateau, and medial femoral condyle, along with extensive synovectomy and all three compartments: patellofemoral joint, medial compartment, and lateral compartments. The postoperative diagnoses were right knee lateral meniscus tear, three compartment synovitis, chondromalacia of the lateral tibial plateau, chondromalacia of the medial femoral condyle and trochlea, and grade 4 chondral defect. Dr. Levi wrote a narrative letter January 7, 2014 summarizing Petitioner's care and stating his opinion that these injuries and the ensuing treatment

procedures were directly related to the injury Petitioner sustained on October 21, 2012 (PX #9).

After surgery, Petitioner testified he felt better but still had lingering pain in the right knee. He returned to work in the early fall or late summer of 2013. He was officially released by Dr. Levi to work fully duty without restrictions on January 7, 2014. However, at that time Dr. Levi opined that although Petitioner was being released to work full duty because he had recovered from the right knee arthroscopy, he did sustain a "significant articular cartilage injury" and this could lead to post-traumatic arthritis and the recurrence of pain. Dr. Levi opined that Petitioner could need a joint replacement in the future.

Petitioner sustained a second injury while at work on April 22, 2015. On that date, while at the office, he was walking to his desk and slipped on a floor that was wet due to maintenance workers. There was no wet floor sign. Petitioner testified that when he slipped, he immediately felt a sharp pain in his right knee. He acknowledged that since his prior surgery he always had right knee pain. Petitioner testified that his right knee "never fully recovered" after the first injury. However, he continued to work full-time without restrictions despite constant pain in the period between returning to work after his first injury.

When the second accident Petitioner left work immediately to seek medical attention at Adventist LaGrange Hospital. He returned to Dr. Levi on April 29, 2015. An MRI on May 20, 2015 showed no apparent signs of a meniscus tear. Dr. Levi diagnosed a re-injury of right knee injury from October 21, 2013.

Dr. Levi the wrote another narrative report on October 21, 2016, stating:

> "In my opinion, the patient has an injury to his right knee that occurred initially in 2012 at work. This was treated with an arthroscopy of his right knee, performing a partial lateral meniscectomy, a microfracture of the trochlea, as a chondroplasty of the lateral tibial plateau, medial tibial plateau and medial femoral condyle. Most important, he was found to have articular cartilage injury as well as a lateral meniscus tear. The patient has good reason to have a re-aggravation of his knee after slipping at work on a wet floor. This is the type of knee injury that can have recurrent problems if you have twisting and slipping injuries such as the one that occurred to him on April 22, 2015." (PX #9)

Dr. Levi initially treated Petitioner with non-operative conservative therapies like pain medications, heat pads, gels, physical therapy, and injections. Dr. Levi administered Depo-Medrol and cortisone injections, as well as a series of four Orthovisc injections.

When the injections failed to relieve Petitioner's pain, Dr. Levi amended his diagnoses on July 8, 2015 to include a right knee medial meniscus tear on July 8, 2015. During this time, Dr. Levi determined Petitioner was unable to work due to this new right knee injury. Petitioner was completely off work per Dr. Levi's order from the date of the second injury through October 21, 2016.

On October 7, 2015 Dr. Levi recommended another arthroscopy of the right knee. Dr. Levi noted that Petitioner had signs and symptoms of a right knee medial meniscus tear despite the results of the MRI, and at that time, Petitioner was not improving despite non-surgical care. Dr. Levi could not determine the cause of Petitioner's persistent pain and therefore recommended arthroscopy to determine the source of his continued right knee pain.

Dr. Levi's request for authorization for this arthroscopy was not approved until early 2018.

At Respondent's request Petitioner's right knee was examined by orthopedic surgeon Dr. Shane Nho of Midwest Orthopaedics at RUSH on January 19, 2016 (RX #1). Dr. Nho conducted his records review and examination in reference to Petitioner's April 22, 2015 accident only. Dr. Nho noted Petitioner's history of a right knee arthroscopy in 1982 and a subsequent arthroscopy in 2013. Dr. Nho recorded that Petitioner reported that he slipped on a cleaned and waxed floor on April 20, 2015. Dr. Nho then reviewed Petitioner's care under Dr. Levi which included physical therapy and orthovisc injections.

On exam Dr. Nho found symmetric range of motion in both of Petitioner's knees: 2° of hyperextension and 100° of flexion. There was no right knee effusion. There was tenderness over the lateral facet of patella but none over the medial facet of the patella. There was tenderness over the medial joint line but none over the lateral joint line. Lachman and pivot shift were negative. Anterior and posterior drawer were also negative. Plain X-rays demonstrated mild medial compartment joint space narrowing and mild narrowing of the patellofemoral joint with periarticular osteophytes.

Dr. Nho completed his report, RX #1, with a series of answers to questions without reference to the questions. He did opine that Petitioner did not require further treatment. Although Petitioner's prognosis was fair, Dr. Nho opined that Petitioner could return to full duty work without restrictions because he had reached MMI.

On October 21, 2016, Dr. Levi noted that Petitioner should avoid stairs and avoid running if possible and avoid squatting and lunging. He further noted that Petitioner's workplace was not honoring his restrictions or honoring his off-work status and threatened to not cover his care or his pay if he is off work. Dr. Levi again recommended

a repeat arthroscopy and noted that Petitioner may ultimately need joint replacement in the future because Petitioner's knee had not completely resolved.

Dr. Levi performed arthroscopic surgery on Petitioner's right knee February 16, 2018. The preoperative diagnoses was posttraumatic arthritis. Dr. Levi performed a chondroplasty of the patella and medial femoral condyle, synovectomy in all three compartments, and removal of loose bodies greater than 1 cm. During the procedure Dr. Levi noted grade 4 posttraumatic arthritis of the medial femoral condyle and significant grade 3 changes with loose flaps of cartilage about the patella and trochlea. The postoperative diagnoses included posttraumatic arthritis of the medial femoral condyle, patella, and trochlea along with three compartment synovitis.

Petitioner received postoperative physical therapy. On July 18, 2018, he was still having right knee pain and still treating with Dr. Levi. Dr. Levi noted at that time, "The patient is not doing well. He continues to have pain. He is taking Tramadol for the pain. "He will need a partial knee replacement as this has not resolved with the arthroscopy and he has significant medial joint chondromalacia."

Dr. Nho performed another IME on July 2, 2018 (RX #2). Dr. Nho again reviewed petitioner's medical care since his April 22, 2015 accident. He noted Petitioner's complaints of 5–6/10 dull/achy pain in the anteromedial aspect of the right knee. Symptoms are aggravated by stairs and flexion. Petitioner complained of stiffness and clicking in the knee and that Tramadol and NSAIDs provide mild relief.

On examination Petitioner had extension to 4° and flexion to 100° in the right knee. There was mild tenderness over the anteromedial joint but none over the patella, patella tendon, lateral joint line, or popliteal fossa. McMurray, anterior drawer, and posterior drawer were negative. Lachman and pivot shift were stable. There was no joint laxity.

Dr. Nho again completed his report, RX #2, with a series of answers to questions without reference to the questions. He noted that Petitioner's current complaints are the result of his underlying, pre-existing chondromalacia. Dr. Nho opined that a total knee replacement was not reasonable or necessary nor related to any work injury. He did not state an opinion regarding the necessity of a partial knee replacement. Dr. Nho further noted that Petitioner had reached MMI as of his last IME and was able to return to fully duty work without restrictions.

On February 4, 2019 Dr. Levi noted that the delay in performing the second arthroscopy resulted in multiple large loose bodies and "now an injury to the patella and

medial femoral condyle articular cartilage. This cartilage injury is unfortunately permanent, and he will ultimately need a partial if not total knee replacement due to the extensive cartilage injury to the articular cartilage."

Dr. Levi concluded that the only reasonable long-term treatment option to this type of articular cartilage damage is partial or total knee replacement. He recommended a partial knee replacement because of Petitioner's young age but noted that Petitioner may need a total knee in the future if the pain persists.

Petitioner testified that he has had constant right knee pain since the date of his second work injury on April 22, 2015. He has had no relief in his knee pain, even after the second arthroscopy.

Petitioner testified that he is forced to work full duty without restrictions and that he has constant right knee pain. His job duties include daily walking up and down stairs "all day long" to meet with parolees, and getting in and out of his car, all of which are daily activities that increase his knee pain. He rates his knee pain as a "6 or 7" while at work. His right knee symptoms have affected his range of motion and daily living activities.

CONCLUSIONS OF LAW

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

The arbitrator finds that Petitioner proved that his current condition of ill-being was causally related in combination and concert with his two work-related injuries on October 21, 2012 and April 22, 2015.

There is no genuine dispute that Petitioner injured his right knee in a work-related accident on October 21, 2012. That injury ultimately required arthroscopic surgery performed by orthopedic surgeon Dr. Gabriel Levi on April 1, 2013. That surgery involved repair of a right lateral meniscus tear as well as articular cartilage injury to the lateral tibial plateau, medial femoral condyle, medial tibial plateau, and trochlea. Dr. Levi noted a microfracture of the trochlea. He also performed a chondroplasty of the lateral plateau, medial plateau, and medial femoral condyle. On January 7, 2014 Dr. Leavy stated his opinion that these injuries and the ensuing treatment procedures were directly related to the injury Petitioner sustained on October 21, 2012. He also stated that significant articular cartilage injury can lead to post traumatic arthritis which may worsen and cause recurrent pain. He noted this may lead to the need for joint replacement in the future.

When Petitioner reinjured his knee on April 22, 2015 he returned to Dr. Leavy for medical care. After failed conservative care Dr. Levi performed another arthroscopic procedure on Petitioner's right knee on February 16, 2018, involving chondroplasty of the

patella and medial femoral condyle, synovectomy in all three compartments, and removal of loose bodies greater than 1 cm.

Dr. Levi had noted on October 21, 2016 that Petitioner had reinjured his right knee in the April 2015 work accident and that surgery was required to treat that reinjury. Dr. Leavy opined then that Petitioner's reinjury and need for surgery were related to the April 22, 2015 work accident. He reiterated his opinion February 4, 2019, when he also opined that Petitioner required a partial total knee replacement.

Respondent has offered the opposing opinions of orthopedic surgeon Dr. Shane Nho. Dr. Nho have performed two IMEs: January 19, 2016 and July 2, 2018. On January 19 Dr. Nho summarize petitioner's medical care without reference to Petitioner's 2012 right knee injury. Dr. Nho mentioned the 2013 arthroscopy but with no mention of detailed review of Petitioner's medical care prior to or subsequent to that surgery.

On January 19, 2016 Dr. Nho opined that Petitioner did not require further medical treatment and that Petitioner was at MMI. Dr. Nho did not state with any detail or specificity the bases for his opinions. Subsequent events, namely Petitioner's continuing complaints which ultimately led to another arthroscopic surgery by Dr. Levi on February 16, 2018, disproved the validity of Dr. Nho's January 19, 2016 the opinions.

On July 2, 2018 Dr. Nho opined again that Petitioner was at MMI and did not require further medical treatment. Once again there was only a cursory review of Petitioner's medical history which was significant for a right knee injury in 2012 and arthroscopic surgery in 2013. Although Dr. Nho referred to Dr. Levi's series of Orthovisc injections he omitted reference to the Depo-Medrol and cortisone injections administered by Dr. Levi. Once again Dr. Nho did not state with any detail or specificity the bases for his opinions.

The Arbitrator does not find Dr. Nho's opinions, either in 2016 or 2018, to be reasonable or persuasive. Clearly Dr. Nho did not perform a thorough review of petitioner's medical history with Dr. Levi. There was no explanation on why Dr. Nho did not review the records relating to Petitioner's 2012 work related injury and subsequent arthroscopy in 2013. Without review of those records and a full understanding of Petitioner's history the Arbitrator finds that Dr. Nho's opinions lack bases and validity.

Correspondingly, the arbitrator finds the opinions of Dr. Levi to be reasonable and well-founded. Dr. Levi's opinions are based on his broad-based experience in treating Petitioner over the years, a foundation that Dr. Nho lacked. As noted above, the Arbitrator finds that Petitioner proved with the support of the medical evidence and the reasonable and persuasive opinions of Dr. Gabriel Levi that his current condition of ill being is causally related in combination and concert with his work related accidents on October 21, 2012 and April 22, 2015.

K: Is Petitioner entitled to prospective medical care?

The Arbitrator finds the Petitioner proved he is entitled to the prospective medical care recommended by Dr. Levi, partial replacement of his right knee. In so doing, the arbitrator adopts the findings set forth above.

The Arbitrator weighed the conflicting opinions of Petitioner's treating orthopedic surgeon, Dr. Gabriel Levi, with those of Respondent's retained examining orthopedic surgeon, Dr. Shane Nho. As noted above, the Arbitrator found Dr. Nho's opinions of no causation where ill-founded and unpersuasive. More to the point, Dr. Nho opined on January 19, 2016 that Petitioner did not require further medical care. The obvious fact of Petitioner's subsequent arthroscopy on February 16, 2018 and the objective findings during that procedure disproved the validity of Dr. Nho's 2016 opinion that no further medical treatment was required. This, plus Dr. Nho's incomplete and inadequate review of Petitioner's medical history, undermines the validity and persuasiveness of his 2018 opinion that no further medical treatment is required.

Therefore, the Arbitrator orders that Respondent shall authorize and pay for the prospective medical treatment recommended by Dr. Levi, namely a partial replacement of the right knee, as well as all necessary ancillary and reasonable rehabilitative care.

Steven J. Fruth, Arbitrator

June 2, 2020
Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC001952
Case Name	Adrianne Mays v. Alpha School Bus Company
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0341
Number of Pages of Decision	13
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Gerald Connor
Respondent Attorney	Nicole Breslau

DATE FILED: 9/6/2022

/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

ADRIANNE MAYS,

Petitioner,

vs. NO: 20 WC 01952

ALPHA SCHOOL BUS COMPANY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causation, prospective medical treatment, medical expenses and temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, but makes the modifications outlined below.

In the first full sentence on page 6, we strike the sentence beginning with "It seems clear…" in its entirety.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 26, 2021, is hereby affirmed and adopted with the modifications noted above.

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

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

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

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

Since no award was made in this case, no bond for the removal of this cause to the Circuit Court by Respondent is required. 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.

September 6, 2022

/s/ *Maria E. Portela*

MEP/dmm
O: 072622
49

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC001952
Case Name	MAYS, ADRIANNE v. ALPHA SCHOOL BUS CO
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Gerald Connor
Respondent Attorney	Robert Cozzi

DATE FILED: 7/26/2021

THE INTEREST RATE FOR THE WEEK OF JULY 20, 2021 0.05%

/s/ Kurt Carlson, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Adrienne Mays
Employee/Petitioner

v.

Alpha School Bus Co.
Employer/Respondent

Case # **20** WC **01952**

Consolidated cases: **---**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Chicago**, on **May 14, 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, **January 22, 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 not*** sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned $**7,696.00**; the average weekly wage was $**148.00.**

On the date of accident, Petitioner was **52** years of age, ***single*** with **1** dependent children.

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

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

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

ORDER

THE ARBITRATOR FINDS THAT THE PETITIONER FAILED TO PROVE SHE SUSTAINED ACCIDENTAL INJURIES ARISING OUT OF AND IN THE COURSE OF HER EMPLOYMENT. ALL OTHER ISSUES ARE RENDERED MOOT. COMPENSATION 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.

KURT CARLSON **JULY 26, 2021**

Signature of Arbitrator

STATEMENT OF FACTS

The petitioner testified that she was employed by the Respondent as a bus monitor. On January 22, 2020, she testified that she was injured when she fell on the school bus. She struck her right side, back, head, right knee and left arm.

On the following day, she sought treatment with Dr. Joseph Rabi complaining of right knee, left wrist, low back and head pain. She provided a history of being on a school bus on January 22, 2020 and helping children when she fell on her right side bracing her impact with her left outstretched hand. She was sent for x-rays of the areas of her body of which she was complaining and sent for physical therapy. (Pet. Ex. 1) She returned on February 6, 2020 continuing to complain of the right knee and low back. She was sent for an MRI of the lumbar spine and prescribed medication. She was also referred to Dr. Steven Sclamberg whom she first saw on February 10, 2020. (Pet. Ex. 1)

When first seen by Dr. Sclamberg, she provided a history of injuring herself when she fell on a school bus while helping children on January 22, 2020. He sent her for an MRI of the right knee. (Pet. Ex. 1) When she was first seen by the physical therapist at the Therapy Providers of America (Pet. Ex. 2), she provided a history of standing on the bus when abrupt motion caused her to fall. She fell hitting her head on a sidearm of the wheelchair on the right side and then fell on the right side twisting her right knee using her left hand to break the fall having

whiplash injury to her neck and severe sprain to her right lumbosacral area. When the petitioner returned to Dr. Sclamberg on February 24, 2020, she indicated that, "due to a previous surgery she had that she had a complication, she did not wish to undergo any surgery at this time." On March 12, 2020, the petitioner underwent an injection to the low back performed by Dr. Rabi. (Pet. Ex. 1) On March 9, 2020, the petitioner told Dr. Sclamberg that she did not wish to undergo any surgery. Dr. Sclamberg placed her at maximum medical improvement and released her from his care. (Resp. Ex. 6) The petitioner testified that she still has problems with her right knee and plans to undergo surgery if authorized by the Respondent.

On cross-examination, the petitioner stated that her accident happened on the AM morning run of January 22, 2020. She was shown a copy of her Application for Adjustment of Claim (Resp. Ex. 1) and acknowledged her signature which she dated January 22, 2020, the day of the accident. The Application further shows that the Application for Adjustment of Claim was filed at the Illinois Worker's Compensation Commission at 2:45 p.m. on January 22, 2020, the day of the accident.

She was asked whether she reported the accident to anyone at work. She did report it but could not recall the name of the individual to whom she reported. She indicated that she has never received a medical bill for any of the treatment she received and has no idea how much the medical bills total. She claims she never

told Dr. Sclamberg that she did not wish to undergo surgery. She has not received any medical attention since March 12, 2020.

Linon Glenn III testified that he is the Operations Manager for the respondent since 2016. The respondent is in the business of transporting school children and the facility is located in Crestwood, Illinois. The Operations Manager is responsible for the entire operation of the bus facility including scheduling, personnel, safety issues and the mechanic's shop.

At some point in time in 2020, Mr. Glenn was advised by the Risk Management department that the petitioner, a school bus monitor, was claiming that she fell down on the school bus on January 22, 2020 and thereby injured herself. He was asked by Risk Management to retrieve the bus video and review it to determine if indeed the accident occurred. All school buses are equipped with the camera system that begins to run as soon as the bus is turned on and continues to record until five minutes after the bus is turned off. The video is date and time stamped and, to the best of his knowledge, the video cannot be edited or altered in any way.

After he had the hard drive removed from the bus on which the petitioner was working on the day of the accident, he reviewed the entire videotape. At no point in time did the petitioner fall over as she claimed she had or was she injured

in any way while on the school bus. He made a copy of the videotape and it was accepted into evidence. (Resp. Ex. 2)

Mr. Glenn identified the Employee Handbook which sets forth all the policies and procedures for employees. The handbook reflects on Page 20 that "all accidents must be reported immediately to your manager." (Resp. Ex. 3) He was the Operations Manager on the day of the accident and, at no time, did she ever report an accident to him. To his knowledge, she did not report an accident to anyone at the bus company. The petitioner signed a handbook acknowledgement on November 21, 2019, when she was hired, that acknowledged she was given a handbook and that she understood the policies and procedures set forth in the handbook. (Resp. Ex. 5) In addition, the collective bargaining agreement between the respondent and Teamster's Local 777 reflects in Article 47 that "any employee involved in any accident shall immediately report the accident and any medical injuries sustained." (Resp. Ex. 4)

CONCLUSIONS OF LAW

With respect to issue (C) "Did an accident occur that arose out of and in the course of Petitioner's employment with the Respondent?" the Arbitrator concludes the following:

The petitioner claims to have sustained an injury while attending to children on the school bus on which she was riding on January 22, 2020. The incident occurred during the AM morning run, according to the petitioner. The bus video

for that day was accepted into evidence. (Resp. Ex. 2) The petitioner's Operations Manager, Linon Glenn III, reviewed the videotape and indicated that no such injury took place. The Arbitrator also reviewed the entire 4 hours of said video and agrees with witness Linon Glenn III.

The video is split into two segments. The first segment covers the entirety of the AM pick-up. The Petitioner alights the bus at the 1:15 minute mark and favors her right knee in that she walks into the bus pushing one step at a time, pushing off with her left leg. The bus gets underway and the special needs children are picked up from their homes and dropped off at school. It takes about two hours. There is no break in footage during the time the children are in the bus and at no time is there an accident or occurrence described by the Petitioner. Furthermore, the driver is in constant communication with dispatch.

There is a break period in the afternoon that occurred between "drop off" and "pick up." The Petitioner signed her application of adjustment of claim during the gap and it was immediately filed with The Illinois Workers' Compensation Commission that afternoon. She did not visit a doctor. The timing of these events is unusual.

Later that afternoon, the Petitioner returned to work and the second portion of the video recorded the bus activity. She struggled to alight the bus at the :30 second mark. She's seen rubbing her knee at minute mark 8:44. At 20:05, she

struggles to get into a standing position. It seems clear something happened earlier, but during the break in the workday, not while helping disabled children get into the bus earlier that morning. Of vital note, the video also recorded the conversations between the Petitioner and the driver of the bus. At the 34:25 minute mark, the driver tells the Petitioner, "you need to go to a doctor." At 36:06, the driver asks, "how long your leg been like purple?" At no time during the conversation was the Petitioner's right leg condition discussed in the context of a contemporaneous work injury. In fact, at 39:05 the driver states, "I wish you would've said something earlier." At 1:28:50, the driver states, "It's bad enough you let it be like that for awhile." The driver is constant contact with dispatch throughout the day, even performing radio checks, but no report of accident is requested or made.

Finally, the Arbitrator notes that the petitioner could not provide any details regarding the reporting of her accident. The company rules and the collective bargaining agreement clearly require her to report it immediately. Linon Glenn III, the respondent's Operations Manager, stated that the accident was not reported to him as the rules require nor was it reported to anyone else to the best of his knowledge.

As a result of the above, the petitioner's claim for compensation is denied. If one takes the time and effort to view the entire four hours of video, one can see

that it is not "glitchy" as claimed by Petitioner. The there is no blinking of video while the children are in the bus. There is no slip and fall upon a wheelchair arm as claimed by Petitioner. Nothing remotely like that occurred. It is safe to state that there was no accident in the bus and no time-stamp is needed because there is so much footage: fours hours in fact. If viewed with the audio turned up to the maximum, the video might be considered embarrassing to the claimant. The Petitioner and her attorney had the opportunity to view the video on the date of trial and rebut, but passed.

With respect to issues (F), (J), (K) and (L) the Arbitrator concludes the following:

Based on the Arbitrator's finding with respect to Issue (C), all other issues are rendered moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC010194
Case Name	Fadol Brown v. Chicago Bears Football
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0342
Number of Pages of Decision	35
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Kenneth Wolfe
Respondent Attorney	Rich Lenkov

DATE FILED: 9/6/2022

/s/ Deborah Baker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

FADOL BROWN,

Petitioner,

vs. NO: 20 WC 10194

CHICAGO BEARS FOOTBALL CLUB,

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's current right knee condition of ill-being is causally related to the undisputed October 24, 2019 work accident, whether Petitioner has reached maximum medical improvement, entitlement to temporary total disability benefits, and entitlement to incurred medical expenses, 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 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).

Corrections

1. The Commission corrects the fourth paragraph on page 1 of the Findings of Fact to reflect Petitioner's undisputed accident occurred on October 24, 2019.

2. The Commission corrects the Decision to incorporate the undisputed temporary total disability benefits from January 7, 2020 through September 16, 2020, which correspond to Respondent's credit for TTD benefits already paid.

CONCLUSIONS OF LAW

Medical Expenses

The Arbitrator ordered Respondent to pay $2,147.00 for disputed treatment at NorthShore University HealthSystem. The Commission agrees the treatment and associated charges are reasonable, necessary, and causally related to the undisputed accidental injury, however, our analysis of Petitioner's Exhibit 5 reveals the outstanding balance is $1,149.00. As such, the Commission orders Respondent to pay medical expenses in the amount of $1,149.00.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 24, 2021, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,529.84 per week for a period of 88 3/7 weeks, representing January 7, 2020 through September 16, 2021, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b), this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any. Respondent shall have a credit of $55,511.34 for TTD benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of $1,149.00 for medical expenses, as provided in §8(a), subject to §8.2 of the Act. Respondent shall have a credit of $54,395.42 for medical benefits that have been previously paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in §8(j) of the Act.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $26,700.00. 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.

September 6, 2022

/s/ *Deborah J. Baker*

DJB/mck

O: 7/13/22

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC010194
Case Name	BROWN, FADOL v. CHICAGO BEARS FOOTBALL CLUB
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	31
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	Kenneth Wolfe
Respondent Attorney	Richard Lenkov

DATE FILED: 11/24/2021

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

/s/Charles Watts, 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)

FADOL BROWN
Employee/Petitioner

v.

CHICAGO BEARS FOOTBALL CLUB
Employer/Respondent

Case # **20** WC **10194**

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 **CHARLES WATTS**, Arbitrator of the Commission, in the city of **CHICAGO**, on **9/16/2021**. 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, **10/24/2019**, 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*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**88,000.00**; the average weekly wage was $**7,333.33**.

On the date of accident, Petitioner was **26** years of age, ***single*** with **1** dependent children.

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

Respondent shall be given a credit of $**55,511.34** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**55,511.34**.

Respondent is entitled to a credit of $**54,395.42** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services of $2,147.00, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit of $54,395.42 for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

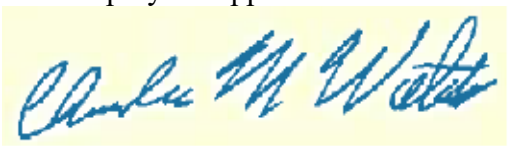
Respondent shall pay Petitioner temporary total disability benefits of $1,529.84/week for 52 2/7 weeks, commencing 9/16/2020 through 9/16/2021, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $55,511.34 for temporary total disability benefits that have been paid.

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

NOVEMBER 24, 2021

FINDINGS OF FACT:

Petitioner's Testimony at Arbitration:

Petitioner played one year of college football at Florida International University and played the rest of his football college career at Ole Miss. (T. 8). In May 2017, the Oakland Raiders ("Oakland") signed Petitioner as an undrafted free agent. (T. 8, T. 49). On September 2, 2017, Oakland waived Petitioner. (T. 8-9). He was assigned to Oakland's practice squad the following day and he remained on the practice squad for the season. (T. 8-9). Oakland signed Petitioner to a reserve/futures contract on January 2, 2018 and played eight games for the team. (T. 9) Petitioner was waived by Oakland on December 4, 2018. (T. 9). Petitioner was not waived because of an injury. (T. 50). Petitioner was waived because of performance. (T. 51). Petitioner jumped offsides during a game with the Kansas City Chiefs. (T. 51) Petitioner testified that he was graded out at almost 90% and had a lot of production. (T. 52). Petitioner never had any performance issues and Oakland had not expressed any performance issues with Petitioner prior to that time. (T. 52).

Petitioner was claimed off waiver on December 5, 2018 by the Green Bay Packers ("Green Bay") within 24 hours of being released by Oakland (T. 9, 54). Petitioner testified that he went in immediately and played 50% of Green Bay's total defensive plays for the remainder of the season. (T. 9, 54). Green Bay resigned Petitioner on March 6, 2019, and waived Petitioner on October 5, 2019, after Game 6. (T. 9, 55). Green Bay did not express any performance issues with Petitioner. (T. T. 54). Petitioner testified that he was released because a running back had been hired and two other players had received extensions. (T. 56). Petitioner testified that he "was a bubble guy in a loaded room full of highly-paid defensive linemen" and he was the player that "had to go." (T. 56).

On October 15, 2019, Respondent signed Petitioner onto its practice squad on October 15, 2019, after a pre-examination/workout. (T. 9, 56).

Petitioner was injured on October 29, 2019, about 80% through practice for Respondent. (T. 9-10). Petitioner was playing a six technique in which he was engaged with a tight end and tackler in front of him and a linebacker behind him. (T. 10). Petitioner stepped on the linebacker's foot, Petitioner's leg twisted, and he felt his right kneecap slide up and Petitioner fell down. (T. 10). Petitioner could not get off the field on his own and he was assisted off the field. (T. 10). Petitioner was seen by Respondent's doctor, Dr. Mark Bowen, on the same day. (T. 10).

Petitioner testified that Dr. Bowen recommended an MRI and performed right knee tendon surgery on November 1, 2019. (T. 10-11). Following surgery, Petitioner was placed in a medical brace. (T. 11). Petitioner returned to see Dr. Bowen on November 11, 2019. (T. 11). Dr. Bowen removed half of the staples and noted some drainage from the wound. (T. 11). Petitioner testified that the gauze that was applied to his right knee following surgery had been soaked in Betadine, to which he is allergic. (T. 11-12). As a result, Petitioner's skin was severely irritated and red when the gauze was removed. (T. 11-12). Dr. Bowen cleaned the wound, applied new dressing and an Ace bandage, and put Petitioner's right knee back in the

brace. (T. 12). Dr. Bowen referred Petitioner to a plastic surgeon, Dr. Michael Howard. (T. 12). Petitioner returned to Dr. Bowen three days later and the wound was debrided, cleaned, and the locked position bracing continued. (T. 12-13).

Petitioner saw Dr. Howard on November 18, 2019. (T. 13). Dr. Howard removed most of the staples, cleaned the incision, and recommended daily dressing changes and for Petitioner to continue wearing the brace. (T. 13).

Petitioner returned to Dr. Bowen on December 19, 2019, and they had a discussion regarding allegations that Petitioner had been seen without the brace. (T. 13). Petitioner testified that this conversation occurred while Petitioner was switching physical therapists. (T. 14). Petitioner was switching physical therapists because he felt that they were not "getting the job done." His physical therapy provider did not have pools or underwater treadmills. (T. 14). Petitioner testified that he told Dr. Bowen that he never took the brace off. (T. 13-15). Petitioner testified that at the time, he lived in a "one-story shotgun house" with other adults. (T. 14). There would be no reason to take the brace off and Petitioner could ask for help if he needed it. (T. 14). Petitioner would not take the brace off when he showered and he would cover the brace with a plastic bag he purchased at Walgreens (T. 15). Dr. Bowen recommended another MRI at that time. (T. 15).

Dr. Bowen performed another surgery on his right knee on December 27, 2019. (T. 15)

Petitioner's first post-surgical appointment with Dr. Bowen was on January 10, 2020. (T. 16). Dr. Bowen discussed a possible additional surgery. (T. 16).

Petitioner underwent a right knee exploration and repair and augmentation of the tendon on January 13, 2020. (T. 13). Petitioner returned to Dr. Bowen on January 23, 2020 and was advised to continue wearing the brace and to return in four days for suture removal. (T. 16). Petitioner returned to Dr. Bowen on January 27, 2020 and some of his stitches were removed. (T. 16).

Petitioner returned to Dr. Bowen on January 28, 2020. (T. 17). Petitioner was having some drainage from the wound. (T. 17). Dr. Bowen removed every other suture, changed his dressing, and discussed the use of a wound vac. (T. 17). Petitioner obtained the wound vac on January 30, 2020. (T. 18).

Petitioner testified that at one point Dr. Bowen had asked him if he had been using marijuana because he smelled like it. (T. 18). Petitioner told Dr. Bowen that he had been dropped off by a friend and that he did not smoke. (T. 18). Petitioner testified that he had not smoked marijuana that day and had not smoked since joining Respondent. (T. 19). Petitioner testified that he does not smoke during the season. (T. 19) Players are regularly tested for drugs and Petitioner had never failed a drug test, including for steroids, from high school through professional football. (T. 19). Petitioner admitted to smoking marijuana once or twice a year after the season. (T. 19). It is not something he does regularly. (T. 19).

On February 3, 2020, Petitioner saw Dr. Seth, a plastic surgeon. (T. 19). Petitioner was having continued wound issues. (T. 19-20). Petitioner spent a few days in the hospital for treatment of an infection. (T. 20). The wound was cleaned out. (T. 20). Petitioner was discharged on February 5, 2020. (T. 20). Petitioner had an antibiotic infusion on February 6, 2020 at Skokie Hospital. (T. 20).

Petitioner returned to Dr. Bowen on February 17, 2020. (T. 20). Dr. Bowen cleaned the wound again, repacked it, and discussed a possible PICO drip for the infection. (T. 20). Dr. Bowen wanted Petitioner to be seen by the infectious disease department. (T. 20).

Petitioner returned to see Dr. Howard on February 21, 2020. (T. 21). Dr. Howard performed a wound check and noted that Petitioner's skin had separated by a centimeter. (T. 21). Dr. Howard removed one of the sutures, explored the wound, cleaned it, packed it, and closed it. (T. 21).

Petitioner again saw Dr. Howard on March 4, 2020. (T. 21). The drain was removed. (T. 21). Dr. Howard and Petitioner discussed another procedure and further revision and debridement of the wound. (T. 21-22). On March 10, 2020, Dr. Howard performed another procedure and removed the staples. (T. 22). On March 23, 2020, Dr. Howard finished the suture removal and noted that there was still a small area of skin separation. (T. 22).

On March 25, 2020, Dr. Howard reopened the wound, freshened the edges of the skin, explored the wound, and closed it. (T. 22). On April 9, 2020, Petitioner returned to Dr. Howard and told him he had a small leak in the wound when he flexed his knee. (T. 23). Dr. Howard took Petitioner out of physical therapy for ten days and gave him antibiotics. (T. 23).

Dr. Howard again reopened Petitioner's wound at two sites on April 20, 2020. (T. 23). Dr. Howard performed an exploration and repair. 9T. 23).

On April 21, 2020, Dr. Howard explored Petitioner's knee tendon and performed a small debridement. (T. 23).

Petitioner was seen the following day for a dressing change. (T. 23). Dr. Howard and Petitioner discussed scheduling a procedure to close the wound. (T. 23-24). Petitioner, however, declined the procedure because of the pain he felt during prior procedures. (T. 24). Petitioner testified that the prior procedures had been performed while Petitioner was awake and not sedated. (T. 24). The prior procedures were extremely painful. (T. 24). Petitioner waited a couple of weeks and Dr. Howard surgically closed the knee wound on April 23, 2020 in his office. (T. 24).

Petitioner had postoperative visits with Dr. Howard on April 27, May 7, at which time the staples were removed, and May 21, 2020, when half of the sutures were removed. (T.24-25). Petitioner testified that on May 21, 2020, Dr. Howard told him that he could start very minimal mobilization of the knee. (T. 25).

On May 27, 2020, Petitioner had a telehealth visit with Dr. Bowen and Dr. Bowen recommended Petitioner continue with physical therapy. (T. 25-26). Petitioner was in Florida at this time. (T. 26). On June 4, 2020, Dr. Bowen continued Petitioner's physical therapy

and home exercises. (T. 26). On July 24, 2020, Petitioner reported no complaints of pain, was riding his bike and using the elliptical, and was working towards strengthening exercises. (T. 26-27). Petitioner started attending physical therapy at Athletix on September 3, 2020 and attended 37 sessions through mid-January 2021. (T. 27).

Petitioner was examined at the request of Respondent by Dr. Bush-Joseph on September 16, 2020. (T. 27-28). Petitioner testified that the examination consisted of about five minutes of conversation and two minutes of examination. (T. 29-30).

Petitioner had a telehealth visit with Dr. Bowen on October 26, 2020. (T. 30). Dr. Bowen recommended additional physical therapy. (T. 30).

Petitioner returned to Dr. Howard on November 12, 2020, and reported having some leakage from the wound. (T. 30-31).

Petitioner had follow-up visits with Dr. Bowen on November 16, 2020 and February 1, 2021. (T. 31). On February 1, 2021, Dr. Bowen recommended that Petitioner continue with strengthening, running, and trying more football-specific activities. (T. 31). Dr. Bowen said that Petitioner's knee strength had improved. (T. 44-45). Petitioner testified that as of February 1, 2021 he was still struggling with strength and had a significant size difference in his leg. (T. 45). Petitioner testified that the strength difference in his leg was about seventy to thirty percent. (T. 45). Following Dr. Bowen's recommendation, Petitioner did some physical therapy sessions at Athletix and also participated in training sessions at Goldin Athletic Training Association (G.A.T.A.) in Atlanta, which he had routinely done throughout his career since college. (T. 31-32).

On August 9, 2021, Petitioner saw Dr. Howard. (T. 32). Petitioner testified that he went to Dr. Howard because the wound had opened again, after participating in football-specific drills while in Atlanta. (T. 32-33). Dr. Howard cut the wound open again, removed a loose stitch, and cleaned both sites. (T. 34). Petitioner testified that he still has permanent stitches in the wound and that Dr. Howard recommended he return to see him within two to three weeks. (T. 34).

At hearing, Petitioner testified that he has not returned to work since the accident, but has continued to train every day to attempt to return to football. (T. 35) Petitioner currently trains at G.A.T.A, a sports performance complex that does position-specific drills and has a gym and medical portion. (T. 60). G.A.T.A. is located in Atlanta, Georgia. (T. 60). Petitioner goes to G.A.T.A. three or four times per week and trains for an hour and a half to two hours a day. (T. 60). Petitioner weight trains. (T. 61). In the mornings, he does lifts. (T. 62). In the afternoons, he participates in defensive position drills. (T. 62). Petitioner is 6'5, weighs 265 pounds, and can currently bench press about 375 pounds to 400 pounds for four sets of three to four reps. (T. 62, 64). Petitioner testified that 375 pounds is the heaviest amount he felt that he needs to do. (T. 63-64). The amount he is currently bench pressing is about 25% less of what he was previously bench pressing. (T. 64). Petitioner cannot physically do multiple days of constant heavy lifting on his legs, because it creates swelling and his knee leaks a lot when it swells. (T. 65). It is uncomfortable. (T. 65). On a good week, Petitioner does two heavy days of legs and cardio. (T.

65). Petitioner's leg training consists of things like presses with his legs. (T. 65). On his right side, he can "do about 60 percent of what I can do on my left leg." (T. 65). On a single leg press, Petitioner can press 200 pounds on his right leg and about 315 pounds on his left side. (T. 65).

Since the right knee procedure Petitioner underwent on August 9, 2021, the weight Petitioner can lift has gone down to 150 pounds from between 175 to 180 pounds. (T. 66). Petitioner testified that prior to the injury and when healthy, he could squat close to 575 pounds. (T. 66). Heavy cardio and constant heavy lifting with his legs causes swelling and a lot of leakage so he allows for some healing time between workouts. (T. 59-60, 65). Petitioner also participates in defensive drills, which consist of "get-offs, explosive work within 10 to 15 yards, sprints, 100-yard sprints, build-ups, pass rush drills against pressure, that kind of stuff." (T. 67). Petitioner explained that these were "football-specific drills against about the most amount of weight that you are going to be able to go against, which is another guy." (T. 67).

At the time of hearing, Petitioner testified that since the August 9, 2021 procedure, the top site had completely closed and was feeling "a whole lot better." (T. 38). There was still a knot at the site that Petitioner has had problems with since the beginning, and there was still minimal discharge. (T. 38). Petitioner had not had any other income since his benefits were stopped one year ago. (T. 38). Petitioner has attempted to work. (T. 41). Petitioner has reached out to resources and is doing everything that he can to obtain employment, while also devoting time trying to get back into his football career. (T. 41). Petitioner has contacted former coaches at Ole Miss and Mario Cristobal in Oregon, as well as relatives that have their own businesses on multiple occasions. (T. 42). Petitioner has contacted friends that own car dealerships in North Carolina for sales positions. (T. 42, 43). Petitioner did not have job search documentation with him at hearing. (T. 42). Petitioner agreed that no doctor has told him that his right knee prevents him from working in sales. (T. 44). Petitioner testified that he still has an opening in his leg, and it would not be comfortable for him to be on his feet, walking for nine hours a day with swelling. (T. 44). Petitioner agreed that no doctor has restricted him from working, except for in a professional football environment. (T. 44).

Petitioner suffered a minor right patellar tendon tear while he was in Oakland during his 2017 rookie year. (T. 36). There was no specific injury and his right knee was bothering him. (T. 40). Petitioner agreed that he would not have a reason to dispute the Oakland records if those records reflect that Petitioner had a partial thickness tear involving more than 50% of the proximal patellar tendon. (T. 40). Petitioner was not aware that it was 50%. (T. 41). Petitioner's treatment consisted of physical therapy and was out of practice for two to three weeks. (T. 36). Petitioner testified that he was "completely fine" after completing physical therapy and returned to playing football. (T. 36). Petitioner did not have any other knee injuries until October 29, 2019. (T. 36). Petitioner underwent a pre-employment physical when he joined Respondent and no issues were noted. (T. 36-37).

Petitioner testified that he has unpaid medical bills from Northshore and has received phone calls from NorthShore. (T. 38).

Petitioner testified that it is his understanding that Dr. Bowen is a good doctor, he's Respondent's doctor, so he assumes that Dr. Bowen is a good doctor. (T. 47). Petitioner told Dr. Bowen everything that was going on with his right knee and was honest with Dr. Bowen. (T.

47). Petitioner testified that from his understanding, Dr. Bowen is a decent person and Petitioner would have no reason to dispute Dr. Bowen's opinions. (T. 48).

Petitioner cannot fully get into playing shape because of the hole in in his leg and constant leakage that keep him from being able to lift excessive weight and requiring him to keep the site clean to avoid infection. (T. 57). At the time of hearing, Petitioner did not feel ready to attempt a football tryout. (T. 35). His leg was still draining and did not think that anyone would give him an opportunity. (T. 36). Petitioner has not had any tryouts with any NFL or other professional team since leaving Respondent, but numerous teams have reached out to ask if he is ready to play. (T. 59).

Dr. Bowen has never told Petitioner that he thought Petitioner was ready to try out for a football team. (T. 68).

Petitioner is currently living in Atlanta, and travels back forth from Atlanta to Chicago because his son lives in Chicago. (T. 60). Petitioner travels to Chicago every other week, if he can, to see his son. (T. 61). His son is two years old. (T. 61). He also tries to help his mom in any way that he can. (T. 61).

Evidence Deposition Testimony of Dr. Charles Bush-Joseph

Respondent's Section 12 examiner, Dr. Charles Bush-Joseph, testified by way of evidence deposition on March 23, 2021 and a transcript of his testimony was admitted as Respondent's Exhibit 2 (RX2), without objection. T. 77. Respondent's Exhibit 1, Dr. Bush-Joseph's Independent Medical Examination report, was also admitted without objection. T. 76.

Dr. Bush-Joseph is an orthopaedic surgeon with a subspecialty in orthopedic sports medicine. (RX2. 5). He is currently a partner at Midwest Orthopedics at Rush ("Rush") and has practiced at Rush for 32 years. (RX2. 6). He is an active surgeon and a full professor of orthopedic surgery at Rush, where he performs 400 to 500 surgeries per year. (RX2. 7). Of the surgeries he performs annually, sixty percent are of the knee, thirty percent are of the shoulder, and ten percent are of the hip, elbow, and ankle. (RX2. 7). Dr. Bush-Joseph performs one to four IMEs per week and eighty percent of those are on behalf of respondent and twenty percent are on behalf of petitioner. (RX2. 8, 26). IMEs comprise less than four or five percent of his practice. (RX2. 8). Dr. Bush-Joseph sees between 80 to 100 patients per week. (RX2. 26).

Dr. Bush-Joseph has been the Chicago White Sox team physician since 2003. (RX2. 8). He has been on the NFL Pension Disability Board for the past ten years. (RX2. 8). He sees a variety of professional athletes in consultations for second opinions or for care, which includes treatment for knee-related injuries. (RX2. 8).

Dr. Bush-Joseph saw Petitioner for an in-person IME on September 16, 2020. (RX2. 9). Petitioner provided him with a history of the accident, which he documented in his report. (RX2. 10-11). Dr. Bush-Joseph testified that Petitioner repeatedly told him that he had no prior injury, treatment, or trauma to his right knee prior to October 24, 2019. (RX2. 11). Dr. Bush-Joseph testified that in his report, he described Petitioner's injury as "he lost his balance

and suffered an eccentric injury resulting in a rupture of his patellar tendon." (RX2. 11). Dr. Bush-Joseph explained that "[u]sually a big man, especially an NFL player, when a player attempts to stop, cut, pivot, or change directions rapidly, it requires significant muscle contraction either to accelerate or more commonly to decelerate the body weight. And sometimes, unfortunately, the body weight overwhelms the ability of the muscle to contract and control the joint and the tendon ruptures." (RX2. 11-13). Sometimes this type of injury happens more commonly in tendons that have had some underlying issues, including patellar tendonitis or tendopathy. (RX2. 12). Sometimes, this type of injury is seen in patients that have taken a certain class of antibiotics and are at a higher risk for it. (RX2. 12). Dr. Bush-Joseph testified that it is a relatively common injury seen in high level professional athletes. (RX2. 12).

Dr. Bush-Joseph reviewed treatment records of Dr. Bowen and of the Chicago Bears' training staff and medical staff. (RX2. 12). He also reviewed MRI reports, but could not recall if he reviewed the actual images. (RX2. 27). He did not review any MRIs that were taken in proximity to his exam. (RX2. 27).

As part of his IME, Dr. Bush-Joseph performed a physical examination of Petitioner. (RX2. 13). The physical examination consisted of having Petitioner walk around and get out of a chair and squat and kneel. (RX2. 13). The joints were also examined independently to try to perform the levels of function. (RX2. 13). Radiographs were obtained. (RX2. 13).

Dr. Bush-Joseph recalled that Petitioner was cooperative and there were no signs of symptom magnification or malingering. (RX2. 14). Petitioner was responsive and appropriate. (RX2. 14).

Petitioner was able to heel walk, toe walk, and elevate on his tiptoes in a symmetric fashion. (RX2. 14). Petitioner had a full range of motion of the bilateral hips while in a sitting position. (RX2. 14). Petitioner was also able to get out of the chair with his arms folded. (RX2. 14). Petitioner had evident weakness of his right leg when compared to his left leg in his ability to single-legged stance and balance. (RX2. 14). Petitioner also had residual atrophy in the left leg. (RX2. 14). Petitioner had multiple well-healed scars consistent with his surgeries. (RX2. 14). There was no signs of residual infection or drainage. (RX2. 14). He had some tenderness around his knee and had residual atrophy of the thigh muscle. (RX2. 14, 30). He also had some crepitation or some grinding underneath his kneecap, which is not an uncommon finding in professional athletes with or without a patellar tendon rupture. (RX2. 14).

Dr. Bush-Joseph believed that Petitioner had significant scar tissue in the knee and significant wear around the kneecap. (RX2. 28). He had no obvious effusion. (RX2. 28). Petitioner had thickening of the lining of the knee, but no obvious fluid at the time of the examination. (RX2. 28).

Four x-rays were taken, which showed (1) significant internal fixation around his patella consistent with the previous surgeries to stabilize his patellar tendon; (2) ossicles in the patellar tendon itself by the tibia or the shinbone attachment point, suggestive of underlying tendonitis or tendonisis of the knee; and (3) relatively well-preserved tibia and femur, with some cartilage degenerative changes. (RX2. 15). Dr. Bush-Joseph explained that while there was some degenerative changes, the main part of his knee, where the femur and tibia articulate, was in

relatively good condition. (RX2. 15). The x-rays were consistent with a player that has undergone multiple operative procedures about the patellar tendon. (RX2. 28).

Dr. Bush-Joseph's diagnosis was a patellar tendon rupture. (RX2. 16). Petitioner underwent a primary surgical repair that was complicated by continued wound drainage, and eventually re-ruptured. (RX2. 16). Petitioner required a secondary revision surgery using a tendon transplant. (RX2. 16). Petitioner again had some wound healing problems and required the use of a wound VAC. (RX2. 16). Despite all of that, Dr. Bush-Joseph opined that Petitioner had gone on to have a successful repair of the patellar tendon with no signs of residual infection, but did have residual atrophy measuring 1.5 centimeters of his thigh, which was not unexpected given the four surgeries Petitioner had undergone. (RX2. 16, 17, 30). Dr. Bush-Joseph explained that atrophy is loss of muscle bulk or girth. (RX2. 16). Patients will generally always have some degree of atrophy after having major knee surgery. (RX2. 17). A reduction in strength is a factor in atrophy of muscles and Petitioner's atrophy could have been improved with further managed physical therapy, training, or performance enhancement coaching. (RX2. 30).

As to causal connection, Dr. Bush-Joseph opined that he believed the injury occurred during the course of Petitioner's work or employment. (RX2. 17-18). Petitioner, unfortunately, had complications which required more extensive and prolonged treatment than what Dr. Bush-Joseph considered normal. (RX2. 18). Dr. Bush-Joseph also opined that the care and treatment of Petitioner's injury was reasonable, appropriate, and within the appropriate standard for the injury and Petitioner's condition. (RX2. 18). Dr. Bush-Joseph opined that Petitioner was sufficiently recovered from his surgery, he was safe to resume his normal training regimen or private training session activities. (RX2. 18-19). He did not see the need for further medical management.

Dr. Bush-Joseph testified that the failure or difficulty of Petitioner's knee healing following the first surgery is not a common occurrence. (RX2. 19). This incidence occurs in less than three to five percent. (RX2. 19). There is a variety of potential causes, including smoking, however, Dr. Bush-Joseph testified that it would be difficult to ascertain any single particular cause to why the complications occurred. (RX2. 19-20). Petitioner admitted to smoking marijuana and using oral tobacco, which could contribute to the complications. (RX2. 20). However, it would be difficult to ascertain a specific cause as to why Petitioner's complications occurred and usually, the cause is multifactorial and it is difficult to pinpoint a specific event. (RX2. 20).

Dr. Bush-Joseph testified that Petitioner had developed an infection that led to poor healing and eventual re-rupture. (RX2. 29). He could not provide an opinion as to cause of surgical complication and subsequent re-rupture. (RX2. 29. He further testified that there is a certain class of antibiotic medications that can cause collagen damage that increased the risk of rupture in the patellar tendon, quad tendon, or Achilles tendon. (RX2. 29). He had no knowledge or information that Petitioner had previously been on those types of medications. (RX2. 29). Cipro is in the fluoroquinolones class of antibiotics, and is implicated in the risk of rupture. (RX2. 29-30).

Dr. Bush-Joseph opined that Petitioner was at MMI based on his opinion that Petitioner required no further medical management and Petitioner's clearance to participate in NFL professional or

private player training. (RX2. 20-21). Dr. Bush-Joseph believes that a patient is at maximum medical improvement when supervised medical care is not necessary. (RX2. 32). At the time of his examination, Dr. Bush-Joseph believed that supervised medical care of Petitioner was not necessary. (RX2. 32). He agreed that from a medical approach, a patient is at maximum medical improvement if all treatment options have been exhausted. (RX2. 33). In this case, Dr. Bush-Joseph believed Petitioner was past the point of requiring further medical management, but needed to continue to build strength and endurance by whatever means possible. (RX2. 33). Dr. Bush-Joseph provided a medical impairment rating according to the AMA Guidelines. (RX2. 21).

Any physician can provide an AMA rating if the patient is at maximum medical improvement. (RX2. 21). It is recommended that the physician providing the rating be certified after having taken a course for the AMA impairment guidelines, which Dr. Bush-Joseph did and passed the appropriate examinations. (RX2. 21).

Dr. Bush-Joseph explained that maximum medical improvement means that "the patient has had a functional healing plateau. So there is not perceived to be benefit from further aggressive medical management, which means either invasive therapy or further surgery or further formalized physical therapy." (RX2. 22). Once a patient is at maximum medical improvement, the patient transfers to a rehabilitation mode under a supervised care provider, like a physical therapist or a physician. (RX2. 22). When an athlete is at maximum medical improvement, the athlete goes into training mode, where they have personal strength coaches or personal performance enhancers to help them perform or enhance their skill so that they can play at a professional level. (RX2. 22-23). Non-athletes at maximum medical improvement return to their normal job or seek other employment, however, athletes are required to perform at the highest level and even a minor loss can make a difference in their ability to "make a roster and play versus being released and deemed not officially capable to perform at a higher level." (RX2. 23-24, 31).

Dr. Bush-Joseph felt that Petitioner was ready to resume full professional football training activities and his job duties because Petitioner had been released from active care. (RX2. 24). Dr. Bush-Joseph believed that Petitioner's team physician provided that information, and Dr. Bush-Joseph agreed. (RX2. 24). Dr. Bush-Joseph believed that Petitioner was in training mode, trying to train himself up to a level to be able to earn a roster spot and contract in the NFL. (RX2. 24). Dr. Bush-Joseph reiterated that he is on the NFL Pension Disability Board and had been evaluating NFL players for the past ten years. (RX2. 25). He had seen these types of conditions, the results of the injuries, and how players perform. (RX2. 25). The athlete's ability to return to a contractual basis is varied. (RX2. 25). Dr. Bush-Joseph had seen players return to the NFL after suffering the same type of injury and undergoing the same surgery as Petitioner had. (RX2. 25). He explained that players usually have some decrement to their ability and performance levels, but they are able to return. (RX2. 25, 31). Some players do not return, because they lose enough percentage of thigh strength or lower extremity balance and power that is necessary for them to perform. (RX2. 25, 31). The return to competition is 65 to 70 percent. (RX2. 25). Speed, quickness, power, strength, and agility are the objective criteria considered in a player's ability to return to football. (RX2. 25-26). Dr. Bush-Joseph explained that the NFL is the "ultimate

Darwinian employment," and that a player can either do the job or not. (RX2. 26). If the player cannot do the job, then the player is relegated to something else. (RX2. 26).

Dr. Bush-Joseph testified that at the time of his exam, Petitioner had complained of weakness and a diminished inability to accelerate, which is not unexpected in a player that undergoes surgery and subsequent complications. (RX2. 30). Additional formalized physical therapy, training with a certified athletic trainer or fitness coach or performance enhancement coach would have assisted Petitioner with his inability to accelerate. (RX2. 32). Formalized physical therapy is one method of trying to build further strength. (RX2. 32). Dr. Bush-Joseph agreed that part of the purpose of Petitioner's formal rehabilitation was to regain strength in his leg. (RX2. 36). Dr. Bush-Joseph did not see any difference between what Petitioner was "going to get from the supervised strength and conditioning coach versus a formal physical therapist." (RX2. 43). In Dr. Bush-Joseph's experience, the majority of players do better with a strength and conditioning coach who is more experienced to train for their given occupation as opposed to a physical therapist who is trained in a more generic fashion to improve strength, function, and range of motion. (RX2. 43-44, 45). Dr. Bush-Joseph did not see that a supervised physical therapy program would change the outcome of Petitioner's condition any more than a strength and conditioning coach or performance enhancement coach would. (RX2. 44). He explained that a supervised physical therapy program is necessary when a player has residual loss of range of motion, residual instability or other incomplete healing elements. (RX2. 44-45). He did not believe nor was he aware of Dr. Bowen providing Petitioner with further aggressive medical care, including injections, surgery, or significant oral medications that would change the opinion of maximum medical improvement. (RX2. 45). He also agreed that the greater the strength that Petitioner is able to regain in his leg, the better his chance is of returning to play at the highest level of football. (RX2. 36). He also agreed that the purpose was also to counter the negative impact of Petitioner's scar tissue on strength, mobility, and pain. (RX2. 36).

On cross-examination, Dr. Bush-Joseph testified that he found Petitioner was ready to train for a return to professional football, however, that did not mean that Petitioner was able to resume play at the highest level. (RX2. 34). Dr. Bush-Joseph explained that while Petitioner was not able to resume playing at the highest level, neither was 99 percent of the population as it was different than returning to employment as a truck driver or construction laborer. (RX2. 34). Petitioner was ready to do blocking drills at the time of his examination. (RX2. 35). Dr. Bush-Joseph explained that he agreed with the recommendation of Petitioner's treating physician, and in his opinion, Petitioner was exiting the treatment and rehabilitative phase of his injury and was entering the training phase for his conditions of employment. (RX2. 35). Dr. Bush-Joseph has some understanding of get-off drills and explained that it is how fast a player can get out of position or get into position. (RX2. 36). He described it as a variety of rapid start accelerating activities. (RX2. 36). He described read and react D-line drills as classic football drills where a player has to react in the presence of another player or blocking pad or "something where they get off the block to be able to react." (RX2. 36). They are skilled maneuvers associated with the occupational activity. (RX2. 36). He also described pass-rush and run-stop drills are skill performance drills for the occupational activity. (RX2. 36).

On cross examination, in regards to MMI, Dr. Bush-Joseph explained that he accepts that there is a certain level of time when a patient may return to their occupational activity or training for their occupational activity, even though continued improvement will occur with their natural activities of daily living or training for their occupational activity. (RX2. 37-38). Dr. Bush-Joseph agreed that it was possible for a patient to be at MMI and also have room for improvement in terms of strength, coordination, and function. (RX2. 41). He believed that Petitioner had met the threshold to participate in full football and training activities, but at the time of his examination, Petitioner's strength was not sufficient to be able to compete at an NFL level. (RX2. 38). Between 35 to 40 percent of players wo suffer the type of injury that Petitioner suffered do not ever regain the ability to compete at an NFL level. (RX2. 38). Dr. Bush-agreed that if Petitioner did not regain the strength to compete at an NFL level, he would consider Petitioner's injury to be career-ending. (RX2. 38).

In order for Petitioner to resume playing for an NFL team, Dr. Bush-Joseph testified that he would have to improve his strength, performance, endurance, and agility. (RX2. 34). He would also have to hit the measurables that NFL teams demand from players of Petitioner's position. (RX2. 34-35).

Dr. Bush-Joseph is familiar with Dr. Bowen and he is aware that at the time of Petitioner's injury, he was the team doctor for Respondent. (RX2. 40). Dr. Bush-Joseph testified that he trusted Dr. Bowen's judgment and considered him a competent and experienced orthopedic surgeon. (RX2. 40).

Dr. Bush-Joseph did not measure Petitioner's speed or leg strength. (RX2. 35). Dr. Bush-Joseph testified that if Petitioner had not had further treatment following his September 16, 2020 examination, and attempted a return to football, Petitioner was at higher risk of reinjury because of his condition. (RX2. 40).

Dr. Bush-Joseph saw and examined Petitioner only once and was unaware of Petitioner's condition at the time of his deposition. (RX2. 30). Dr. Bush-Joseph had not reviewed any medical records or physical therapy records since September 16, 2020. (RX2. 39).

Testimony of Dr. Mark Bowen

Dr. Mark Bowen testified by way of evidence deposition on February 10, 2021 and a transcript of his testimony was admitted as Petitioner's Exhibit 2 (PX2). (T. 72).

Dr. Bowen is an orthopedic surgeon and is board certified with the American Board of Orthopedic Surgeries. (PX2. 5). Dr. Bowen does not perform IMEs. (PX2. 6). His practice focuses primarily on sports medicine, particularly arthroscopic treatment of knee and shoulder injuries. (PX2. 6). Sixty percent of his practice involves treatment of knee injuries. (PX2. 6).

Dr. Bowen is a team physician for Respondent and has been a team physician since 1992. (PX2. 6).

Dr. Bowen is familiar with Petitioner and first saw Petitioner in the beginning of November 2019. (PX2. 6-7). He saw Petitioner the day that Petitioner had injured his right knee in a practice. (PX2. 7). Petitioner clinically had an acute rupture of his patella tendon. (PX2. 7). Dr. Bowen recommended repair of the tear, following an MRI that confirmed the injury. (PX2. 7, 8). Dr. Bowen's findings following review of the MRI was that Petitioner had an acute patella rupture. (PX2. 7).

He surgically repaired Petitioner's patella tendon on November 1, 2019. His intraoperative findings were that Petitioner had a traumatic rupture of his patella tendon, partially in the tendon and partially from the pull of the patella or straight off the bone. (PX2. 8).

Following surgery, Petitioner initially did well and progressed appropriately in therapy. Then on December 19, 2019, Petitioner had increased pain and noticed a dramatic increase in knee range of motion between one physical therapy session and the next. (PX2. 8). Petitioner was re-evaluated for a re-rupture, which was confirmed by MRI. (PX2. 8). He recommended that it be re-repaired. (PX2. 9).

Petitioner underwent an exploration of his patella tendon on December 27, 2019. (PX2. 9). At the time of the surgery, Dr. Bowen and his partner noticed that the tissue looked unusually necrotic and unhealthy. (PX2. 9). They were concerned that there was another reason for that other than just that the sutures had pulled through the tissue. (PX2. 9). They took cultures, put a drain in, and decided not to introduce other suture material into the wound at that time. (PX2. 9). Basically, they cleaned everything out aggressively, closed the wound, and waited a couple of weeks for the cultures to return. (PX2. 9). The cultures were negative and the wound was healing fine. (PX2. 9). At that time, they felt safe performing a reconstruction of Petitioner's patella tendon, which occurred on January 13, 2020. (PX2. 10). The reconstruction was performed with augmentation, or added tendon tissue harvested from one of Petitioner's hamstring tendons called the semitendinosus. (PX2. 10-11).

Dr. Bowen did not know what caused the necrosis. (PX2. 10). It was hard to tell if what he found was necrosis, but the tissue looked unhealthy. (PX2. 10). Dr. Bowen asked a partner to scrub in with him because a re-rupture is very unusual. (PX2. 10). Dr. Bowen had never had a re-rupture happen in the patella tendon. (PX2. 10). It was not satisfactory for him and his partner to re-repair the tendon at that time, so they "took a timeout." (PX2. 10).

Petitioner did well postoperatively. (PX2. 11). Petitioner was in a brace and not moving. (PX2. 11). In early February 2020, Petitioner began to experience a little drainage from one spot where staples had been removed, which "got a little bigger and got a little bigger." (PX2. 11). Dr. Bowen tried to treat the site without an additional surgery by putting in a wound vac. (PX2. 11-12). A wound vac is a sterile suction device that is used for soft tissue healing, where the skin is slightly compromised. (PX2. 12). It is commonly used in knee replacements. (PX2. 12). After having used the wound vac for a week or two, it became clear that it was not going to solve the problem. (PX2. 12). On February 3, 2020, Dr. Bowen and a partner washed everything out aggressively, took cultures, removed some tissue, and closed the wound over the drains to try to get it all to close. (PX2. 12). This was a surgical procedure. (PX2. 21). Eventually the wound closed with the help of plastic surgeon, Dr.

Howard. (PX2. 12). Once the wound healed, Dr. Bowen recommended a course of physical therapy. (PX2. 12). The risk of infection had passed and tension could safely be put on the skin again. (PX2. 12). They started Petitioner off slowly in therapy to avoid further problems with the wound. (PX2. 12). The primary goal was to get the wound to heal. (PX2. 12). Once the wound healed, Petitioner could proceed with what he needed to do to get his range of motion, his strength, and function back with the ultimate goal of Petitioner trying to be a professional athlete again. (PX2. 12). Dr. Bowen recommended as much physical therapy as Petitioner needed, and was not prognosticating how many sessions it would require. (PX2. 13).

Dr. Bowen agreed that if his April 3, 2020 note reflected that he believed MMI would be achieved within six months, then that is what he wrote at the time. (PX2. 22). Dr. Bowen, however, explained that would have been a prediction and that MMI is sometimes difficult to prognosticate. (PX2. 22).

Petitioner returned home to Florida in June 2020. (PX2. 13). Petitioner initially did "quite a bit" of his therapy in Chicago. (PX2. 13). When his wound was healed and Dr. Bowen did not "need to keep a close eye on him" it was more convenient for Petitioner to be home and Petitioner had confidence in the rehab facility in Florida. (PX2. 13-14). It is very common for athletes to have personal trainers. (PX2. 36). After Petitioner left for Florida, he and Dr. Bowen spoke reasonably frequently. (PX2. 14). Respondent's physical therapist spoke to and obtained records from the facility in Florida, which he passed onto Dr. Bowen. (PX2. 14, 40). Petitioner's therapist would send video of Petitioner working out to Dr. Bowen as well. (PX2. 14, 40). Dr. Bowen saw multiple videos of Petitioner training. (PX2. 24). Dr. Bowen did not specifically ask for the videos, instead they were of what Petitioner's trainer and therapist felt were representative of what Petitioner was doing and communicating. (PX2. 24). Dr. Bowen was able to closely evaluate and observe Petitioner, and recalled it being a difficult time for people to be in offices. (PX2. 14). Petitioner did not want to be in a doctor's office, which Dr. Bowen understood. (PX2. 14).

Dr. Bowen reviewed Dr. Bush-Joseph's IME report. (PX2. 14). He does not agree with Dr. Bush-Joseph's opinion that Petitioner was at MMI at the time of his examination. Dr. Bowen explained that Dr. Bush-Joseph's concept of MMI differed than his. (PX2. 26). (PX2. 14). Dr. Bowen opined that Petitioner was not at MMI, because Dr. Bowen's interpretation of the meaning of MMI is "that's it, that's as far as [Petitioner] could get, or go, with his recovery." (PX2. 15). Dr. Bowen believed that Petitioner was functional "as a human being" at the time he saw Dr. Bush-Joseph, as Petitioner essentially had most of his range of motion back and had functional strength, but Petitioner still "had quite a ways to go" in terms of Petitioner's ability to perform as a professional athlete. (PX2. 15).

Dr. Bowen testified that his view of MMI for a professional football player is when the player is able to play professional football at a level that is commensurate with his talent. (PX2. 20). Dr. Bowen does not know if Petitioner has talent enough to play professional football, but thinks Petitioner is close to having enough talent to play professional football since Petitioner has been on a couple of practice squads. (PX2. 20). Dr. Bowen thinks that Petitioner is physically getting closer and that Petitioner had sufficient time to prepare for the upcoming football season, which

was three to four months away. (PX2. 20). Dr. Bowen believed Petitioner would be ready to try out for professional football in Spring 2021. (PX2. 18).

On cross-examination, Dr. Bowen opined that maximum medical improvement means "that is the end of expected improvement." (PX2. 24-25). He does not think MMI is an objective finding at all. (PX2. 25). Instead, it is partly objective and also partly subjective based on information and experience. (PX2. 25). Dr. Bowen explained that he has been treating professional athletes for thirty years and there is a certain amount of recovery that is necessary to be an athlete. (PX2. 25). If somebody has reached a level that they cannot improve from, Dr. Bowen thinks that is maximum. (PX2. 25). He did not believe that Petitioner had yet reached his final ability to get better. (PX2. 26). Dr. Bowen reiterated that if a physician is rating a patient at MMI, then that means the patient has reached their final outcome, which sometimes is not normal, and is as good as the patient is going to get. (PX2. 27). Dr. Bowen testified that at the time Petitioner was seen by Dr. Bush-Joseph, Dr. Bowen did not believe that Petitioner had reached the "top improvement" that could be expected from Petitioner. (PX2. 26). Dr. Bowen did not find Respondent's counsel's hypothetical appropriate to this situation. (PX2. 27). Petitioner still was not fully recovered from the injury, he was still recovering, and he had not reached symmetrical strength. (PX2. 28). So, while there was not an actual physical impediment, there is still an expectation of recovery and improvement. (PX2. 28). Dr. Bowen opined that there was still an expectation of improvement and Petitioner was not at MMI. (PX2. 28, 42).

In his October 26, 2020 note, Dr. Bowen opined that Petitioner required additional ongoing therapy and training to restore Petitioner's function and ability to work out for an NFL team successfully, be signed to a contract, and play at a high athletic level required to compete at his physically demanding sport. (PX2. 29). Dr. Bowen explained that in terms of whether there is an objective standard or physical measurement to be able to work out for an NFL team, came down to whether Petitioner had restored enough function. (PX2. 30). Dr. Bowen does not have any ability to judge whether Petitioner will ever sign a contract for an NFL team as he is not a judge of talent. (PX2. 26). This is why he said "work out for," meaning Petitioner being able to get on a field and show that he could play football. (PX2. 30). Petitioner had not yet done the things, such as speed bursts and deceleration, that would be required for him to show up for a workout without being asked why he was there. (PX2. 31).

Dr. Bowen agreed that his October 26, 2020 note was silent as to any restrictions being given to Petitioner. (PX2. 31). Petitioner did not have restrictions at that time. (PX2. 32).

Dr. Bowen explained that "released to play football" means that Petitioner is released to progress in football activities based on safety and not functional ability. (PX2. 32). Because there was an extremely low risk of re-injury, there were not any restrictions. (PX2. 32). The focus, however, was progression. (PX2. 32). Petitioner could not play in a professional football game at that point because he did not have the strength, power, speed, or stamina. (PX2. 32). Dr. Bowen explained that there was "a logical step-wise progression" for a big injury, which he believed Petitioner sustained, to clear a player to play in a professional football game, which involves on-field specific functional drills that are like reenactment of a football game. (PX2. 33-34). Petitioner's subjective reporting of symptoms would be considered. (PX2. 35). If Petitioner

were to say he is ready to go, but then goes out onto the field and does not look ready to go, then they would not let him play. (PX2. 35). Petitioner did not look ready to try out for a team in October 2020. (PX2. 36).

Dr. Bowen last saw Petitioner on February 1, 2021, a week and a half prior to Dr. Bowen's deposition. (PX2. 15). He examined Petitioner at that time and it was his opinion that Petitioner "still had a ways to go" to be at an elite level to play football. (PX2. 16). Petitioner has made regular progress, but "it's just a long uphill climb for him." (PX2. 16).[respondent object under Ghere b/c did not have records after 10/26/20, petitioner also did not have dr. Bowen records after 10/26/20, only athletix records.] At the February 1, 2021 exam, Dr. Bowen measured Petitioner's thigh circumference, and found that Petitioner was two centimeters less on the right involved side compared to the left, which is also what it looks like visually. (PX2. 17). If Petitioner were uninjured, Dr. Bowen would expect the right leg to be symmetrical to the left. (PX2. 17). With two centimeters of quad atrophy, Dr. Bowen would guess that Petitioner was fifteen to twenty percent weaker. (PX2. 41). After seeing videos of Petitioner, there was still "a ways to go [for Petitioner] to be at the level where you would say there's an equivalency with his other leg." (PX2. 41). Dr. Bowen agreed that if Petitioner worked out both legs equally, the "bad leg" would not "catch up" with the "good leg," but that was not what Petitioner was doing and is not the way that you rehab a person. (PX2. 43).

Personal trainers are both at the expense of the athlete and of the athlete's current team. (PX2. 36). If a player is rehabbing a football-related injury, it is Dr. Bowen's understanding that the personal trainer is covered by workers' compensation. (PX2. 37). If the player is training on their own, that is at the player's expense. (PX2. 37). Dr. Bowen was not familiar with Athletix Rehab and Recovery. (PX2. 37). Respondent had physical therapist Tristan Askin, and Petitioner was familiar and comfortable with him. (PX2. 37). It is common for players to work out in other places. (PX2. 38). Dr. Bowen was not sure if Athletix's services went beyond rehab and provided athletic training, injury prevention, or other types of physical readiness. (PX2. 38). Petitioner's treatment with Athletix was appropriate. (PX2. 40).

An athlete would benefit from going to a training facility and training with professionals to get better. (PX2. 38). Most athletes train during the off-season to improve their athletic performance. (PX2. 38). Football is too demanding and competitive of a sport, to not train during the off-season. (PX2. 38).

Dr. Bowen opined that within a reasonable degree of medical certainty, (1) there is a causal connection between the accident of October 24, 2019 and Petitioner's ruptured patella, because Petitioner hurt himself on the football field and tore his patella tendon; (2) that Petitioner's treatment had been reasonable and necessary; (3) his prognosis was "as good as it's ever been in the last year plus," as Petitioner had made excellent progress to the point where Dr. Bowen feels that Petitioner has a legitimate chance at being sufficiently athletic and that he could continue to play football; and (4) that Petitioner has shown sufficient motivation to return to play football. Dr. Bowen opined that in order to be signed by a team, Petitioner has to continue his preparation, including participating in football and position-specific activities. (PX2. 18-20).

Summary of Pre-accident Medical Records

Respondent offered pre-accident records from the Oakland Raiders Organization as Respondent's Exhibit 3, which were admitted.

On July 30, 2017, Petitioner presented to Dr. Warren King with right knee pain complaints. Petitioner reported that while he was engaged in a defensive drill the day prior, he loaded up with another defensive player, he twisted to the right and felt sudden pain in the inferior aspect of his right patella/patellar tendon junction. (RX3. 1). Petitioner was unable to continue with drills. (RX3. 1). He was seen by training staff and was noted to have weakness with knee extension in the flexed position. (RX3. 1). Dr. King diagnosed Petitioner with proximal patellar tendonitis versus partial proximal patellar tendon tear. (RX3. 1). Dr. King recommended an MRI and instructed Petitioner to return for MRI review. (RX3. 1). Dr. King instructed Petitioner begin treatment in the training room on a daily basis and modification of activities based on Petitioner's symptoms. (RX3. 1).

On July 31, 2017, Petitioner underwent an MRI of the right knee at Queen of the Valley Medical Center in Napa, California. (RX3. 2). The MRI showed a partial thickness tear involving more than 50 percent of the proximal patellar tendon at the patellar insertion. (RX3. 2). The superficial tendon fibers were intact, however the deep fibers were torn. (RX3. 2). There was no tendon gap or retraction. (RX3. 2). The menisci, cruciate ligaments, patellar retinacula, and collateral ligaments were intact. (RX3. 2). The osseous structures displayed normal marrow signal intensities. (RX3. 2). The articular cartilage was maintained throughout. (RX3. 2). There was borderline joint effusion. (RX3. 2).

Summary of Medical Records[1]

On November 1, 2019, Petitioner underwent a right knee exploration and primary repair of the patellar tendon with repair of medial and lateral retinaculum. (PX1. 605). The procedure was performed by Dr. Bowen. (PX1. 605). Petitioner's post-operative diagnosis was ruptured patellar tendon of the right knee with prior patellar tendinopathy with extensive tearing of the medial and lateral retinaculum. (PX1. 605).

Petitioner returned to Dr. Bowen on November 11, 2019. (PX1. 65). It was his first post-operative visit. (PX1. 65). Petitioner reported that he was doing well and his pain was under better control, but bothering him at night. (PX1. 65). Dr. Bowen noted some slight discoloration to the lateral side of the wound. (PX1. 65). Approximately half of the staples were removed. (PX1. 65). There was mild serosanguineous drainage that escaped from the inferior portion of the wound. (PX1. 65). It was cleaned with peroxide and Dr. Bowen attempted to express further fluid, but none was obvious. (PX1. 65). He also noted that some of the skin was thin, which might show some area of desquamation. (PX1. 65). There was no blistering, obvious breakdown, or skin loss. (PX1. 65). Petitioner's calf was tender on the lateral side of the incision. (PX1. 65). Petitioner's post-operative status was satisfactory. (PX1. 66). Dr. Bowen noted slight concern about the condition of the skin, which seemed slightly traumatized lateral to the incision. (PX1. 66). The mild amount of serosanguinous fluid was indicative of a possible small seroma under the skin. (PX1. 66). Dr. Bowen was concerned about the possibility of developing a deep infection and discussed the condition of the skin with Petitioner. (PX1. 66). The wound was cleaned, covered in sterile dressing and an Ace bandage, and Petitioner's

knee was put back in a brace. (PX1. 66). Dr. Bowen referred Petitioner to Dr. Howard, a plastic surgeon, who had helped Dr. Bowen in the past with skin conditions and wounds. (PX1. 66). Petitioner was kept on Keflex. (PX1. 66).

Petitioner saw Dr. Howard on November 12, 2019 for a consultation. (PX3. 910). Dr. Howard examined Petitioner's right knee wound and noted .5x2cm desquamation on the peri-incisional skin. (PX3. 910). This was cleaned and the underlying skin flaps were noted to be viable and perfused/bleeding. (PX3. 910). Dr. Howard's impression was skin desquamation, which he suspected was related to injury edema. (PX3.910). The underlying skin appeared viable. (PX3. 910). Silvadine was applied to the wound. (PX3. 911).

On November 14, 2019, Petitioner presented to Dr. Bowen for a post-operative follow-up. (PX1. 60). Petitioner reported that he was doing well, the pain was under good control, and he had minimal complaints. (PX1. 60). On physical examination, Dr. Bowen noted the surgical incision was healing with peri-incisional desquamation erythema without drainage, advancing erythema, streaking, or masses. (PX1. 60). There was no fluctuance. (PX1. 60). The wound was debrided with sterile water, hydrogen peroxide and dead epidermal tissue was debrided. (PX1. 60). Dr. Bowen's assessment was healing surgical wound without dehiscence or infection. (PX1. 60). A wound dressing was planned for the following day and Petitioner was instructed to ambulate with the brace in locked position and use crutches. (PX1. 60).

On November 18, 2019, Petitioner saw Dr. Howard. (PX3. 905). Petitioner reported that he was doing well, using the knee brace, and elevating his leg when sitting. (PX3. 905). The staples were removed without difficulty, the incision was cleaned, and bacitracin, gauze, an ace wrap, and the brace were applied. (PX3. 905). Petitioner was instructed to change the dressings daily until the incision was completely healed, and continue use of the ace wrap and knee brace. (PX3. 905).

Petitioner saw Dr. Bowen on December 19, 2019 for follow-up. (PX1. 54). Dr. Bowen noted that he had a discussion with Petitioner's trainers the day prior regarding Petitioner. (PX1. 54). The trainers reported that Petitioner was observed walking without a brace in physical therapy and around Halas Hall. (PX1. 54). Dr. Bowen noted that the trainers informed him that at his therapy on Monday, Petitioner was able to flex to 95 degrees, had a strong endpoint, and seemed to be doing well. (PX1. 54). They further reported that at his next visit, Petitioner was able to bend to over 110 degrees without a solid stop or new swelling. (PX1. 54). Petitioner denied any traumatic injury and walking without the brace locked. (PX1. 54). Petitioner reported that he had not felt a pop or felt a significant increase in pain. (PX1. 54). Dr. Bowen noted that Petitioner's wound was healing well. (PX1. 54). There was a bit of subcutaneous fluid collection. (PX1. 54). Petitioner was noted to have a decent quad set, was able to straight leg raise with a lag of about ten degrees, and was able to extend his knee from a bent position with a lag of about thirty degrees. (PX1. 54). Dr. Bowen noted that it was difficult to assess defect. (PX1. 54). In his impression, Dr. Bowen noted concern over potential partial re-rupture of the patellar tendon repair. (PX1. 54). Dr. Bowen discussed his concerns with Petitioner and reminded him about having the brace locked. (PX1. 54). An MRI was arranged. (PX1. 54).

Petitioner underwent right knee incision, irrigation, debridement, removal of suture material, and debridement of necrotic tissue on December 27, 2019. (PX1. 463) The procedure was performed by Dr. Bowen and Dr. Garapati. (PX1. 463). The findings post-procedure was poor quality tissue. (PX1. 462). Petitioner's post-operative diagnoses were recurrent right knee patellar tendon rupture and nonviable patellar tendon tissue, rule out deep infection. (PX1. 463). Following the procedure, Petitioner was admitted for routine postoperative care and pain management, and was discharged on December 28, 2019. (PX1. 444). While admitted, Petitioner underwent an infectious disease consult with Dr. Kala Muthiah. (PX1. 444). Dr. Muthia's diagnoses were right knee patellar tendon rupture with debridement on December 27, 2019, with poor quality tissue with necrosis noted, infection to be ruled out; and right patellar tendon rupture with primary repair, also medial alteral retinaculum on November 1, 2019. (PX1. 458). Dr. Muthiah recommended Petitioner continue cefazolin while admitted and linezolid 600mg when discharged.

On January 10, 2020, Petitioner reported to Dr. Bowen. (PX1. 47). Petitioner reported minimal pain, denied calf pain and shortness of breath. (PX1. 47). Dr. Bowen noted Petitioner's wound was healing well and there was no drainage. (PX1. 47). He noted significant quad atrophy. (PX1. 47). There was no calf tenderness. (PX1. 47). Dr. Bowen noted Petitioner was doing well with no signs of fever, chills, sweats, or other constitutional symptoms. (PX1. 47). Dr. Bowen discussed the treatment plan with Petitioner, including the probable need for an autograft hamstring augmentation and use of other biologics. (PX1. 48). He also discussed the opportunity for Petitioner to obtain a second opinion. (PX1. 48). The plan was to proceed with patellar tendon exploration, repair and augmentation as necessary the following Monday. (PX1. 48).

Petitioner underwent a right knee exploration and repair and augmentation of patellar tendon rupture on January 13, 2020. (PX1. 368). The procedure was performed by Dr. Bowen and Dr. Garapati. (PX1. 368). His postoperative diagnosis was recurrent rupture of the right patellar tendon. (PX1. 367).

On January 27, 2020, Dr. Bowen saw Petitioner and noted that Petitioner's wound was healing well. (PX1. 38). There was no swelling. (PX1. 38). Dr. Bowen ranged Petitioner to 30 degrees and noted that Petitioner was able to do a quad set. (PX1. 38). Petitioner's post-op was satisfactory. (PX1. 38). Dr. Bowen instructed Petitioner to continue with brace immobilization and use of crutches. (PX1. 38).

Petitioner was seen by Dr. Bowen on January 28, 2020. (PX1. 32). Dr. Bowen noted that Petitioner contacted him about drainage on the dressing that was placed the day prior. (PX1. 32). Dr. Bowen noted that after removing every other suture, the dressing was changed. (PX1. 32). There were two small holes that appeared be in the area of the lower central and more distal area that were expressing clear serous fluid. (PX1. 32). Dr. Bowen attempted to express areas of tissue that were still tense from prior surgery. (PX1. 33). The draining fluid was clear. (PX1. 33). Dr. Bowen discussed his findings with infectious disease specialist, Dr. Garapati, and Dr. Bashyal, who believed the wound could be managed with a wound VAC. (PX1. 33). The plan was for Petitioner to see Dr. Bashyal the following day for repeat labs and placement of the wound VAC. (PX1. 33). Petitioner did not have a fever, chills, sweats, constitutional symptoms, or an increase in pain. (PX1. 33).

Petitioner saw Dr. Bowen for follow-up on January 30, 2020. (PX1. 26). Petitioner was also seen by Dr. Bashyal, who had seen Petitioner the previous day and placed the wound VAC. (PX1. 26). Petitioner reported that he was doing well. (PX1. 26). Dr. Bowen noted that there continued to be no obvious signs of active infection. (PX1. 26). The wound VAC was removed. (PX1. 27). The upper area of the wound was completely nondraining. (PX1. 27). The lower area continued to weep serosanguineous fluid. (PX1. 27). There was no obvious purulence. (PX1. 27). Dr. Bowen and Dr. Bashyal attempted to express the wound. (PX1. 27). Dr. Bowen bent Petitioner's knee to forty degrees and noted that Petitioner was able to do a good quad set. (PX1. 27). Overall, both doctor's believed that the wound appeared to be improved and felt that they should continue to try to maximize the benefit of the wound VAC. (PX1. 27). At the very least, it appeared that the wound could possibly require some re-exploration, so delayed closure over the area that was draining was likely possible. (PX1. 27). Dr. Bowen discussed same with Petitioner, and also noted that he discussed Petitioner's use of marijuana and risk for wound healing, as Petitioner continued to use marijuana for personal reasons. (PX1. 27).

On February 3, 2020, Petitioner saw Dr. Bowen along with Dr. Bashyal and plastic surgeon, Dr. Akil Seth. (PX1. 19). Petitioner reported he was doing well and was not having any increase in pain. (PX1. 19). Upon examination, Petitioner's wound was healing well. (PX1. 19). There continued to be some exudate from the middle area and more cloudy fluid from the more distal area of the wound. (PX1. 19). Dr. Bowen was able to express some fluid, which signaled that there was active drainage. (PX1. 19). Dr. Bowen's impression was persistent wound drainage with concern for low-grade infection. Dr. Bowen recommended incision, washout, and placement of drain in order to stop the drainage. (PX1. 19). Petitioner was upset and did not want further surgery, however, Dr. Bowen believed that at that time, there was ongoing drainage concern for secondary infection that was necessary. (PX1. 19). An addendum to this record notes that Dr. Bowen spoke to Petitioner's agent on two occasions, to Petitioner on several other occasions, and also with Dr. Andrews, who Petitioner and his agent had contacted for his input and opinion. (PX1. 19). The addendum also notes that all agreed that incision and drainage of the wound should be done at the most convenient opportunity. (PX1. 19). Dr. Bowen discussed this with Petitioner and he was reluctant, but willing to proceed. (PX1. 19). Petitioner was admitted and underwent an incision and drainage and debridement of the right knee wound, and was admitted for treatment. (PX1. 199, 213, 216). Petitioner's post-operative diagnosis was persistent wound drainage, right knee post patellar tendon reconstruction, and rule out wound infection. (PX1. 217).

On February 4, 2020, Petitioner saw Dr. Jennifer Leigh Grant for a consult at the request of Dr. Bowen. (PX1. 207). Dr. Grant noted that Petitioner had chemical dermatitis to betadine subsequent to his November 1, 2020 tendon repair. (PX1. 207). Petitioner then re-ruptured the tendon from suspected overuse and not using the immobilizer. (PX1. 207). Dr. Grant noted that following Petitioner's incision and drainage on December 27, 2020, cultures showed one colony of "S. caprae." Petitioner then had a two-week course of linezolid and had tendon repair on January 13, 2020. (PX1. 207). At that time, cultures were negative. Petitioner was given cephalexin by ortho and the wound seemed to be doing well up until a week prior, when sutures were removed, there was serious drainage, and purulence was noted. (PX1. 207). Petitioner was brought in for a wash-out. Cultures taken showed growing

"S.marcescens. (PX1. 207). Dr. Grant's impression was recurrent patellar tendon rupture status post repair, but with poor wound healing and drainage now with S.marcescens infection status post incision and drainage on February 3, 2020. (PX1. 212). Dr. Grant recommended Petitioner continue ceftazidime and anticipate home IV antibiotics by PICC line. (PX1. 212). Petitioner refused a PICC line, but was amenable to only a midline. (PX1. 214).

While admitted, Petitioner underwent antibiotic infusions for serratia marcescens infection (primary) and prepatellar bursitis of the right knee. (PX1. 180-198).

On February 5, 2020, Petitioner again saw Dr. Grant and reported feeling well and wanted to go home. (PX1. 228). Her impressions remained the same. (PX1. 232). Dr. Grant recommended Petitioner change to ceftriaxone 2g daily for 4 to 6 weeks, infusion center setup, a midline catheter, weekly labs, and a follow-up appointment with Dr. Muthiah in 1 to 3 weeks. (PX1. 232). Petitioner was discharged in good condition on February 5, 2020. (PX1. 199).

Petitioner returned to Dr. Bowen on February 17, 2020. (PX1. 13). Petitioner reported no increase in pain. (PX1. 13). Dr. Bowen noted that the wound continued to improve. (PX1. 13). Petitioner had one stitch that pulled through in the most tenuous area of the skin, which was cut. (PX1. 13). There was a very minor amount serous drainage. (PX1. 13). There was no redness or erythema. (PX1. 13). The drain output measured a couple of milliliters over two days and was pulled. (PX1. 13). Dr. Bowen ranged Petitioner to about 40 degrees from 0 degrees. (PX1. 13). Dr. Bowen noted that Petitioner had a decent quad set. (PX1. 13). Dr. Bowen's impression was that there was satisfactory improvement two weeks post-irrigation and debridement, and placement of wound and drain was still in an area that was the most traumatized skin that is not healed. (PX1. 13). Dr. Howard cleaned the wound with peroxide, and placed Xeroform dressing and gauze to cover the drain site. Dr. Bowen instructed Petitioner to return the following day for a wound check, and for consideration of replacement of the Pico wound VAC. (PX1. 13). Dr. Bowen discussed same with Dr. Bashyal and Dr. Seth, who concurred with this plan. (PX1. 13). Dr. Howard noted Petitioner was going to see infectious diseases the following day. (PX1. 13).

On February 21, 2020, Petitioner returned to Dr. Howard for a wound check. (PX3. 897). Dr. Howard noted that in the central 1/3 of the wound, there was a one centimeter site where the skin had separated. (PX3. 897). There was also a slight amount of loose fibrinous/tendonous tissue in the incision. (PX3. 897). A single suture within some gapping at the inferior aspect was removed and the wound was explored. (PX3. 897). Dr. Howard measured the opening at 1.5x0.6cm with 2cm subcutaneous undermining beneath the skin flaps. (PX3. 897). Sutures for the tendon repair were noted at the base. (PX3. 897). No odor, drainage, or erythema was noted. (PX3. 897). Dr. Howard's impression was very slight dehiscence with exposed tendon repair. (PX3. 897). Dr. Howard did not think that the wound could be managed with local care alone, as undertreatment of potential contamination was a risk and he did not think the existing wound would close on its own secondarily without risk of subsequent contamination. (PX3. 898). He discussed this with Petitioner and Dr. Bowen. (PX3. 898). Dr. Howard recommended aggressive local care over the weekend, which included dilute hypochlorous acid, silvadine, and silvadine BD, or on Monday for delayed primary closure. (PX3. 899). Petitioner was given instructions on how to clean the wound. (PX3. 899).

Petitioner saw Dr. Howard again on March 4, 2020. (PX3. 884). At that time, there was minimal edema, no collection, and no evidence of infection. (PX3. 886). The skin edges of the incision were viable. (PX3. 886). There was minimal serous in the drain, which appeared clear and non-infected. (PX3. 886). The serous was removed. (PX3. 886). Dr. Howard noted that the incision appeared to be healing well. (PX3. 886). Dr. Howard discussed with Petitioner that further revision debridement was essential. (PX3. 886). Petitioner was restricted from knee bending and instructed to return in one week for staple removal and in three weeks for suture removal. (PX3. 886).

On March 10, 2020, Petitioner returned to Dr. Howard. (PX3. 875). There was no collection and minimal edema. (PX3. 876). Dr. Howard noted that the skin edges of the incision were viable and there was no evidence of infection. (PX3. 876). The staples were removed. (PX3. 876). Dr. Howard restricted Petitioner to knee bending and instructed him to return in two weeks for suture removal. (PX3. 877).

Petitioner presented to Dr. Howard on March 23, 2020 for follow-up of a non-healing surgical wound. (PX3. 868). There was no collection and minimal edema. (PX3. 868). Dr. Howard noted that the skin edges of the incision were viable and there was no evidence of infection. (PX3. 868). Dr. Howard noted a very small area, 1mm, of skin separation. (PX3. 869). The sutures were removed. (PX3. 868).

Petitioner saw Dr. Howard on March 25, 2020. (PX3. 857). Dr. Howard noted a very small area, 1mm, of skin separation and exposed tendon with a small amount of undermining at the right knee mid-distal incision. (PX3. 857). Dr. Howard reported that the incision looked very clean, however, he did not think that the incision would heal secondarily in short order. (PX3. 857). Dr. Howard recommended local debridement and closure, which was performed. (PX3. 858). Petitioner's diagnosis was non-healing surgical wound. (PX3. 856).

On April 9, 2020, Petitioner saw Dr. Howard for a post-operative follow-up. (PX3. 843). Dr. Howard noted that Petitioner's right knee incision was healing well. (PX3. 844). The sutures were removed. (PX3. 844). Petitioner reported having a small leak when the knee was flexed. (PX3. 844). Dr. Howard noted Petitioner appeared to have small clear fluid at one of the suture tracts, which was expected since the suture traversed the tendon repair site. (PX3. 844). Dr. Howard instructed Petitioner to refrain from physical therapy for the next ten days. Petitioner was instructed to continue with local care to the site and to return in ten to fourteen days. (PX3. 845).

Petitioner returned to Dr. Howard on April 20, 2020. (PX3. 834). Petitioner presented with a right knee incision with two pinpoint sites of opening to the tendon. (PX3. 834). There was no purulence. (PX3. 834). Dr. Howard recommended in-office exploration. (PX3. 834). The two sites were opened and connected, creating a one centimeter opening. (PX3. 835). The subcutaneous tendon was explored, and Dr. Howard debrided a very minimum amount of non-viable appearing portion of tendon and subcutaneous granulation. (PX3. 835). The wound was washed and soaked with phase 1 for ten minutes. (PX3. 835).

Petitioner saw Dr. Howard on April 21, 2020. (PX3. 824). There was a 1.5 centimeter opening to the tendon. (PX3. 825). There was no purulence or odor. (PX3. 825). The tendon was explored and Dr. Howard debrided a very minimum amount of loose tendon edge. (PX3. 826). The wound was washed and soaked with phase 1 for ten minutes. (PX3. 826).

On April 22, 2020, Petitioner presented to Dr. Howard for follow-up. (PX3. 814). There was a 1.5 centimeter opening to the tendon. (PX3. 815). There was no purulence or odor. (PX3. 815). The tendon was explored and Dr. Howard debrided a very minimum amount of loose tendon edge. (PX3. 816). The wound was washed and soaked with phase 1 for ten minutes. (PX3. 816). Dr. Howard discussed with Petitioner and Dr. Bowen that the wound was ready for closure and options for same. (PX3. 816). Dr. Howard noted that Petitioner was adamant that the procedure be done in-office, which was not Dr. Howard's first choice, but based on the appearance of the wound it was a reasonable second choice. (PX3. 816).

Petitioner saw Dr. Howard on April 23, 2020. (PX3. 806). The wound appeared clean. (PX3. 807). There was no residual FB visible with aggressive local exploration. (PX3. 807). Dr. Howard noted that closure was indicated and appropriate at that time. (PX3. 808). Dr. Howard recommended that this procedure be performed in an operating room setting, as wide local opening and exploration was ideal since there may be residual suture or deep pockets that he cannot see through the existing wound opening. (PX3. 808). Petitioner declined. (PX3. 808). Dr. Howard proceeded with an in-office right knee debridement and closure. (PX3. 808). Surgical resection of the skin edges and sharp, excisional debridement of the wound and non-viable tissue was performed. (PX3. 808). The wound was closed over a drain and dressings were applied. (PX3. 808).

On April 27, 2020, Petitioner followed-up with Dr. Howard. (PX3. 797). Petitioner was doing great. (PX3. 798). There was minimum output in the drain, which was removed. (PX3. 798). There was no collection. (PX3. 798). Petitioner was instructed to return in one week for staples removal and keep the knee immobilized for the following two to three weeks. (PX3. 799).

Petitioner saw Dr. Howard on May 7, 2020. (PX3. 788). Petitioner was doing great. (PX3. 789). There was no collection or leak. (PX3. 789). Petitioner's staples and small incisional edge crust were removed. (PX3. 789-790). Dr. Howard instructed Petitioner keep his knee immobilized for the next two to three weeks and to return for suture removal in two to three weeks. (PX3. 790).

Petitioner returned to Dr. Howard on May 21, 2020. Petitioner reported doing great. (PX3. 780). There was no collection or leak. (PX3. 780). Half of Petitioner's sutures were removed. (PX3. 780). Dr. Howard removed very minimal incisional edge crust. (PX3. 781) Dr. Howard instructed Petitioner to continue with local care, recommended very minimal mobilization starting that week or the following week, and instructed Petitioner to return in one week for the removal of the remaining sutures. (PX3. 781).

On May 28, 2020, Petitioner returned to Dr. Howard. (PX3. 770). Petitioner reported that he was doing great. (PX3. 771). Petitioner was walking and doing some guided therapy. (PX3.

771). There was no collection or leak. (PX3. 771). The remaining sutures were removed. (PX3. 771). Petitioner was instructed to return pro re nata. (PX3. 772).

On June 4, 2020, Petitioner presented to Dr. Bowen via a telehealth appointment. (PX1. 121). Petitioner's physical therapist, Kelly Doyle, was also on the call. (PX1. 122). Petitioner continued to make progress. (PX1. 122). At that time, he had had four physical therapy sessions. (PX1. 122). Petitioner's flexion had progressed from 40 degrees at the first visit, to over 80 degrees. Petitioner had excellent quadriceps set straight leg raise without lag. (PX1. 122). Petitioner could extend his knee to full flexion. The wound appeared healthy and intact. (PX1. 122). Petitioner was walking well in the clinic. (PX1. 122). Dr. Bowen's assessment was that Petitioner had made substantial progress with physical therapy. (PX1. 122). Petitioner was to continue therapy and home exercise and repeat labs. (PX1. 122).

Petitioner participated in a telehealth appointment with Dr. Bowen on July 24, 2020. (PX1. 113). Petitioner had no reports of pain. (PX1. 113). Dr. Bowen's assessment was that Petitioner had excellent recent progress with ROM and strengthening, flexion to 125 degrees, full extension without lag, and demonstrated good leg control with walking lunge and stabilization exercises. (PX1. 113). Petitioner was to continue physical therapy with regular follow-up. (PX1. 113).

Petitioner did not show up for his appointment with Dr. Bowen on October 30, 2020. (PX1. 105).

On November 16, 2020, Petitioner returned to Dr. Bowen for a one-year follow-up. Dr. Bowen notes that Petitioner continued to improve and had made very good progress through hard work on his own and in therapy. (PX1. 100). Dr. Bowen had reviewed videos of Petitioner running on an AlterG treadmill, doing field work, running over small hurdles. (PX1. 100). He also reviewed notes from Petitioner's therapist in Florida. (PX1. 100). Petitioner reported some crepitation and occasional knee discomfort. (PX1. 100). No significant pain was reported. (PX1. 100). Dr. Bowen noted that Petitioner's athletic function continued to be diminished primarily due to weakness power and explosion. (PX1. 100). On exam, there was obvious asymmetry with visible quadriceps atrophy. (PX1. 100). Petitioner had good quadriceps contraction. (PX1. 100). Petitioner had full extension and symmetrical knee flexion. (PX1. 100). No instability was noted. (PX1. 100). Petitioner was able to double leg, get out of a seated position, but struggled with single leg with significant shifting of his center gravity to accomplish same. (PX1. 100). The wound was healed and without any effusion or subcutaneous swelling. (PX1. 100). Dr. Bowen's opinions were (1) Petitioner continued to make progress in the postsurgical condition of his right leg; (2) Petitioner was doing well in terms of his day-to-day normal life; (3) Petitioner was still diminished in terms of progressing to a level of competition at a lead professional level; (4) Petitioner would continue to improve and had a high expectation of ultimate recovery; (5) he believed Petitioner to be sufficiently functional and that Petitioner would impress and pass field testing for employment in "probably somewhere in 3 month range" based on Petitioner's recent progress, but there was some variability to that; and (6) he did not think that Petitioner could play football at that time given the functional deficits that Petitioner continued to have, but he expected those to continue to improve. (PX1. 100). Dr. Bowen explained his impressions to

Petitioner. (PX1. 100). Dr. Bowen noted that Petitioner continued to be very committed to improvement and returning to play professional football. (PX1. 100).

Petitioner returned to Dr. Bowen on February 1, 2021. (PX1. 93). Petitioner reported continued improvement and stated that he was working hard with strengthening, running, and doing starts and stops. (PX1. 94). Petitioner had not done a lot of actual sports specific type drills, but continued to note improvement and was encouraged and felt that he would be ready to do football-type activities in three months. (PX1. 94). On physical examination, Dr. Bowen noted there was still physical asymmetry. (PX1. 94). Petitioner's quadriceps circumference was measured at 2cm and 10cm above the patella. (PX1. 94). There was a 2cm difference at both places, with the left side being greater than the right, which was consistent with what was visible. (PX1. 94). Petitioner had very good quad contractions, with some slight patellofemoral crepitus. (PX1. 94). Dr. Bowen's impression was continued improvement, post right patellar tendon repair and revision. (PX1. 94). Dr. Bowen encouraged Petitioner to continue with his course of strengthening, progression of running and more football specific activities. (PX1. 94). Dr. Bowen believed that Petitioner would continue to improve and expected Petitioner to reach a full ability to perform at high demand level. (PX1. 94). Dr. Bowen agreed that further emphasis on football drills and activities would be appropriate in the near future and three months seemed to be a reasonable prognostication in terms of what Petitioner's timing might be for effective football activities. (PX1. 94).

Petitioner saw Dr. Howard on August 9, 2021 for a follow-up. (PX3. 760). Petitioner reported he was doing well, was back to training, and planned on returning to tryouts in the fall. (PX3. 760). Petitioner had noticed thinning of the right knee incision at two areas proximally and in the middle of the incision. (PX3. 760). The sites had developed some drainage and granulation tissue, which intermittently break open. (PX3. 760). Dr. Howard suspected suture from the tendon repair as the etiology. (PX3. 761). He discussed the option of opening and debriding both sites and exploring for suture. (PX3. 761). Petitioner agreed. (PX3. 761). The sites were debrided. (PX3. 761). Significant granulation tissue was noted at the proximal wound and in the central incision wound, a retained FiberWire suture was identified and removed. (PX3. 761). Petitioner was instructed to return in one to weeks and the potential need for further debridement was discussed. (PX3. 761).

Petitioner participated in 37 sessions of therapy at Athletix Rehab and Recovery, intermittently from September 3, 2020 through January 14, 2021. (PX4).

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). The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. Board of Trustees v. Industrial Commission, 44 Ill. 2d 214 (1969).

Credibility is the quality of a witness which renders his evidence worthy of belief. The arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

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 Com'n., 83 Ill. 2d 213 (1980). The mere existence of testimony does not require its acceptance. Smith v. Industrial Com'n., 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 his testimony might be contradicted by the evidence, or how evident it might be that his story is fabricated afterthought. U.S. Steel v. Industrial Com'n., 44 Ill. 2d 207, 214, 254 N.E. 2d 522 (1969); see also Hansel & Gretel Day Care Center v. Industrial Com'n., 215 Ill. App. 3d 284, 574 N.E. 2d 1244 (1991).

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 him to be a credible witness. Petitioner was calm, well-mannered, composed, spoke clearly, and made normal eye contact with the Arbitrator. Petitioner's answers were forthright and his tone of voice remained consistent. 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.

Regarding Issue (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).

The Arbitrator notes that there is no dispute that Petitioner injured his right knee while at practice for Respondent on October 24, 2019. Dr. Bowen and Dr. Bush-Joseph, Respondent's IME physician, agree that the right knee injury occurred during the course of Petitioner's work or employment.

The Arbitrator notes that Petitioner testified that he suffered a right knee injury on July 30, 2017, while employed with Oakland. Respondent submitted records of one medical visit, which shows that Dr. King diagnosed Petitioner with proximal patellar tendonitis versus partial proximal patellar tendon tear and recommended an MRI. (RX3. 1). The MRI showed a partial thickness tear involving more than 50 percent of the proximal patellar tendon at the patellar insertion. (RX3. 2). Petitioner, however, credibly testified that he returned to his normal routine football activities a few weeks after and had not had any problems or treatment for his right knee since that time. Additionally, there are no records of any right knee treatment between 2017 and October 24, 2019 in the record. While Petitioner suffered right knee tendonitis in 2017, Petitioner was able to return to playing football, having played with Oakland until September 2017, then with Green Bay within 24 hours of being waived by Oakland and until October 5, 2019, and then was signed to Respondent's practice squad on October 15, 2019, after passing a pre-examination/workout. Thus, Petitioner's right knee condition was aggravated as a result of the October 24, 2019 work accident.

The Arbitrator finds the opinions of Dr. Bowen more convincing than those of Dr. Bush Joseph. Dr. Bowen has provided Petitioner with continuous treatment for his condition since October 24, 2019. Dr. Bush Joseph saw and examined Petitioner only once on September 16, 2020, was unaware of Petitioner's condition after September 16, 2020, and had not reviewed any medical or physical therapy records since September 16, 2020. Dr. Bush Joseph did not measure Petitioner's speed or leg strength at his examination of September 16, 2020. Accordingly, the Arbitrator finds that Petitioner was not at MMI on September 16, 2020 and that his current condition of ill-being is causally related to the October 24, 2019 work accident.

Regarding his opinion that Petitioner was at MMI on September 16, 2020, the Arbitrator finds Dr. Bush Joseph's explanations less convincing than those of Dr. Bowen. Dr. Bush Joseph opined that a patient is at maximum medical improvement when supervised medical care is not necessary and when all treatment options have been exhausted. Dr. Bush Joseph testified that Petitioner was at MMI on September 16, 2020 and his opinion was based on his opinion that Petitioner required no further medical management and Petitioner's clearance to participate in NFL professional or private player training. (RX2. 20-21). Petitioner, however, returned to Dr. Bowen on November 16, 2020 and February 1, 2021 and returned to Dr. Howard on August 9, 2021. Notably, Petitioner returned to Dr. Howard on August 9, 2021 because he had noticed thinning of the right knee incision at two areas, which had developed some drainage and granulation tissue and had intermittently broken open. At that time, Dr. Howard debrided the sites, granulation tissue was noted, and a retained suture was removed. The potential need for further debridement was discussed by Dr. Howard with Petitioner. The records clearly demonstrate that Petitioner continued with further medical management following his September 16, 2020 IME with Dr. Bush Joseph and that further supervised medical care was necessary.

On the other hand, Dr. Bowen did not believe Petitioner was at MMI on September 16, 2020. The Arbitrator finds Dr. Bowen's explanation more convincing than that of Dr. Bush-Joseph. Dr. Bowen explained that his view of MMI for a professional football player is when the player is able to play professional football at a level that is commensurate with his talent and that it means that it is the end of expected improvement. (PX2. 24-25). If the athlete has reached a level that they cannot improve from, then the athlete is at MMI. (PX2. 25). Dr. Bowen, however, did not believe Petitioner had reached a level that he could no longer improve from. (PX2. 26). At the time of the IME, Petitioner was not fully recovered from the injury, was still recovering, and had not yet reached symmetrical strength. Overall, there was still an expectation of improvement. (PX2. 28, 42).

Dr. Bowen's opinion is supported by his testimony and treatment records of November 16, 2020 and February 1, 2021. On November 16, 2020, Dr. Bowen noted that Petitioner continued to improve, however, Petitioner's athletic function continued to be diminished. There was still obvious asymmetry with visible quadriceps atrophy. Petitioner struggled with single leg with significant shifting of his center of gravity. At that time, Dr. Bowen opined that Petitioner was doing well in his day-to-day normal life, but was still diminished in terms of progressing to a level of competition for professional football. He did not believe Petitioner could play football at that time, but expected Petitioner to continue to improve. On February 1, 2021, Dr. Bowen noted that Petitioner had not done a lot of actual sports specific drills, but had continued to improve. Physical asymmetry was still noted and there was a 2 cm difference at two points of Petitioner's right quadriceps compared to his left, which was also clearly visible. At that time, Dr. Bowen's impression was continued improvement, post right patellar tendon repair and revision. He encouraged Petitioner to continue with his course of strengthening, progression of running and more football specific activities. Dr. Bowen believed that Petitioner would continue to improve and expected Petitioner to reach a full ability to perform at high demand level. Petitioner could not return to playing professional football, and could participate in football and position-specific training.

The Arbitrator further notes that Dr. Bush Joseph's opinions support those of Dr. Bowen, wherein he opined that if Petitioner had attempted a return to football at the time of the September 16, 2020 IME, Petitioner would be at higher risk of reinjury because of his condition. Further, Dr. Bush-Joseph testified that in his opinion, in order for Petitioner to resume playing for an NFL team, Petitioner would have to improve his strength, performance, endurance, and agility, and would have to hit the measurables that NFL teams demand from players in Petitioner's position, which is similar to the opinions of Dr. Bowen. Dr. Bush Joseph also testified that he trusted Dr. Bowen's judgment and considered him a competent and experienced orthopedic surgeon.

Based on the above, the Arbitrator finds Petitioner has proven by a preponderance of the evidence that his current conditions of ill-being to his right knee are related to his work injury of October 24, 2019. Specifically, the Arbitrator places more weight and credibility upon the treating doctors' opinions, and does not find the opinions of Dr. Bush-Joseph convincing.

Regarding Issue (J), whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds the following:

Having found that Petitioner ‘s current condition of ill-being of his right knee is causally related to his work injury of October 24, 2019, the Arbitrator finds that all medical care provided to Petitioner in order to resolve his right knee issues has been reasonable and necessary. Respondent shall be responsible for the disputed NorthShore Health Systems bill in the amount of $2,147.00. The parties stipulated that Respondent is due a credit of $54,395.42.

Regarding Issue (L), what temporary total disability benefits are in dispute, the Arbitrator finds the following:

Having found that Petitioner suffered injuries to his right knee on October 24, 2019, and that Petitioner was not at MMI on September 16, 2020, the Arbitrator finds by a preponderance of the evidence that Petitioner is entitled to temporary total disability benefits. At issue is the claimed TTD period of September 16, 2020 through September 16, 2021. Given that the records and testimony support Petitioner’s off work status for this time period, the Arbitrator finds that Petitioner has met his burden for TTD from September 16, 2020 through September 16, 2021, and is entitled to TTD benefits for the same time period. The parties stipulated that Respondent is due a credit of $55,511.34.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC016172
Case Name	Steve Miller v. Berry Global Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0343
Number of Pages of Decision	15
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Daniel DeBias
Respondent Attorney	Mark Vizza

DATE FILED: 9/7/2022

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STEVE MILLER,

Petitioner,

vs. NO: 19 WC 16172

BERRY GLOBAL, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent and notice given to all parties, the Commission, after considering all issues and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, with the following change made to the calculation of attorney's fees pursuant to §16 as stated herein.

In pertinent part, §16 of the Illinois Workers' Compensation Act provides:

> "Whenever the Commission shall find that the employer, his or her agent, service company or insurance carrier has been guilty of delay or unfairness towards an employee in the adjustment, settlement or payment of benefits due such employee within the purview of the provisions of paragraph (c) of Section 4 of this Act; or has been guilty of unreasonable or vexatious delay, intentional under-payment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier." 820 ILCS 305/16.

The Act generally limits a claimant's entitlement to attorney's fees to 20% of the amount of compensation recovered and paid unless further fees shall be allowed upon a hearing by the Commission. 820 ILCS 305/16a(B).

Pursuant to the Act, the Commission changes the amount of §16 attorney's fees awarded by basing it only on the compensation awarded, specifically the outstanding TTD benefits and medical expenses, and not on any additional penalties awarded under the Act. The Commission thus finds that Respondent shall pay to Petitioner $4,239.28 in §16 attorney's fees. The

Commission arrived at this amount by taking 20% of $21,196.41, which is the total compensation awarded as calculated by adding $18,019.49 (the total of delayed TTD benefits) to $3,176.92 (the total of unpaid medical bills pursuant to the fee schedule). The award of §19(k) penalties has been removed from the Commission's calculation. The Commission changes the amount of §16 attorney's fees awarded as stated herein, but in all other respects, affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner attorney's fees of $4,239.28, as provided in §16 of the Act. The Commission otherwise affirms and adopts the Decision of the Arbitrator filed on January 24, 2022.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $45,000.00. 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.

September 7, 2022

DLS/met
O- 7/13/22
46

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC016172
Case Name	MILLER, STEVE v. BERRY GLOBAL
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Daniel DeBias
Respondent Attorney	Mark Vizza

DATE FILED: 1/24/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 19, 2022 0.37%

/s/Elaine Llerena, 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

Steve Miller
Employee/Petitioner

v.

Berry Global
Employer/Respondent

Case # **19** WC **016172**

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 **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **July 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 **February 23, 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 $**19,817.42**; the average weekly wage was $**1,372.08**.

On the date of accident, Petitioner was **52** years of age, ***married*** with **1** dependent child.

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

Respondent shall be given a credit of $**18,019.49** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**18,019.49**.

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

ORDER

Respondent shall pay outstanding reasonable and necessary medical expenses of $3,176.92 (shown in PX6a-c), as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits from February 25, 2019 through July 12, 2019, totaling 19-5/7 weeks, at the rate of $914.72 per week as provided in Section 8(b) of the Act. Respondent shall receive a credit for temporary total disability benefits paid.

Respondent shall pay Petitioner permanent partial disability benefits of $813.87 per week for 16.7 weeks, because the injuries sustained caused the 10% loss of the left foot, as provided in Section 8(e)(11) of the Act.

Respondent shall pay to Petitioner penalties of $6,358.92, as provided in Section 16 of the Act; $10,598.21, as provided in Section 19(k) of the Act; and $10,000.00, as provided in Section 19(l) of the Act.

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

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

Elaine Llerena
Signature of Arbitrator

JANUARY 24, 2022

STATEMENT OF FACTS:

Petitioner first started working at for Respondent in November 2018. (T, 8-9) He is a full-time, non-union, maintenance mechanic. *Id.* Petitioner has been a maintenance mechanic for Respondent since he was hired in November 2018, and still holds this same position for the company. (T. 9) He has never held any other job titles for Respondent. *Id.*

Petitioner testified that his job duties were to fix, repair and perform regular maintenance on any production equipment related to manufacturing plastic bags. *Id.* Lifting is also required for his job. *Id.* He is required to lift up to 50 pounds manually. (T. 9-10) For any lifting above 50 pounds, Petitioner is required to use an assistive device. (T. 10) He must lift motors, pipes, tubes, and gears among other things, which are all 50 pounds or less. *Id.* He lifts those items approximately 4 to 10 times per day, depending on what was breaking down that day. *Id.*

Petitioner testified his normal shift was always 12 hours per day. *Id.* Relative to days per week, he would work 4 days one week and 3 days the next week. (T. 10-11)

Petitioner estimated that in a regular workday, he would spend approximately 5 to 8 hours standing. (T. 11) The remainder of the shift, he would spend kneeling or sitting, depending on what he was working on that day. *Id.* Petitioner also testified he crouches daily when he is repairing broken equipment. *Id.* He stated he would get on his knees and even army crawl into equipment. *Id.* He estimated that he spent a couple of hours a day crouching or squatting. (T. 12)

On February 23, 2019, Petitioner was injured while working for Respondent. *Id.* He was working as a maintenance mechanic that day. *Id.* Petitioner testified he "was doing normal routine rounds and went to the extruder area by the grinder and there was plastic all over the ground." *Id.* He slipped on the plastic and slammed his left foot to the ground to catch himself. *Id.* He felt a sharp pain his left foot. *Id.* He went about the rest of the day limping on his left foot. (T. 13) About an hour later, he felt an even sharper pain in the same area of his left foot. *Id.* He worked the rest of his shift though his left foot hurt worse and worse as his shift went on. (T. 14) He did not seek medical treatment that day because he wanted to attempt self-medicating first. *Id.*

Petitioner went to work the next day, February 24, 2019. *Id.* He informed his supervisor Nikolas, and the maintenance manager, Ricky, about the work accident and injury. (T. 15) Ricky told Petitioner he could go home if he felt he needed to. *Id.* Petitioner attempted to work his shift but had to leave halfway through due to the pain in his left foot. (T. 14-15) He testified he could hardly stand because his foot hurt so badly. (T. 15) On February 25, 2019, Petitioner returned to work where he was told to clock in but not start working until the Safety Guy showed up. *Id.* Once the Safety Guy arrived, he drove Petitioner to quick care for medical treatment. (T. 15-16)

On February 25, 2019, Respondent's Safety Guy took Petitioner to Ingalls Occupational Health Clinic. (T. 15-16, PX2) Petitioner was seen by Tibessa Lawrence-Ellis, N.P. (PX2) The record from this date indicated "that on 2/23/19 while at work, [Petitioner] slipped on plastic, resulting in him feeling a little pain to the left foot but then while walking approx. an hour post incident he felt an excruciating pain to the said area." *Id.* Petitioner reported pain in the left foot as aching and moderate. *Id.* He also reported the pain was worse with movement. *Id.* On examination, Petitioner had "pain over the 5th metatarsal on the dorsal surface. Pain to palpation was present over the foot, dorsal surface 9/10 on pain scale. Dorsalis pedis pulse was also present. Swelling was present over the 5th metatarsal, dorsal surface." *Id.* He underwent x-rays and was diagnosed with a non-displaced fracture of his fifth metatarsal bone in his left foot. *Id.* Nurse Practitioner Lawrence-Ellis

recommended he use crutches and a surgical shoe. *Id.* He was instructed not to put any weight on his left foot and was given ibuprofen. *Id.* Petitioner is allergic to most common narcotics. *Id.* He was taken off work and referred to an orthopedic doctor. *Id.*

The x-rays from Ingalls Memorial Hospital dated February 25, 2019, were read by radiologist Michael Wilczynski, who noted a transverse fracture involving the proximal one third of the fifth metatarsal. *Id.*

On February 27, 2019, Petitioner had his initial visit with Dr. Venkat Seshadri, an orthopedic surgeon. (PX3) The record from that date indicated: "2/23/19 slipped on plastic at work, he slammed his foot down to catch him and didn't notice pain for almost an hour but then he felt a break/pop on the side of his foot 11:10am." *Id.* His pain was noted as moderate-to-severe. *Id.* On examination, Dr. Seshadri noted tenderness was mild-moderate at the 5th metatarsal base; mild swelling was also present. *Id.* Dr. Seshadri diagnosed Petitioner with a minimally displaced fracture of the left fifth metatarsal bone, which he described as a "true Jones fracture." *Id.* Dr. Seshadri noted that this fracture carries a higher risk of nonunion, and there was a chance that Petitioner would require surgery. *Id.* At this visit, Dr. Seshadri placed Petitioner's left foot in a short leg cast. *Id.* Dr. Seshadri recommended conservative treatment and non-weight-bearing. *Id.* Petitioner was released return to work with restrictions of seated work only, no squatting, no kneeling, no climbing stairs/ladders, non-weightbearing with the left lower extremity, and must use cast/crutches. *Id.*

Petitioner testified he took Dr. Seshadri's work release form to Respondent where he was told by his employer to stay home until he could work full duty. (T. 26) Petitioner testified that each time his restrictions changed he contacted his employer. (T. 26-27) Each time, Petitioner would hand in documents to the HR department, who told him he could not return to work until he was released to full duty. (T. 27)

Petitioner continued to follow-up with Dr. Seshadri. *Id.* On March 12, 2019, Dr. Seshadri noted tenderness and swelling. *Id.* Dr. Seshadri performed x-rays on this date and stated that the alignment of the left 5th metatarsal fracture was reasonable and acceptable. *Id.* He ordered strict non-weight-bearing. *Id.*

On March 26, 2019, Dr. Seshadri emphasized non-weight-bearing, but noted the fracture alignment looked good. *Id.* Dr. Seshadri continued Petitioner on light duty restrictions. *Id.*

On April 9, 2019, Dr. Seshadri transitioned Petitioner to a CAM boot but still ordered non-weight-bearing on the left lower extremity and continued light duty. *Id.*

On May 7, 2019, Dr. Seshadri noted acceptable alignment, advance to weight-bearing as tolerated, and recommended physical therapy for gait training and weaning off the crutches. *Id.* Petitioner's restrictions were changed to no climbing ladders and no standing greater than 6 hours per shift with allowance for rest breaks. *Id.*

Petitioner was evaluated by Dr. Daniel Troy at the Respondent's request on May 13, 2019. (RX1)[1] Dr. Troy is a board-certified orthopedic surgeon. *Id.* Dr. Troy noted that Petitioner informed him that on February 23, 2019, he stepped on a piece of plastic, lost his footing, and caught himself by slamming his left foot very hard on the ground. *Id.* He had an acute onset of pain, and, after walking on it for the next hour, noticed the pain getting worse. *Id.* Petitioner attempted to work the rest of his shift with difficulty. *Id.* He took photographs of his foot when he got home at the end of the day which showed swelling of the dorsal lateral aspect of his left foot. *Id.* Petitioner attempted to work the next day for half a day. *Id.* He was referred to occupational health where he was placed in a surgical boot. *Id.* On February 27, 2019, Petitioner was evaluated by Dr. Seshadri who placed

[1] Also admitted as PX5.

him in a fiberglass cast and gave Petitioner strict non-weight-bearing restrictions. *Id.* He eventually transitioned to a CAM walker boot. *Id.* At the time of evaluation on May 13, 2019, Petitioner had been ordered to start physical therapy, but had not done so yet. *Id.* His restrictions had also been modified to partial weight-bearing. *Id.* On physical examination, Dr. Troy noted a generally normal examination. *Id.* Regarding the left lower extremity, Dr. Troy noted Petitioner was tender to palpation at the mid aspect. *Id.* Dr. Troy performed radiographs of the left foot which showed "questionable bridging bone of the fracture involving the proximal and third of the diaphysis of the left foot almost reaching the area of a Jones type of fracture." *Id.* Dr. Troy also noted that there appeared to be some bridging callus in the mid diaphyseal region with 1 to 2 millimeters of displacement. *Id.* Dr. Troy noted Petitioner had comorbid conditions of morbid obesity and diabetes, but Petitioner denied any prior injury to the fifth metatarsal. *Id.* Dr. Troy opined "the diagnosis of a fifth metatarsal fracture to the left foot is overall properly stated and supported by objective evidence." *Id.* Regarding causation, Dr. Troy opined the left fifth metatarsal fracture was acute and causally related to Petitioner's work accident of February 23, 2019. *Id.* Dr. Troy opined that all the medical treatment Petitioner had undergone was appropriate and necessary through the date of the examination. *Id.* Regarding future treatment, Dr. Troy noted Petitioner should remain partial weight-bearing for four to six weeks and increase weight-bearing as tolerated. *Id.* He also noted Petitioner was "still at risk of possibly needing to convert to screw fixation of the fracture." *Id.* Dr. Troy noted, regarding work restrictions, that Petitioner should not walk at work. *Id.* He also opined that if the fracture continued to heal, Petitioner would have restrictions through late June or early July 2019. *Id.* He further noted that if the fracture did not heal, Petitioner would need surgery. *Id.* At the time of the exam, Dr. Troy stated Petitioner could not return to work doing his previous job duties. *Id.* Dr. Troy opined Petitioner was not at maximum medical improvement (MMI) and would not be until late June, early July 2019 if the fracture continued to heal. *Id.* If the fracture did not heal, he recommended surgery stating that MMI would be four months after surgery. *Id.* Dr. Troy also opined that the history Petitioner gave regarding the injury explained the two-day gap in treatment. *Id.* Further, Dr. Troy noted the fracture would have been caused by the event in which Petitioner slammed his foot to the floor and over time the symptoms increased to where he could not tolerate the pain or "the fracture completed itself." *Id.*

Petitioner started physical therapy at ATI on May 16, 2019. (PX4) Petitioner presented with decreased range of motion, strength, balance, flexibility, joint mobility, sensation, soft tissue mobility, proprioception and increased pain, fall/safety risk, as well as impairments with gait, lifting mechanics, and weight-bearing. *Id.* He was limited in lifting, carrying, using stairs, pushing/pulling tasks, and sustained standing and walking. *Id.*

On June 4, 2019, Dr. Seshadri noted good fracture alignment, and continued Petitioner on restricted work. (PX3) Petitioner also was instructed to continue physical therapy. *Id.*

Petitioner participated in physical therapy at ATI Physical Therapy from May 16, 2019, through July 1, 2019, completing 21 sessions of therapy in this time frame. (PX4) Petitioner was discharged from physical therapy on July 1, 2019. *Id.* At this final therapy session, Petitioner reported being 80% improvement. *Id.* The therapist noted Petitioner had improved his ability to stand and walk as well as increased his weight-bearing activity with no major increase in discomfort. *Id.* The therapist listed Petitioner's functional limitations as: carrying, lifting from floor, lifting overhead, pulling/pushing tasks, and walking. *Id.* His pain scale decreased to 1/10 at rest and 2/10 with activity. *Id.* The therapist also made an observational comment: mild edema after ambulating in shoe. *Id.* Petitioner testified physical therapy went rather well. (T. 20)

Petitioner followed-up with Dr. Seshadri on July 2, 2019. (PX3) Dr. Seshadri noted acceptable position of the fracture and allowed Petitioner to return to work full duty. *Id.*

Petitioner testified that he returned to work full duty the day after he was released to do so. (T. 27) Petitioner further testified he has not missed any days, since he returned to work, for the left foot. (T. 28)

Petitioner's last visit with Dr. Seshadri was July 31, 2019. Id. Dr. Seshadri noted on physical exam mild to moderate tenderness and mild lateral left foot swelling. *Id.* Dr. Seshadri released Petitioner from care and instructed him to keep up with his home exercise program. *Id.* Petitioner testified he has been keeping up with the home exercise program. (T. 21) Dr. Seshadri also prescribed 800 mg of ibuprofen at this final office visit. *Id.* Petitioner testified that he ran the full course of refills on the 800mg ibuprofen. (T. 21) Dr. Seshadri placed Petitioner at MMI at that last visit. (PX3)

Petitioner confirmed he had not been back to see Dr. Seshadri since his last appointment on July 31, 2019. (T. 27-28) Petitioner testified he had not seen any other doctors to treat his left foot since his last appointment with Dr. Seshadri. (T. 28)

Petitioner testified he does not wear sandals anymore and has trouble wearing house slippers because these types of shoes do not have enough support for his left foot. (T. 21) His left foot aches after about an hour of wearing slip-on shoes. *Id.* He usually wears tie shoes that can "pull in the side" of his foot. (T. 21-22) He takes over-the-counter ibuprofen, as needed, a couple times a week. (T. 22) He has not sought treatment since July 31, 2019 for the left foot. *Id.*

Petitioner is still employed by Respondent as a maintenance mechanic. *Id.* Regarding his job duties, Petitioner testified that his left foot starts aching after a rigorous shift and, a couple times a month, he will have to ice his left foot after a 12-hour shift, especially if he is working a lot of overtime. *Id.* Petitioner stated he still works the same schedule and overtime as needed. (T. 28) Petitioner testified that he has had to work overtime in the last two years. *Id.* However, he only works the minimum amount of overtime required by his employer. (T. 29)

Petitioner testified that, prior to the work accident of February 23, 2019, he did not have any injuries to his left foot. (T. 23) Further, he had never sought medical treatment for the left foot prior to the accident. *Id.* He never missed any work for the left foot prior to the accident. *Id.* Finally, Petitioner never fractured his left foot prior to the work accident. *Id.*

Petitioner testified that, despite being off work following the February 23, 2019 accident, he did not receive any temporary total disability benefits until November 2019. *Id.* He testified that, due to delay in payment of benefits, he had to sell various tools, have a garage sale, and use his federal and state income tax to keep his house. (T. 23-24) He testified he almost lost his house and his wife and child were upset. (T. 24)

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

A 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), 93111.2d 381, 386, 67111.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,* 99111. 2d 174, 182, 457 N.E.2d 1222, 1226, 75111. Dec. 663 (1983). An employee need only prove that some act or phase of his employment was a causative factor of the resulting

injury, the mere fact that he might have suffered the same disease, even if not working, is immaterial. *Twice Over Clean, Inc. v. Indus. Comm'n*, 214 Ill.2d 403, 414, 827 N.E.2d 409, 415 (2005).

The Arbitrator notes that Petitioner testified he did not have any prior injuries or medical treatment relating to his left foot prior to the work accident on February 23, 2019. He also never lost any time from work for his left foot prior to the work accident. Petitioner testified that on the date of accident February 23, 2019, he slipped on plastic and slammed his left foot to the ground to catch himself. He felt a sharp pain his left foot. About an hour later, he felt an even sharper pain in the same area. Petitioner continued to have pain in his foot which prevented him from working full days for the next two days until his employer brought him to Ingalls Occupational Health. At Ingalls, he underwent x-rays and was diagnosed with a fracture of the left fifth metatarsal.

The Arbitrator also notes that Nurse Practitioner Tibessa Lawrence-Ellis stated on February 25, 2019 that Petitioner's left foot condition was causally related to the work accident.

The Arbitrator further notes that Respondent's Section 12 examiner, Dr. Troy, noted "[t]he claimant denies any prior injuries or treatment to his left foot." Further, Dr. Troy opined the two-day gap in treatment was appropriate considering the history provided by Petitioner. Dr. Troy opined "the diagnosis of a fifth metatarsal fracture to the left foot is overall properly stated and supported by objective evidence." Dr. Troy opined the fifth metatarsal fracture was acute and causally related to Petitioner's employment from a direct trauma to the foot on February 23, 2019.

Therefore, based on Petitioner's testimony and the opinions of Nurse Practitioner Tibessa Lawrence-Ellis and Dr. Troy, the Arbitrator finds that Petitioner's current condition of ill being in his left foot is causally related to the work accident of February 23, 2019.

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:

Under Section 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 (1"" Dist., 2011).

The Arbitrator notes that there is no real dispute or controversy to Petitioner's medical treatment in this case. Dr. Troy agreed that all treatment through his exam on May 13, 2019 was reasonable and necessary. Dr. Troy was also aware on May 13, 2019 that Petitioner had an order for physical therapy. While not specifically addressing physical therapy in his examination note, Dr. Troy opined that Petitioner would require additional medical treatment as of May 13, 2019.

The only medical treatment Petitioner underwent after May 13, 2019 was physical therapy and follow-up visits with Dr. Seshadri. Dr. Seshadri ordered physical therapy for gait training and weaning off crutches. Petitioner improved with physical therapy. His self-stated improvement was 80% improvement from physical therapy. Per the ATI Physical Therapy discharge note, Petitioner reduced his pain from 4-8 out of 10 on May 16,

2019 down to 1-2 out of 10 on July 1, 2019. Petitioner also increased his range of motion and strength from physical therapy, as documented in the July 1, 2019 discharge note.

The office visits with Dr. Seshadri after May 13, 2019 consisted of three office visits, on June 4, 2019, July 2, 2019, and July 31, 2019. On June 4, 2019, X-rays were done to evaluate the fracture alignment, therapy was continued, and work status was addressed. On July 2, 2019, additional X-rays were performed, and work status was addressed. On July 31, 2019, Dr. Seshadri performed a final set of X-rays and placed Petitioner at maximum medical improvement.

The Arbitrator finds that the treatment ordered was helpful to Petitioner, and ultimately allowed him to restore most of his function and return to full duty work. Considering that both Dr. Seshadri and Dr. Troy were concerned about Petitioner potentially requiring surgical intervention for the left foot fracture, the fact that he healed with conservative care further indicates that the treatment as ordered was appropriate. Therefore, based on the above, the Arbitrator finds that all of Petitioner's medical treatment through July 31, 2019 was reasonable, necessary, and related to the work accident of February 23, 2019.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Pursuant to Section 8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's (AMA) "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors;

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

With regard to subsection (i) of Section 8.1b(b), the Arbitrator notes that neither party has presented an AMA permanent partial impairment rating or report into evidence. Therefore, this factor carries no weight in the permanency determination.

With regard to subsection (ii) of Section 8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a maintenance mechanic at the time of the accident and

that he is able to return to work in his prior capacity as a result of said injury. The Arbitrator gives this factor substantial weight.

With regard to subsection (iii) of Section 8.1b(b), the Arbitrator notes that Petitioner was 52 years old at the time of the accident. The Arbitrator gives this factor some weight.

With regard to subsection (iv) of Section 8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that no evidence indicating that Petitioner's future earning capacity has been deterred or restricted. The Arbitrator gives this factor great weight.

With regard to subsection (v) of Section 8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner was diagnosed with a minimally displaced fracture of the fifth metatarsal of the left foot. His foot was initially placed in a surgical boot, then transitioned to a cast, and finally transitioned to a CAM boot. He underwent physical therapy from May 16, 2019 through July 2, 2019. Petitioner testified that he currently typically only wears shoes with support for the side of his foot. He cannot wear slippers or sandals for any length of time without his foot aching. Petitioner also testified he still has aching and even swelling at the end of a work shift, especially after working a lot of overtime. At his final office visit with Dr. Seshadri on July 31, 2019, Dr. Seshadri noted on exam that Petitioner had mild to moderate swelling over the 5th metatarsal of the left foot, and mild swelling over the lateral left foot. Petitioner was prescribed 800mg ibuprofen at this visit and testified that he ran the full course of this medication. He continues to take over the counter ibuprofen a few times a week. The Arbitrator gives this factor substantial weight.

Based on the above factors, the record taken as a whole and a review of prior Commission awards with similar injuries similar outcomes, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 10% loss of use of the left foot pursuant to Section 8(e)(11) of the Act.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES BE IMPOSED UPON THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Petitioner filed multiple Petitions for Penalties and Attorney's Fees under Sections 16, 19(k), and 19(l) of the Act. (PX7-PX10). Those petitions were filed in advance of the Arbitration hearing in this case. In these petitions, Petitioner argued that Respondent's nonpayment of temporary total disability benefits and medical benefits was merely frivolous and for the purpose of delay.

In denying compensation, the Respondent must reasonably rely in good faith on a medical opinion. *Continental Distrib. Co. v. Indus. Comm'n*, 98 Ill.2d 407, 456 N.E.2d 847 (1983), *Bd. of Educ. v. Indus. Comm'n*, 93 Ill.2d 20, 442 N.E.2d 883 (1982) ("*Norwood*" case) and *Board of Educ. v. Indus. Comm'n*, 93 Ill.2d 1, 442 N.E.2d 861 (1982) ("*Tully*" case). In *Tully*, the Illinois Supreme Court held that where a delay has occurred in payment of workers' compensation benefits, the employer bears the burden of justifying the delay and the standard we hold him to is one of objective reasonableness in his belief. Thus it is not good enough to merely assert honest belief that the employee's claim is invalid or that his award is not supported by the evidence; the employer's belief is "honest" only if the facts which a reasonable person in the employer's position would have warrant it. 42 N.E.2d at 865. The Court added in *Norwood* that whether an employer's conduct justifies the imposition of penalties is a factual question for the Commission. The employer's conduct is considered in terms of reasonableness. *Id.* at 885. It was further held in *Continental Distributing* that a Respondent's reliance on its own physician's opinion does not establish, by itself, that its challenge to liability was made in good faith. The test is not whether there is some conflict in medical opinion. Rather, it is whether the employer's conduct in relying on the medical opinion to contest liability is reasonable under all the

circumstances presented. 56 N.E.2d at 851. Moreover, the Appellate Court has noted that the burden of proof of the reasonableness of its conduct is upon the employer. *Consol. Freightways, Inc. v. Indus. Comm'n*, 136 Ill.App.3d 630, 483 N.E.2d 652, 654 (1985); *accord*, *Ford Motor Co. v. Indus. Comm'n*, 140 Ill.App.3d, 488 N.E.2d 1296 (1986).

The Arbitrator finds that Respondent did not have a reasonable basis to withhold benefits in this case. At Petitioner's first office visit with Ingalls on February 25, 2019, Nurse Practitioner Tibessa Lawrence-Ellis opined that Petitioner's left foot fracture was causally related to the work accident. Additionally, on May 13, 2019, Dr. Troy opined that Petitioner's left foot condition was causally related to the work accident. Dr. Troy also found on that date that Petitioner had not reached MMI and was unable to return to work, full duty. Despite these findings and opinions, Respondent issued no benefits at that time.

The Parties have stipulated that the period of temporary total disability in this case spans from February 25, 2019 through July 12, 2019, a period of 19-5/7 weeks. (AX1).

Despite this stipulation and the medical opinions noted above, Respondent did not pay any temporary total disability benefits until November 25, 2019, when a check was issued totaling $18,019.49 from ESIS, who is Respondent's workers' compensation insurance carrier. (See PX11).

After receiving Dr. Troy's Section 12 exam report, Petitioner's counsel wrote to the Respondent on July 31, 2019 demanding payment for all the back due temporary total disability benefits and medical bills. (PX12) On September 16, 2019, Petitioner's counsel again demanded back due temporary total disability benefits from Respondent. (PX13) On February 18, 2020, Petitioner's counsel demanded payment of the unpaid medical bills and sent copies of the unpaid bills to Respondent. (PX14) On August 6, 2020, Petitioner's counsel again demanded payment of the unpaid medical bills, again attaching copies of the bills in the correspondence to Respondent. (PX15)

After all of Petitioner's counsel's demands for payment of temporary total disability benefits and medical expenses, temporary total disability benefits were not paid until November 25, 2019, and the medical bills remain unpaid even at the time of the Arbitration hearing on July 22, 2019.

The Arbitrator finds that there was no real controversy in this matter concerning temporary total disability and the medical bills incurred. As such, the Arbitrator finds that Respondent's delay in payment of temporary total disability benefits and lack of payment of medical bills was frivolous, unreasonable and for the purpose of delay.

Petitioner testified at that this delay of benefits impacted him financially, requiring him to sell multiple personal possessions, and use his state and federal income tax return money just to make ends meet. Therefore, the Arbitrator awards Petitioner penalties and attorney's fees under Sections 16, 19(k), and 19(l) of the Act as follows:

Section 19(k) Penalty Calculation

In calculation of Section 19(k) penalties, Respondent delayed payment of $18,019.49 in temporary total disability benefits, which should have been paid in full by July 12, 2019, and was not paid until November 25, 2019. Additionally, the unpaid medical bills at the time of arbitration totaled $3,176.92 with application of the medical fee schedule. The total amount of delayed temporary total disability and unpaid medical bills totals $21,196.41. Accordingly, Respondent shall pay Petitioner penalties under Section 19(k) in the amount of 50% of these benefits, totaling $10,598.21.

Section 19(l) Penalty Calculation
In calculation of Section 19(l) penalties, Respondent's obligation to pay temporary total disability benefits began on February 25, 2019. Their obligation to pay these benefits was solidified on May 13, 2019 when their Section 12 examiner Dr. Troy opined causation for Petitioner's left foot condition, and opined that Petitioner was unable to return to full duty work and was not at maximum medical improvement. Petitioner's counsel demanded payment of all the back-due temporary total disability benefits for the first time on July 31, 2019.

"In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of $30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed $10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay." 820 ILCS 305/19(l).

Respondent's obligation to pay temporary total disability benefits began on February 25, 2019. The benefits were not paid until November 25, 2019. This is a delay of 273 days x $30/day = $8,190.00 in 19(l) penalties for the delay in temporary total disability payment.

Relative to unpaid medical bills, the oldest unpaid medical bill at the time of Arbitration was for date of service March 12, 2019. (See PX6(a)-(c)). Additional medical bills remain unpaid as well. However, from March 12, 2019 through the date of Arbitration July 22, 2021 is a total of 863 days x $30/day $25,890.00 in 19(l) penalties for the nonpayment of medical bills.

The total 19(l) penalties between temporary total disability and medical bills are $34,080.00. However, given that Section 19(l) of the Act caps this penalty at $10,000.00, the Arbitrator awards Petitioner $10,000.00 in Section 19(l) penalties.

Section 16 Attorney Fee Calculation
In calculation of Section 16 attorney's fees:

Total delayed temporary total disability: $18,019.49
Total medical bills unpaid with fee schedule applied: $3,176.92
Total 19(k) penalties awarded: $10,598.21
TOTAL $ $31,794.62
20% of the total equals $6,358.92

Based on the above, Respondent shall pay Petitioner $6,358.92 in Section 16 attorney's fees, $10,598.21 in Section 19(k) penalties, and $10,000.00 in Section 19(l) penalties, totaling $26,957.13.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC003988
Case Name	Vaneisha M Hudson v. Maclellan Integrated Services Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0344
Number of Pages of Decision	11
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Kylee Miller
Respondent Attorney	Ilir Imeri

DATE FILED: 9/7/2022

/s/Stephen Mathis, Commissioner

Signature

22IWCC0344

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

VANEISHA HUDSON,

Petitioner,

vs. NO: 21 WC 003988

MACLELLAN INTEGRATED SERVICES, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, causal connection, temporary total disability, and prospective medical care, and being advised of the facts and law, corrects and 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 further amount of temporary total disability, vocational rehabilitation, and compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec.794 (1980).

The Commission corrects the clerical error in the Findings of Fact part of the Arbitrator's Decision in the final paragraph on page 3 to reflect, consistent with the evidence, that the date of Petitioner's accident was December 23, 2020.

Petitioner was employed by Respondent MacLellan Integrated Services as a janitorial cleaner. On the date of the accident, she was walking in an area that had accumulated water pooled due to spin jet spraying. She was wearing paper booties over her shoes that were required to prevent paint from being tracked around the plant at the time she fell. Petitioner fell directly onto her right shoulder. The issue of accident was stipulated to by Respondent.

Respondent had seasonal lay-offs that followed Petitioner's work accident. Layoffs were common at the Chrysler plant during 2020. Workers would return to work when Chrysler had the materials necessary to reopen the plant. At present Petitioner is working an 8-hour shift on light duty. Her restrictions are being accommodated by a successor company to Respondent that took over in March 2021.She has the same janitorial duties as she had previously for Respondent. The Arbitrator awarded temporary total disability benefits commencing January 25, 2021, through October 1, 2021.

The Commission finds based upon its review of the record that the Arbitrator's award of temporary total disability benefits through October 1, 2021, is not supported by the evidence adduced at hearing. In Petitioner's testimony at pages T20-21 she stated that she "believes she returned to work in September 2021". Petitioner further testified that upon returning to work she "pretty much did what she could." She did not testify to a specific date upon which she returned to work. Furthermore, Petitioner did not enter into evidence any documentary evidence, e.g payroll check stubs, that would support a specific return to work date of October 1, 2021.

Petitioner testified on cross examination at pages T35-36 she that she returned to work in August or the beginning of September 2021. The Commission is unable to identify any evidentiary support either via testimony or document in the record to support the Arbitrator's award of TTD benefits through October 1, 2021. On the basis of the foregoing the Commission hereby modifies the Arbitrator's award of temporary total disability benefits to extend through August 31, 2021, which is consistent with Petitioner's testimony at hearing, and otherwise affirms and adopts with correction the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $442.40 per week for a period of 31 2/7 weeks, commencing January 25, 2021, through August 31, 2021, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 31, 2022, is hereby corrected as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall not be given a credit for TTD.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner reasonable and necessary medical expenses, as provided in Section 8(a) and 8.2 of the Act for Petitioner's necessary medical treatment and authorized appointment with an orthopedic surgeon as recommended by Petitioner's treating physician.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that in no instance shall this award be a bar to subsequent hearing and a determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 7, 2022

SJM/msb
o-07/27/2022
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	21WC003988
Case Name	HUDSON, VANEISHA M v. MACLELLAN INTEGRATED SERVICES, INC.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Ilir Imeri
Respondent Attorney	Kylee Miller

DATE FILED: 1/31/2022

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

/s/ Paul Seal, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF WINNEBAGO)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Vaneisha M. Hudson
Employee/Petitioner

v.

Maclellan Integrated Services, Inc.
Employer/Respondent

Case # **21** WC**003988**

Consolidated cases:

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

FINDINGS

On **12/23/20**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**33,280.00**; the average weekly wage was $**640.00**.

On the date of accident, Petitioner was **39** years of age, ***married*** with **0**2dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

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

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

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $442.40 a week for **35 4/7 weeks**, commencing 1/25/21 through 10/1/21, as provided in Section 8(b) of the Act.

Respondent shall not be given a credit for TTD.

Respondent shall pay reasonable and necessary medical expenses, as provided in Section 8(a) and 8.2 of the Act for Petitioner's necessary medical treatment and authorized appointment with an orthopedic physician as recommended by the petitioner's treater.

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 31, 2022

Signature of Arbitrator

FINDINGS OF FACTS

On December 23, 2020, Petitioner was a 39-year-old single mother of two dependent children. She was employed by Respondent Maclellan Integrated Services, Inc. as a janitorial cleaner. She had been working for Respondent for approximately three and a half years prior to December 2020. Her job duties varied but she would typically clean, sweep, mop, or work in a maintenance booth. On the day of the accident Petitioner was walking to a booth in an area of the facility that frequently pooled water due to spin jet spraying. She was required to wear white booties over her shoes. She was walking across the designated walking area when she slipped and fell on water that had pooled on the ground. She testified that she landed on her right shoulder more towards the back of her shoulder. She also testified that her arm was slightly tucked into her side and slightly outstretched. Her coworker Patrick was behind her but was not able to catch her when she fell but was able to call their supervisor and get help. Designated medical at the factory came to assist and they called an ambulance. Due to internal rules at the factory EMS was not allowed in the building. Instead, Petitioner was taken by her supervisor Keith to the Swedish American emergency room.

On December 23, 2020, Petitioner was examined by Dr. Chuang-Yuan at Swedish American Hospital (PX1/44). She gave a history of her accident in which she stated she slipped on a puddle and landed on her right shoulder and her arm had not been outstretched. She was given an x-ray. The x-ray showed no acute fractures. She was diagnosed with a. contusion of the right shoulder. She was given light duty restrictions. (PX1/46).

Petitioner testified she was off work for the Christmas holiday on December 24 and 25. She was then laid off from December 26, 2020, until January 18, 2021. Petitioner testified layoffs occurred often throughout her employment. Petitioner testified she returned to work on January 18, 2021, performing her customary work duties. Petitioner testified that while she was off work the pain was manageable but upon returning to work the pain increases. On January 25, 2021, Petitioner was examined by her primary care physician Dr. Murtaugh at Crusader Clinic. (PX1/13). She had limited range of motion, could only lift her arm to elbow level, had decreased abduction and flexion, positive impingement sign, and was tender over the AC joint. (*Id.*). She reported she had to hold her arm in a bent position to relieve the pain and the pain would increase when she dangled her arm. (*Id.*). Dr. Murtaugh ordered an MRI.

On January 29, 2021, Petitioner underwent an MRI at Forest City Diagnostic. (PX5). She was diagnosed with severe tendinosis of the supraspinatus with moderate intrasubstance and bursal surface partial thickness tearing that was acute and related to an acute injury. (PX5/1). Mild tendinosis of the infraspinatus with mild intrasubstance tearing that was likely acute and related to an acute injury. (PX5/2). Mild AC joint OA impinging the supraspinatus myotendinous junction that was chronic. And mild fluid in subacromial subdeltoid bursa secondary to the rotator cuff tear. (*Id.*).

On February 8, 2021, Petitioner returned to Dr. Murtaugh who diagnosed a traumatic incomplete tear of the right rotator cuff. She recommended Petitioner be examined by an orthopedic specialist. Petitioner testified she has not received any treatment following this visit. (PX1/9).

On June 22, 2021, Petitioner underwent a Section 12 examination by Dr. Troy Karlsson. (Respondent's Exhibit 1). Dr. Karlson opined Petitioner had suffered a right shoulder contusion on December 23, 2020, that had since resolved. He opined Petitioner's rotator cuff tear was pre-existing. He agreed medical treatment thus far had been reasonable and related to her work injury. He believed she had reached MMI in relation to her work injury.

Petitioner testified that she stopped working for Respondent in March of 2021, when a new contractor took over the factory. She was hired by the new contractor but remained on a lay off until approximately August 2021 when she went back for a few days and was laid off again, then returned in September 2021 and has been working on light duty restrictions in the same position ever sense. She testified that her shoulder continued to be at a 2 or 4 out of 10 on the pain scale when resting but that the pain would increase when working. She stated she continues to ice and rest her arm, but it has not improved since her date of accident.

Petitioner testified that she had previously complained of right shoulder pain in September 2020. The records show that she was treated by Dr. Murtaugh on September 29, 2020, complaining of right shoulder pain that had started two weeks prior. (PX1/21). She reported cleaning and moving a lot of things with the right arm at work. On examination she had some pain with range of motion but no other objective signs. She was diagnosed with a muscle strain of the right arm. (PX1/22). On December 9, 2020, Petitioner was again examined for right shoulder pain. She noted the pain was a 4/5 out of 10 on the pain scale and was an ache that would increase in pain with lifting the arm. On exam she had decreased range of motion. She continued to be diagnosed with a muscle strain of the right arm. (PX1/18). An x-ray taken on December 15, 2020, was normal.

On cross examination Petitioner was asked if she recalled informing Dr. Karlsson she had no prior shoulder problems prior to her date of accident. Petitioner testified she did not recall making that statement and did not dispute that she had previous shoulder symptoms prior to December 23, 2020. Petitioner testified that she had been able to work full duty without restrictions from September 2020 until her work accident of December 23, 2020. Following her work accident, she was only able to work with light duty restrictions, had an increase in pain, and objective examinations showed decreased range of motion and positive testing compared to previous evaluations.

CONCLUSIONS OF LAW

Petitioner bears the burden of proving her case by a preponderance of the evidence. The Petitioner must present evidence that is more credible and convincing to the mind; and, when viewed as a whole, establishes the fact sought to be proved is more probable than not. *In re K.O.,* 336 Ill.App.3d 98, 782 N.E. 2d 835, 270 Ill.Dec. 276 (1st Dist. 2002).

In regard to (K): What temporary benefits are in dispute? the Arbitrator finds:

Petitioner credibly testified that she had been off work from 1/25/21 through early fall, approximately October 2021 due to her work restrictions. During that time Respondent's contact was purchased or changed and Petitioner was hired by a different company. Petitioner testified she was hired by the new company but did not begin working for them as the layoff persisted during that time. In approximately October 2021 Petitioner went back to work for her new employer under light duty restrictions that they have since been able to accommodate. The Arbitrator awards TTD benefits from 1/25/21 through 10/1/21.

In Regards to (F) and (J): Causation and medical, the Arbitrator finds:

The parties agree that Petitioner suffered a slip and fall injury on 12/23/20 while working for Respondent. Petitioner testified that she fell with her arm outstretched slightly and tucked into her body slightly. The emergency room records from 12/23/20 corroborate Petitioner's testimony her arm was not outstretched. She was initially diagnosed with a shoulder contusion. Respondent's examining physician Dr. Karlsson opines Petitioner only suffered this contusion and has since reached MMI.

Petitioner testified she had been experiencing some shoulder pain in September and early December 2020 for which she sought out medical treatment with her primary care provider. During that time, she was never placed on restrictions and was able to work her job full time without a need for accommodations. Petitioner testified that after her slip and fall on 12/23/20 she was not able to work without restrictions. The medical records show significant deterioration of Petitioner's shoulder condition following her accident. On 1/25/21 Dr. Murtaugh noted Petitioner could not hold her arm in a dangling position without pain, had a decrease in range of motion, and had additional positive testing indicative of greater shoulder problems than she had been suffering in September 2020. Dr. Murtagh ordered an MRI that showed severe tendinosis of the supraspinatus with moderate intrasubstance and bursal surface partial thickness tearing that was acute and ***related to an acute injury***. (emphasis added). The radiology physician also agreed the MRI showed damage likely related to an acute injury. Dr. Murtagh recommended Petitioner be examined by an orthopedic physician regarding her shoulder injury. Petitioner testified she has not been to any orthopedic physician because instead she was instructed to attend a Section 12 examination.

Respondent's examining physician Dr. Karlsson has opined Petitioner's mechanism of injury was unlikely to result in a shoulder tear. This opinion is unpersuasive. The bulk of the medical evidence shows Petitioner's pre-existing shoulder condition suffered a deterioration in the form of an incomplete tear of the right rotator cuff. She remains on work restrictions, and she testified that she is still in significant pain when attempting to use her shoulder.

The Arbitrator finds Petitioner suffered an aggravation and acceleration of her pre-existing shoulder condition as a result of the slip and fall on 12/23/21. This slip and fall resulted in a partial tear of the right rotator cuff that persists and requires additional treatment.

In regard to (O): Is Petitioner entitled to prospective medical treatment? The arbitrator finds:

Petitioner's treating physician has recommended Petitioner follow up with an orthopedic physician to determine next treatment steps for her partial rotator cuff tear. To date Petitioner has not attempted any conservative treatment including physical therapy, injections, or other treatment that may cure Petitioner's condition of ill being. Therefore the Arbitrator finds it reasonable an orthopedic examination and treatment be authorized to cure Petitioner's condition of ill being.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	09WC009964
Case Name	Sheree Meyer v. First Student Inc
Consolidated Cases	
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	22IWCC0345
Number of Pages of Decision	21
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Andrew Kriegel
Respondent Attorney	Courtney Cronin

DATE FILED: 9/8/2022

/s/ Deborah Baker, Commissioner

Signature

22IWCC0345

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

SHEREE MEYER,

Petitioner,

vs. NO: 09 WC 09964

FIRST STUDENT, INC. and
GALLAGHER BASSETT SERVICES, INC.,

Respondent.

DECISION AND OPINION ON REVIEW
PURSUANT TO §19(h), §8(a), §19(l), §19(k), & §16 OF THE ACT

This matter comes before the Commission pursuant to Petitioner's: (1) Petition for Review Under §19(h) or §8(a) of the Act ("Petition One"), and (2) Petition for penalties under §19(k) and §19(l) and attorney's fees under §16 of the Act[1] ("Petition Two"). In Petition One, Petitioner alleges a causal connection between her February 19, 2009 accidental work injury and medical treatment, and her increased disability since the Decision of the Arbitrator dated March 12, 2012. A hearing on both petitions was held before Commissioner Deborah J. Baker on December 2, 2021, and a record was made. After reviewing the record in its entirety and being advised of the applicable law, the Commission grants Petition One and finds that Petitioner established a material increase in her condition as required under Section 19(h) of the Act for the reasons set forth below. The Commission also finds causation between Petitioner's incurred medical expenses and the work accident under §8(a) of the Act. The Commission denies Petition Two.

I. FINDINGS OF FACT

[1] The Commission's electronic filing system indicates that Petitioner filed her Petition for Penalties & Fees (Petition Two) on March 8, 2019; however, a copy of Petition Two was not included in the record.

A. Relevant Procedural History and Background

On February 19, 2009, Petitioner was 53 years old and was working as a Bus Aide Monitor for disabled and behaviorally challenged children when she suffered a work-related injury to her low back. Dr. Ronjon Paul found spondylolisthesis and spinal stenosis at L4-5 and spondylosis at L5-S1, and eventually performed an L4-S1 lumbar decompression and transforaminal lumbar fusion on April 5, 2010. Subsequently, Petitioner developed left foot drop and other ongoing left lower extremity symptoms. A June 8, 2010 EMG/NCV of the left leg revealed active radiculopathies involving the left L5 and S1 nerve root levels.

On October 4, 2010, Dr. Geoffrey Dixon performed a laminectomy, facetectomy, and foraminotomy bilaterally with decompression of the cauda equina and nerve roots at L5-S1. After surgery, Petitioner's complaints persisted and she received additional conservative care, including an L5 epidural injection in February 2011 and a lumbar sympathetic block in March 2011.

On March 1, 2011, Petitioner's diagnoses from Dr. Brian A. Couri included low back pain, left L4-5 and right L5 radiculopathies, a disc bulge at L3-4, and complex regional pain syndrome ("CRPS") of the left leg. RX 43, p.2681-2686.

On April 29, 2011, Dr. Frank Clark at Northshore University Health System noted Petitioner's severe left leg weakness and bilateral leg pain, left worse than right, subsequent to the April 2010 fusion. Petitioner completed a New Patient Questionnaire, indicating her pain vacillated between 5-8/10, that everything made her pain worse and that she had difficulty sleeping at night. He noted that conservative care had not been helpful. Placement of a spinal cord stimulator was discussed and Petitioner was allowed to schedule the procedure at her convenience. RX 43, p.2902-2908.

On May 31, 2011, Petitioner underwent a thoracic laminectomy with placement of a dorsal column stimulator. Petitioner initially reported a 25-30 percent improvement with the stimulator, but eventually had it removed.

On October 14, 2011, Dr. Dixon drafted a letter indicating Petitioner was under his care and was totally disabled from work. On November 22, 2011, at Respondent's request, Petitioner underwent a section 12 examination by Dr. Richard Noren who opined that Petitioner was functioning at a sedentary-light duty capacity.

On December 12, 2011, Petitioner followed up with Dr. Couri and still had complaints of low back and bilateral leg pain. At that time she was taking 2,700mg of Neurontin daily, 10mg of Norco five to six times daily, and 750mg of Robaxin three times daily. Petitioner had not yet been released back to work by any treating physician.

During the January 31, 2012, arbitration hearing, Petitioner testified that she did not drive hardly at all anymore, stating that her medication left her almost in a drunken state. She was limited to driving only 1.5 miles to and from her house. Her pain was always between 5-9/10. She testified that every aspect of her life had been affected by her condition. Her husband and daughter were

now helping her with shopping, taking care of her house and household chores. She could still prepare meals and do laundry, but needed help shaving her legs and could not stand long enough to wash and dry her hair due to her back and leg pain.

On March 12, 2012, the Arbitrator issued a decision ("Decision of the Arbitrator") finding that Petitioner had sustained an accident under the meaning of the Illinois Workers' Compensation Act ("the Act"), and that her current condition of ill-being was causally related to the February 19, 2009 work accident. The Arbitrator found that Petitioner was entitled to 113 & 5/7ths weeks of temporary total disability ("TTD") benefits, and also found that Petitioner was permanently and partially disabled to the extent of a 60 percent loss of use of her person as a whole. The Arbitrator found Petitioner failed to prove that she was obviously incapable of employment or that she could not perform any services except those which were so limited in quantity, dependability or quality that there was no reasonably stable market for them. Petitioner was capable of performing sedentary-light employment without seriously endangering her health or life. The Arbitrator found that Petitioner failed to conduct a genuine and diligent search for employment. The Arbitrator also denied Petitioner's request for penalties and fees, finding that Respondent's reliance on the opinions of Dr. Noren, its section 12 examiner, was not unreasonable.

The Decision was subsequently appealed by both parties, and on October 16, 2013, the Commission affirmed the Decision of the Arbitrator ("Decision of the Commission"), with a modification to include an award for maintenance benefits from November 23, 2011 (the date Dr. Noren opined Petitioner could return to work in some capacity) through the January 31, 2012 arbitration date, because as of that date, Petitioner provided no evidence that she had either sought employment after being released to sedentary-light work or had obtained a new medical opinion indicating she was incapable of working.

Petitioner appealed the Decision of the Commission to the Circuit Court of Cook County, and on April 29, 2015, the circuit court issued an opinion and order affirming the Decision of the Commission. Petitioner appealed the circuit court's opinion and order to the Appellate Court of Illinois. On May 14, 2015, Petitioner filed the instant Petition One with the Commission, alleging a material increase in her condition and need for additional medical treatment that was causally related to the February 19, 2009, work accident. On June 24, 2016, the Appellate Court affirmed the circuit court's opinion and order, confirming the Decision of the Commission.

B. Medical History after the January 31, 2012, Arbitration Hearing

i. Medical Treatment & Medical Opinions

On February 15, 2012, Dr. Dixon removed Petitioner's spinal cord stimulator due to device failure. At that time, Petitioner complained of persistent bilateral lower extremity pain and decreased sensation to her medial left foot. On February 18, 2012, Petitioner followed up with Physician's Assistant Eric A. Girardot indicating her back pain was tolerable, however, she still complained of motor issues and numbness and tingling in the left lower extremity, which Mr. Girardot noted as longstanding and unchanged. On February 19, 2012, Petitioner followed up with Dr. Ashley Nicole Hardy, noting she was able to ambulate without the assistance of any devices.

On July 30, 2012, Petitioner presented to Dr. Couri complaining of low back and bilateral leg pain. Pain was noted as 4/10, but Petitioner was medicated at the time. She had previously been prescribed 15mg of MS Contin twice daily and was taking 5 Norco daily. Examination revealed left leg tenderness in L5 dermatomal distribution as well as tenderness to palpation over the spinal cord stimulator scar. Dr. Couri diagnosed Petitioner with a diffuse disc bulge at L3-4 and radiculopathies at L4 & L5 on the left as well as L5 on the right. Dr. Couri increased Petitioner's MS Contin prescription to 30mg twice daily to help her decrease her Norco intake, and continued her prescriptions for Valium 30 mg daily and Gabapentin as directed.

On November 26, 2012, Petitioner returned to Dr. Couri with the same pain complaints. She reported her pain was 8/10 and that she was out of medication but indicated that her medication routine was working pretty well and kept her functional. Petitioner's diagnoses remained the same and she was continued on her medications, which now specifically included 2700mg of Gabapentin daily.

On March 18, 2013, Petitioner again presented to Dr. Couri with the same pain complaints. Petitioner indicated that she had fallen down the stairs on her back the week prior, as her left foot was unable to hold her weight, and she now had lumbar pain radiating to her thoracic spine. She rated her pain as 7-8/10. Dr. Couri stated that if Petitioner's pain was not better by the next week, he would further evaluate her spine. Petitioner's pain medications were continued.

On June 19, 2013 a lumbar MRI revealed evidence of Petitioner's prior laminectomies and spinal fusions from L4-S1 without complication, no subluxation at L3-4, a disc bulge at L2-3 with foraminal stenosis, spinal canal and foraminal narrowing at L3-4 with annular fissure in the midline and nonspecific smooth linear enhancement of the filum terminale.

On July 8, 2013, Petitioner presented with ongoing low back and left leg pain, rated 6/10. She complained of trouble urinating and her left leg was bruising more easily with worsening pain. Dr. Couri increased the MS Contin prescription to 30mg three times daily. He was unsure if Petitioner's urinary issues were related to the medication or her spine. Petitioner was diagnosed with an L3-4 annular tear, L2-3 and L3-4 unstable Grade 1 retrolisthesis, CRPS of the left leg and L3-5 radiculopathies. Petitioner testified that the increase in MS Contin caused side effects such as tiredness, dizziness and urinary leakage. Following a visit to Elmhurst Memorial Emergency Room and a consult at Edward Hospital with a general surgeon for complaints of low back and right buttocks pain, emergency room physicians increased her Norco prescription to 6 times daily.

On October 29, 2013, Dr. Couri administered a bilateral epidural injection at L3. It was noted that Petitioner had an unsteady gait and was using a cane. Dr. Couri diagnosed lumbar radiculopathy and degenerative disc disease at L3-4. On January 13, 2014, Petitioner presented to Dr. Couri for low back pain, indicating the injection did not help at all. On September 8, 2014, Petitioner followed up with Dr. Couri for low back pain radiating to her left knee, and worsening right side pain which had been going on for three months. Dr. Couri noted Petitioner had pain in her low back pain that was constant and radiated to her right thigh, along with right thigh numbness. Her diagnoses were unchanged. A new lumbar MRI was recommended, and her MS Contin prescription was increased to 45mg three times daily. The lumbar MRI was performed on

September 12, 2014 at Advocate Sherman Hospital and revealed a posterior disc protrusion at L3-4 with a slightly narrowed spinal canal. RX 32.

On October 20, 2014, Dr. Couri reviewed the MRI, refilled Petitioner's Norco prescription and recommended an epidural injection. Dr. Couri referred Petitioner to Dr. Dixon for a surgical consultation, but Dr. Dixon did not recommend surgery.

On January 16, 2015, Dr. Couri performed a lumbar injection at L3. Petitioner complained of chronic low back pain and leg numbness. Her diagnoses remained unchanged. On February 5, 2015, Dr. Couri noted that the injection was not helpful, thus she was not a candidate for further injections. Petitioner's Norco prescription was increased to allow 7 tablets daily. Dr. Couri noted CRPS was still present. PX 5. On April 23, 2015, Petitioner complained of worsening low back pain radiating to her left toes and right knee with intermittent numbness. Dr. Couri increased the MS Contin prescription to 60mg twice daily.

On October 27, 2015, Petitioner's left-sided pain continued and her right-sided pain had worsened. Dr. Couri increased the MS Contin prescription to a 60mg tablet twice daily and a 30mg tablet once daily. A new lumbar MRI was recommended. On November 6, 2015, a lumbar MRI revealed no significant changes since the September 2014 MRI. RX 32.

On January 8, 2016, Dr. Couri performed an L3 epidural injection. Petitioner complained of chronic low back pain, mobility issues and numbness in her legs. She was diagnosed with bulging discs at L2-3 and L3-4 and L4-S1 radiculopathies. On January 25, 2016, Petitioner noted 50% relief of right leg pain for 2 weeks after the injection and reported 25% improvement in pain. However, it was noted that she began using a cane all the time when out of her house. Dr. Couri noted he would perform a right L3 epidural injection.

On February 8, 2016, board-certified spine surgeon, Dr. Avi Bernstein, examined Petitioner pursuant to section 12 of the Act at Respondent's request. Dr. Bernstein had previously examined Petitioner on November 3, 2011. In November 2011, Petitioner reported no relief with a spinal cord stimulator. Petitioner walked with a cane on her left side and limped. Her straight leg raise test was negative. Dr. Bernstein reviewed X-rays and opined Petitioner had a stable fusion. During the February 8, 2016 examination, Petitioner indicated she was taking MS Contin, Norco, Gabapentin and Valium. Her right-sided leg pain had worsened. Her straight leg raise test was positive. Dr. Bernstein opined Petitioner gave no effort during the motor examination of her lower extremities, indicating she was manipulating the examination. Dr. Bernstein reviewed MRI films from June 19, 2013 and September 12, 2014 which revealed degeneration at L3-4 without significant herniation or nerve root compression. Dr. Bernstein opined that none of these findings indicated a worsening of Petitioner's condition. He opined the March 18, 2013 X-rays also did not indicate a worsening of Petitioner's condition. He also opined the September 12, 2014 MRI revealed degeneration at L3-4 which was similar to that of Petitioner's 2011 radiological results. Moreover, Dr. Bernstein opined Petitioner had no reported increase in symptoms, indicating to him that Petitioner's condition had not worsened since then. Dr. Bernstein found evidence of symptom magnification of low back and radiating pain due to his examination. RX 10.

On March 15, 2016, Petitioner followed up with Dr. Couri who performed a right L3 injection. On April 29, 2016, Petitioner returned to Dr. Couri and indicated the injection did not help. Dr. Couri noted her pain was constantly 7/10 and she was now more uncomfortable in the morning in her bilateral low back and legs. Her right side was worsening and her medications were not as helpful. Dr. Couri also noted that she had numbness and tingling in her right thigh and that CRPS was still present. PX 5. On July 26, 2016, Petitioner underwent a lumbar MRI which revealed post-operative changes of L4-S1 spinal fusion with associated laminectomy changes, multilevel spondylosis was grossly stable, mild to moderate central canal stenosis and mild bilateral neural foraminal narrowing at L3-4.

On August 3, 2016, Petitioner followed up with Dr. Couri with complaints of constant right leg pain that was worse at the end of the day and rated between 6-9/10. Petitioner also reported numbness in her right thigh. Dr. Couri increased Petitioner's MS Contin prescription to 60mg three times daily and restricted her from working and driving due to her medication. PX 5.

On August 4, 2016, Respondent's section 12 examining physician, Dr. Bernstein, examined Petitioner again, noting improvement in her condition as she was able to get on her heels and toes. He reiterated his prior opinions regarding causal connection and also opined no further medical care was necessary. RX 10.

On September 8, 2016, Dr. Richard Noren, who is board-certified in anesthesia and pain management, examined Petitioner pursuant to section 12 of the Act at Respondent's request. He had previously evaluated Petitioner on November 22, 2011. In November 2011, Petitioner complained of low back pain radiating to her bilateral toes, left greater than right. She could not sit for more than half an hour and always used a cane when outside of the house. By September 8, 2016, Dr. Noren's evaluation of Petitioner was unchanged. Her pain complaints were similar and her activity had not changed. She could sit for several hours in a recliner, stand for 10 minutes and walk for 20 minutes. His examination found symptom magnification, noting that Petitioner described her limitations to him in a similar manner than she did in November 2011, including her ability to walk, stand, sit, drive, and perform daily grooming activities, which did not coincide with an increased disability. Her motor strength was 0, which is slightly above paralysis, despite her ability to ambulate around the room. He diagnosed Petitioner with post-laminectomy pain syndrome. He testified via deposition on November 8, 2018 that Petitioner should be weaned off medication and that implantation of a spinal cord stimulator would not be proper since the first implantation failed. RX 11, RX 12.

On November 23, 2016, Dr. Bernstein reviewed the July 26, 2016 MRI films, finding degeneration and bulging from L2-4. He opined that any stress from an L4-S1 fusion would manifest at the adjacent level, L3-4, rather than L2-3. He ultimately opined Petitioner was capable of sedentary duty and could find a job if motivated. RX 10.

On December 23, 2016, Petitioner underwent an EMG with Dr. Couri. It revealed right S1 chronic radiculopathy, evidence of right chronic L3-4 radiculopathy and left chronic L4 & L5 radiculopathies. PX 5. On May 10, 2017, Petitioner followed up with Dr. Couri and indicated that the October 2016 injection did not help her back pain, which radiated down to both feet, left worse than right, and her right-sided pain continued to increase. Dr. Couri advised Petitioner to follow

up with Dr. Dixon for a surgical opinion as she may be a candidate for a dorsal column stimulator on the left side. Dr. Couri increased the MS Contin prescription to 90mg three times daily. PX 5.

On October 9, 2017, Petitioner followed up with Dr. Couri with complaints of worsening low back pain radiating down her right thigh to her leg along with numbness and tingling in the right hip and thigh. Petitioner also reported weakness in both legs and losing her balance more often. Petitioner's CRPS was still present. Dr. Couri recommended a new lumbar MRI. PX 5. On October 16, 2017, a lumbar MRI at Centegra revealed L2-4 stenosis, herniation, and bilateral facet arthropathy. PX 7.

On February 9, 2018, Petitioner complained of worsening pain since her last visit. Dr. Couri opined her most recent MRI revealed a new herniation at L2-3. Petitioner reported that medications no longer helped, she experienced depression and thoughts of no longer wanting to live, and she did not leave her house anymore. Dr. Couri noted that Petitioner appeared to be in severe distress and that Petitioner would be admitted to Linden Oaks Hospital for detoxification off medication and possible treatment for depression. PX 5. On March 16, 2018, Dr. Couri performed L1-3 medial branch blocks. PX 5.

On June 7, 2018, Dr. Tibor Boco at Elmhurst Hospital examined Petitioner to determine if surgery was necessary. Petitioner complained of weakness, paresthesia, and difficulty walking. Petitioner's physical examination revealed tenderness to palpation and she was unable to squat due to her knees. Heel and toe walking were normal and she did not use a cane in the office. Dr. Boco reviewed the October 16, 2017 lumbar MRI and found stenosis from L2-4. He diagnosed post-laminectomy syndrome and lumbar stenosis. He declined to recommend surgery but ordered an updated MRI. RX 30.

On June 13, 2018, Dr. Couri noted that Petitioner's constant back pain remained, and he recommended a new MRI. In an effort to wean off medication, her MS Contin prescription was decreased to 90mg twice daily and 60mg once. PX 5. On June 29, 2018, a lumbar MRI revealed disc bulges from L2-4 and multilevel degenerative changes including L2-4 foraminal stenosis, and L5-S1 foraminal stenosis. RX 30.

On July 3, 3018, Dr. Boco examined Petitioner, noting an inability to squat due to her knees, lumbar tenderness to palpation, weakness in her lower extremities, and slow ambulation. Dr. Boco reviewed the June 29, 2018 MRI and did not find any significant radiographic neurologic compression. He recommended aqua therapy and a continuation of epidural injections. He opined Petitioner was not a surgical candidate. RX 30.

On July 25, 2018, Petitioner indicated to Dr. Couri that her pain increased when her medication prescriptions decreased. Options were discussed and Petitioner was contemplating seeing a spine surgeon instead of having a spinal cord stimulator implanted. Weaning was put on hold since it was not working. Her prescriptions were continued. Dr. Couri noted that epidural injections had not worked and that the June 29, 2018 MRI showed worsening, but surgery was not necessary. Dr. Couri opined that the MRI revealed L2-4 unstable grade 1 retrolisthesis, CRPS, L4-S1 radiculopathies, L2-3 stenosis, herniated disc and disc bulge, and L3-4 stenosis and disc bulge. PX 5.

On October 17, 2018, Petitioner followed up with Dr. Couri and stated she was getting worse, and her pain was limiting her activities and causing depression. Petitioner also reported that her pain radiated to her right thigh and left lower leg. Dr. Couri continued her prescriptions for pain medications and recommended bilateral L3 epidural injections. PX 5.

On January 16, 2019, Dr. Couri placed Petitioner back on MS Contin of 90mg three times daily. It was noted that Petitioner still needed to wean down and possibly wean off medication in the future. On April 9, 2019, Petitioner followed up with Dr. Couri and declined the spinal cord stimulator, indicating that her pain had stabilized. She decided to postpone the right-sided epidural injections and continue current medications. PX 5. Petitioner testified that she was wary of having another spinal cord stimulator implanted, stating she has had 4 back surgeries since 2010 and did not want to go through it anymore, especially when there was no guarantee it would work. PX 5. On November 22, 2019, Dr. Couri performed sacroiliac injections. RX 33.

ii. Testimony at the December 2, 2021 Hearing on Petition One

At the December 2, 2021 Commission hearing on Petitioner's Petition One, Petitioner's husband, Kenneth Meyer, testified that he has lived with Petitioner for the entirety of the 48 years they have been married. He observed Petitioner from her 2009 work accident through the 2012 Arbitration Hearing, and also observed her after that hearing. Petitioner was in constant pain after the hearing and was unable to do the things she used to do. Petitioner could no longer cook, drive, or do laundry. These limitations did not begin until after the spinal cord stimulator was removed on February 15, 2012. Prior to 2012, Mr. Meyer testified that Petitioner was able to drive herself to her medical appointments. He testified that her pain was "horrible" prior to 2012 but became "unbearable" after the spinal cord stimulator was removed. Mr. Meyer owned his own construction company, which required him to travel from Wisconsin to Indiana, but cut back on work beginning in 2012 until finally choosing to retire in 2015 in order to be closer to Petitioner, as she was unable to take care of herself. Since retiring, Mr. Meyer does all of the cooking and laundry. Previously, Mr. Meyer never cooked and only helped out with laundry every once in a while. Mr. Meyer described a typical day as follows: They wake up at 5:00 a.m., when Petitioner's pain is "horrible." She sleeps with one leg elevated by a pillow. Mr. Meyer follows Petitioner to the bathroom to make sure she does not fall before assisting her with her bath. He then follows her back to bed. He then makes coffee and walks his neighbor's dog. At 7:00 a.m. he makes breakfast and gets Petitioner up. While eating breakfast, Petitioner is always adjusting to get comfortable in her seat. After that they do not do much, and Petitioner does not like entertaining anymore. They used to travel, but now don't go anywhere. Petitioner sits on the couch most of the day and Mr. Meyer retrieves dishware from the cabinets for Petitioner, as she does not have good balance.

Petitioner also testified at the December 2, 2021 Commission hearing. She testified to her ongoing and increasing issues. Specifically, Petitioner testified that her balance and feeling in her left leg and foot had worsened since 2012. Her left leg had given out 25-30 times since 2012. She was using her cane more often, as her right leg was no longer supporting her really well. Regarding her medication increases, Petitioner testified that the increase in MS Contin caused side effects such as tiredness, dizziness, and urinary leakage. She testified her pain was rated 8 out of 10, and

decreased to 6 out of 10 with medication, at best. Petitioner also testified that since 2012, her sexual intimacy with her husband has dwindled: "we have no sexual life really at all anymore." She testified that she used to be happy-go-lucky, but no longer is. Her husband is wonderful to her, but she has turned into a different person, and does not like it.

At the time of the December 2, 2021 Commission hearing, Petitioner was 66 years old. She had not worked since her 2009 work accident and continued having problems with her back and bilateral legs. She had been restricted from all work by her treating physicians since 2009.

II. CONCLUSIONS OF LAW

Section 19(h) of the Act states in relevant part:

> [A]s to accidents occurring subsequent to July 1, 1955, which are covered by any agreement or award under this Act providing for compensation in installments made as a result of such accident, such agreement or award may at any time within 30 months… after such agreement or award be reviewed by the Commission at the request of either the employer or the employee on the ground that the disability of the employee has subsequently recurred, increased, diminished or ended.

In *Gay v. Indus. Comm'n*, 178 Ill. App. 3d 129, 132 (4th Dist. 1989), the Illinois Supreme Court explained that:

> The purpose of a proceeding under section 19(h) is to determine if a petitioner's disability has "recurred, increased, diminished or ended" since the time of the original decision of the Industrial Commission. (Ill. Rev. Stat. 1985, ch. 48, par. 138.19(h); *Howard v. Indus. Comm'n,* 89 Ill. 2d 428 (1982). To warrant a change in benefits, the change in a petitioner's disability must be material. *United States Steel Corp. v. Indus. Comm'n,* 133 Ill. App. 3d 811 (1985). In reviewing a section 19(h) petition, the evidence presented in the original proceeding must be considered to determine if the petitioner's position has changed materially since the time of the Industrial Commission's first decision. *Howard v. Indus. Comm'n*, 89 Ill. 2d 428 (1982). Whether there has been a material change in a petitioner's disability is an issue of fact, and the Industrial Commission's determination will not be overturned unless it is contrary to the manifest weight of the evidence. *Id.*; *United States Steel Corp. v. Indus. Comm'n*, 133 Ill. App. 3d 811 (1985). (Citations Edited and page numbers omitted).

i. Material Increase in Disability Pursuant to §19(h)

Based on the record as a whole, the Commission finds that Petitioner proved by a preponderance of the evidence that her condition has changed materially since the March 12, 2012

Decision of the Arbitrator, which documented Petitioner's condition at the time of the January 31, 2012 arbitration hearing. The Commission finds further that Petitioner is now suffering from an increased disability which is still causally related to her February 19, 2009 injury. Accordingly, the Commission grants Petitioner's §19(h) and §8(a) Petition.

Petitioner has undergone several treatments and procedures since the Decision of the Arbitrator, including the removal of a spinal cord stimulator due to device failure, and numerous epidural injections and branch blocks. Since the removal of the spinal cord stimulator, Petitioner has routinely complained of increasing low back pain and radicular symptoms, leading to several increases in her pain medication prescriptions. The record shows that Dr. Couri increased Petitioner's pain medication on at least 8 separate occasions between July 30, 2012 and February 8, 2018 to address Petitioner's increased pain. On August 3, 2016, Dr. Couri restricted Petitioner from working and driving due to the increase in her pain medication and on February 9, 2018, Dr. Couri noted Petitioner's feelings of depression due to pain, and recommended Petitioner be admitted to Linden Oaks Hospital for medication detoxification and possible treatment for depression. These findings corroborate testimony from Petitioner and her husband detailing her physical deterioration subsequent to the February 15, 2012 removal of her spinal cord stimulator. Petitioner's husband testified that she was now unable to do the things she used to do, such as drive, prepare meals, and do laundry. At the Petition 1 hearing, Petitioner's husband testified that Petitioner used to drive herself to medical appointments prior to 2012, but no longer did so after the February 2012 removal of her spinal cord stimulator. The Commission finds that Petitioner's complete restriction from driving and the amount of pain medication required to alleviate her consistent pain, as she has no other options to alleviate her pain, support her claim for additional benefits. The Commission finds Petitioner's disability has increased under section 19(h) of the Act.

ii. Permanent Disability

In her brief, Petitioner argues that based on her testimony and new diagnostic findings, she has proven she is permanently and totally disabled under the Act, beginning February 15, 2012, the date the spinal cord stimulator was removed. In *Cece Corp. v. Industrial Commission*, the supreme court held:

> [A]n employee is totally and permanently disabled when he 'is unable to make some contribution to the workforce sufficient to justify the payment of wages.' The claimant need not, however, be reduced to total physical incapacity before a permanent total disability award may be granted. Rather, a person is totally disabled when he is incapable of performing services except those for which there is no reasonably stable market. Conversely, an employee is not entitled to total and permanent disability compensation if he is qualified for and capable of obtaining gainful employment without serious risk to his health or life. In determining a claimant's employment potential, his age, training, education, and experience should be taken into account. 95 Ill. 2d 278, 286-87 (1983).

Under *A.T.M.C. of Illinois, Inc. v. Industrial Commission*, 77 Ill. 2d 482, 489 (1979), if the claimant's disability is limited in nature so that he is not obviously unemployable, or if there is no

medical evidence to support a claim of total disability, the burden is upon the claimant to establish the unavailability of employment to a person in his circumstances. However, once the employee has initially established that he falls in what has been termed the 'odd-lot' category (one who-though not altogether incapacitated for work, is so handicapped that he will not be employed regularly in any well-known branch of the labor market (2 A Larson, Workmen's Compensation sec. 57.51, at 10—164.24 (1980)), then the burden shifts to the employer to show that some kind of suitable work is regularly and continuously available to the claimant. *Id* at 10—164..97. *Valley Mould & Iron Co. v. Industrial Commission*, 84 Ill. 2d 538, 546-47 (1981). (Emphasis omitted).

Here, the Commission previously found Petitioner was capable of sedentary employment without endangering her health. This was supported by the opinions of Deanna Bailye, a Vocational Rehabilitation Counselor who testified that Petitioner possessed transferable skills allowing her a stable labor market within which to seek employment, and the medical opinions of Dr. Bernstein and Dr. Noren. The Commission's ruling was upheld by the appellate court. Nothing in the record indicates or suggests that any of these opinions or facts have changed for Petitioner. Further, there is no new credible evidence, such as an expert opinion from a treating physician, finding Petitioner is incapable of any work whatsoever. Accordingly, the Commission finds no basis on which to find Petitioner has proven permanent and total disablement.

However, due to the material increase in Petitioner's disability as noted above, the Commission finds it appropriate to increase Petitioner's permanent partial disability award. The Commission finds that the testimony and evidence in the record, especially the fact that Dr. Couri has restricted Petitioner from driving completely, supports a 5% increase in Petitioner's loss of use of her person-as-a-whole. The Commission declines to award temporary total disability benefits as requested by Petitioner at the Commission hearing because the Commission has previously found Petitioner is permanently disabled. See *Briggs Manufacturing Co. v. Industrial Com.*, 212 Ill. App. 3d 318, 320 (3rd Dist. 1989).

iii. Incurred Medical Expenses Pursuant to §8(a)

Section 8(a) of the Act states in relevant part:

> The employer shall provide and pay the negotiated rate, if applicable, or the lesser of the health care provider's actual charges or according to a fee schedule, subject to Section 8.2, in effect at the time the service was rendered for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury . . . .
> 820 ILCS 305/8(a) (West 2008).

An employer's liability under this section of the Act is continuous so long as the medical services are required to relieve the injured employee from the effects of the injury. *Second Judicial District Elmhurst Memorial Hospital v. Industrial Comm'n*, 323 Ill. App. 3d 758, 764 (2d Dist. 2001). However, the employee is only entitled to recover for those medical expenses which are reasonable and causally related to his industrial accident. *Id.* The claimant has the burden of proving that the medical services were necessary, and that the expenses incurred were

reasonable. *City of Chicago v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 258, 267 (1st Dist. 2011).

Here, as the Commission has found a material increase in Petitioner's disability, it also finds that all subsequent treatment related to her lower back and lumbar spine condition was reasonable and necessary to relieve the effects of that condition. The Commission notes that Petitioner's continued treatment, including pain medications, injections, and diagnostic testing, were required to relieve her from the effects of her injury as much as possible. There is nothing in the Act requiring that medical treatment completely cure a condition in order for it to be reasonable or necessary. Based on Petitioner's testimony and the medical records which reflect that her treatment after the January 31, 2012 arbitration hearing helped to relieve some of her pain and symptoms, the Commission finds the medical treatment was causally related to the February 19, 2009 work accident and was reasonable and necessary. The Commission awards the medical bills submitted into evidence, which are as follows:

▪NorthShore University Health Systems Skokie Hospital	$28,421.69
▪NorthShore University Health Systems Anesthesia	$1,500.00
▪NorthShore University Health Systems Professional Charges	$5,962.00
▪Edward Hospital	$17,200.00
▪Elmhurst Memorial Primary Care Associates/ Edward Health Ventures	$22,631.00
▪Elmhurst Outpatient Surgery Center	$17,728.26
▪Advocate Sherman Hospital	$4,508.60
▪Elmhurst Anesthesiologist	$1,080.00
▪Metropolitan Institute of Pain	$364.00
▪McHenry Radiologists & Imaging Assoc.	$450.00
▪Prescriptions	$18,913.42

iv. Penalties and Fees Pursuant to §19(l), §19(k), and §16

At the December 2, 2021, hearing before the Commission, Petitioner claimed entitlement to penalties and attorney's fees for Respondent's continued refusal to pay the medical bills Petitioner incurred subsequent to the January 31, 2012, arbitration hearing. T. 5. However, Petitioner failed to put forth arguments to support her claim for penalties and fees.

In its post-hearing brief, Respondent argues it has paid per the fee schedule all bills which pre-date the arbitration hearing (RX 38), and also represents that all post-arbitration bills have been resolved. Based on the record, it appears that a good portion of Petitioner's bills were submitted to (and paid by) Medicare rather than Respondent, and RX 15 through RX 36 contain a myriad of records showing account balances of $0.00. Further, the Commission finds that for any post-arbitration hearing bills that were denied, it was not unreasonable, vexatious, or bad faith for Respondent to rely on the opinions of its section 12 examining physicians, even if the Commission ultimately disagrees with their opinions. The Commission thus declines to award penalties

pursuant to §19(l) and §19(k), and attorney's fees pursuant to §16.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner's 19(h) & 8(a) Petition ("Petition One") is hereby granted as stated above.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner has not proven permanent and total disability by a preponderance of evidence.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner's Penalties & Fees Petition ("Petition Two") is denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent is liable for all past reasonable and necessary medical care incurred in relation to Petitioner's ongoing lumbar spine condition as provided in Section 8(a) of the Act, and bills are awarded as listed above in the section regarding Incurred Medical Expenses.

IT IS FURTHER ORDERED BY THE COMMISISON that Respondent pay to Petitioner the sum of $237.67 per week for a period of 25 weeks, as provided in §8(d)(2) of the Act, for the reason that the material increase in disability sustained caused an additional 5% loss of use of her 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 removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $40,000.00. 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.

September 8, 2022
O: 7/13/22
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
NOTICE OF ARBITRATOR DECISION

MEYER, SHEREE
Employee/Petitioner

Case# 09WC009964

FIRST STUDENT INC & GALLAGHER BASSETT SERVICES INC
Employer/Respondent

On 3/12/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

1876 PAUL W GRAUER & ASSOC
EDWARD ADAM CZAPLA
1300 WOODFIELD RD SUITE 205
SCHAUMBURG , IL 60173

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

C00159

RESPONDENT'S EXHIBIT 39

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

STATE OF ILLINOIS)
)
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

SHEREE MEYER
Employee/Petitioner

Case #09 WC 9964

v.

FIRST STUDENT, INC. & GALLAGHER BASSETT SERVICES, INC.,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Robert Williams, arbitrator of the Workers' Compensation Commission, in the city of Chicago, on January 31, 2012. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues, and attaches those findings to this document.

ISSUES:

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

B. ☐ Was there an employee-employer relationship?

C. ☐ Did an accident occur that arose out of and in the course of the petitioner's employment by the respondent?

D. ☐ What was the date of the accident?

E. ☐ Was timely notice of the accident given to the respondent?

F. ☒ Is the petitioner's present condition of ill-being causally related to the injury?

G. ☐ What were the petitioner's earnings?

H. ☐ What was the petitioner's age at the time of the accident?

C00160

I. ☐ What was the petitioner's marital status at the time of the accident?

J. ☒ Were the medical services that were provided to petitioner reasonable and necessary?

K. ☒ What temporary benefits are due: ☐ TPD ☒ Maintenance ☒ TTD?

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

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

N. ☒ Is the respondent due any credit?

O. ☐ Prospective medical care?

FINDINGS

- Section 19(b) decisions were filed on August 7, 2009, and October 1, 2009, pursuant to hearings on July 21, 2009, and September 17, 2009, respectively.

- A Decision and Opinion on Review was rendered January 31, 2011, finding that the petitioner was entitled to temporary total disability benefits for 15-4/7 weeks from June 1, 2009, through September 17, 2009.

- The parties agreed that the respondent paid $12,211.86 in temporary total disability benefits.

ORDER:

- The respondent shall pay the petitioner temporary total disability benefits of $237.67/week for 113-5/7 weeks, from September 18, 2009, through November 22, 2011, which is the period of temporary total disability for which compensation is payable.

- The respondent shall pay the petitioner the sum of $237.67/week for a further period of 300 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused the permanent partial disability to petitioner to the extent of 60% loss of use of the person as a whole.

- The respondent shall pay the petitioner compensation that has accrued from February 19, 2009, through January 31, 2012, and shall pay the remainder of the award, if any, in weekly payments.

- The petitioner is awarded the unpaid medical bills. The respondent shall pay the medical bills in accordance with the Act and the medical fee schedule. The respondent shall be given credit for any amount it paid toward the medical bills, including any amount paid within the provisions of Section 8(j) of the Act, and any adjustments, and shall hold the petitioner harmless for all the medical bills paid by its group health insurance carrier.

• The petitioner's request for penalties and fees is denied.

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

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

Robert E. Williams
Robert Williams

3/9/12
Date

MAR 12 2012

C00162

FINDINGS OF FACTS:

On September 2, 2009, prior to the Section 19(b) hearing on September 17, 2009, Dr. Sayeed performed a discography and noted no discogenic pain with only partial concordant pain at L5-S1 based on right leg pain during the injection. Dr. Paul opined on September 9, 2009, that x-rays showed spondylolisthesis and spinal stenosis at L4-5 and spondylosis at L5-S1. He recommended an L4-S1 decompression and fusion. On December 18, 2009, Dr. Bernstein opined after a Section 12 examination on October 16, 2009, that an April 22, 2009, MRI did not reveal spondylolisthesis and that the discogram did not identify a specific pain generator.

An MRI on March 29, 2010, revealed mild left foraminal stenosis at L3-4, mild left foraminal stenosis and mild central canal stenosis at L4-5 and mild bilateral foraminal stenosis at L5-S1. On April 5, 2010, Dr. Paul performed a L4-S1 lumbar decompression and transforaminal lumbar fusion. The petitioner reported left foot drop the next day and Dr. Paul noted weakness in her left tibialis anterior and extensor hallucis longus on April 14th with improvement noted through May 26th. An EMG/NCV study of her left lower extremity on June 8th suggested active radiculopathies involving the left L5 and S1 root levels. Dr. Dixon recommended continued conservative care after his examination on July 21, 2010. On October 4th, Dr. Dixon performed a laminectomy, facetectomy and foraminotomy bilaterally with decompression of cauda equina and nerve roots at L5-S1 at Skokie Hospital. The petitioner reported no change in her pre-operative complaints two months later. She received bilateral L5 transforaminal epidural steroid injections on February 15, 2011, and a left L5 sympathetic block on March 11th. On May 31st, the petitioner had a thoracic laminectomy with placement of a dorsal column

stimulator. The petitioner reported a 25 to 30% improvement with the stimulator to Dr. Couri on July 27th but requested its removal to Dr. Dixon on October 14th. Pursuant to a Section 12 examination on November 22, 2011, Dr. Richard Noren opined that the petitioner was functioning at a sedentary light capacity. On December 12, 2011, Dr. Couri noted that the petitioner complained of low back and bilateral leg pain.

FINDING REGARDING WHETHER THE MEDICAL SERVICES PROVIDED TO PETITIONER ARE REASONABLE AND NECESSARY:

In retrospect, the surgeries were not beneficial or necessary. However, a successful surgery cannot be guaranteed and the petitioner was entitled to reasonable medical care to relieve her of the effect of her work injury. The medical care rendered the petitioner was reasonable and necessary. The parties did not agree on the fee schedule amounts for the unpaid medical bills. The respondent shall pay the unpaid medical bills in accordance with the Act and the medical fee schedule. The respondent shall be given credit for any amount it paid toward the medical bills, including any amount paid within the provisions of Section 8(j) of the Act, and any adjustments, and shall hold the petitioner harmless for all the medical bills paid by its group health insurance carrier.

FINDING REGARDING WHETHER THE PETITIONER'S PRESENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE INJURY:

Based upon the testimony and the evidence submitted, the petitioner proved that her current condition of ill-being with her low back is causally related to the work injury.

FINDING REGARDING THE AMOUNT OF COMPENSATION DUE FOR TEMPORARY TOTAL DISABILITY:

The petitioner was unable to work from September 18, 2009, through November 22, 2011, the date of Dr. Noren's evaluation and opinion that she was at maximum medical improvement. The respondent shall pay the petitioner temporary total disability

benefits of $237.67/week for 113-5/7 weeks, from September 17, 2009, through November 22, 2011, as provided in Section 8(b) of the Act, because the injuries sustained caused the disabling condition of the petitioner.

FINDING REGARDING THE NATURE AND EXTENT OF INJURY:

The petitioner failed to prove that she is obviously incapable of employment or that she cannot perform any services except those which are so limited in quantity, dependability or quality that there is no reasonably stable market for them. The petitioner can perform sedentary light employment without seriously endangering her health or life. She failed to prove that she conducted a genuine and diligent search for employment. The doctors' opinions to the contrary are not consistent with the evidence. Their opinions lack foundation and are not within their expertise of defining the petitioner's physical limitations to maintain her safety and protect her health. The respondent shall pay the petitioner the sum of $237.67/week for a further period of 300 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused the permanent partial disability to petitioner to the extent of 60% loss of use of the person as a whole.

FINDING REGARDING PENALTIES AND FEES:

The petitioner's request for penalties and fees is denied. There was a genuine dispute regarding the need for medical care and the continuation of TTD, and it was not unreasonable for the respondent to rely on their Section 12 examiner.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC035195
Case Name	Reinel Martinez v. Portillos
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	22IWCC0346
Number of Pages of Decision	14
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Daniel Swanson

DATE FILED: 9/12/2022

/s/ Thomas Tyrrell, Commissioner

Signature

22IWCC0346

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Reinel Martinez,

Petitioner,

vs. NO: 16 WC 35195

Portillos,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under Section 19(b) having been filed by Petitioner herein and notice given to all parties, the Commission, after considering all issues, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below. The Commission otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission affirms the Arbitrator's conclusion that Petitioner failed to prove by a preponderance of the evidence that he provided timely notice of his injury pursuant to the Act. The Commission also affirms the Arbitrator's conclusion that Petitioner failed to prove his current condition of ill-being is causally connected to the alleged June 10, 2015, work injury. However, the Commission makes certain modifications to the Arbitration Decision.

The Commission corrects certain scrivener's errors the Arbitrator made in several places throughout the Decision. On pages three (3), seven (7), eight (8), nine (9), and ten (10) of the Decision, the Arbitrator mistakenly refers to the date of accident as June **15**, 2015. The Commission hereby replaces all references to a date of accident of June 15, 2015, or an injury occurring on June 15, 2015, with the correct accident date of June **10**, 2015.

On page three (3) of the Decision, the Arbitrator mistakenly wrote that Petitioner identified the date of accident as June **5**, 2015, in the accident report entered as Respondent's Exhibit 2. The Commission modifies this sentence to read as follows:

He listed the accident date as June **10**, 2015, at 3:00 p.m.

On page four (4) of the Decision, the Arbitrator mistakenly wrote that the August 23, 2016, lumbar MRI report referred to "…low back pain status post MVA on July 27, **2105**…" The

Commission modifies this sentence to read as follows:

> The report notes low back pain status post MVA on July 27, **2016** (PX 1, p 36-37).

Finally, on page eight (8) of the Decision, the Arbitrator wrote: "Petitioner's testimony that he told Mr. Valdez about the injury on the date it occurred is contradicted by Mr. Valdez testimony..." The Commission modifies this sentence to read as follows:

> Petitioner's testimony that he told Mr. Valdez about the injury on the date it occurred is contradicted by Mr. Valdez**'s** testimony, the procedures that were followed on April 7, 2016, and the medical history recorded by Dr. Novoseletsky in October 2016 where his notes state, "He stated he didn't report it to his manager, he just continued working. He mentioned it to his manager a few months later."

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on October 12, 2021, is modified as stated herein.

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.

September 12, 2022

o: 8/16/22
TJT/jds
51

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC035195
Case Name	MARTINEZ, REINEL v. PORTILLOS
Consolidated Cases	No Consolidated Cases
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Daniel Swanson

DATE FILED: 10/12/2021

THE INTEREST RATE FOR THE WEEK OF OCTOBER 5, 2021 0.05%

/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)

Reinel Martinez
Employee/Petitioner

v.

Portillo's
Employer/Respondent

Case # **16** WC **35195**

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**. 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 10, 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 not*** given to Respondent.

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

In the year preceding the injury, Petitioner earned $**27,044.69**; the average weekly wage was $**498.19**.

On the date of accident, Petitioner was **36** years of age, ***single*** with **0** dependent children.

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

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

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

ORDER

Because Petitioner failed to prove by a preponderance of the evidence that he provided notice to Respondent within the time limits stated in the Act, and further failed to prove by a preponderance of the evidence that his condition of ill-being was causally connected to his accidental injury, Petitioner's claim for compensation is hereby denied.

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

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

/s/ Stephen J. Friedman **OCTOBER 12, 2021**
Signature of Arbitrator

ICArbDec19(b)

Statement of Facts

Petitioner testified in Spanish through an interpreter. Petitioner Reinel Martinez testified that on June 15, 2015, he was employed by Respondent Portillo's. He worked in their food production, not in a restaurant. He started work for Respondent in 2006. In June 2015, his job was to prepare BBQ. He took pots to mix the sauce ingredients, then dump it into bigger pots. He needed to lift them higher than desk height. Petitioner denied any prior injuries or treatment for his low back.

Petitioner testified that on June 15, 2015, he started to raise a pot of BBQ weighing about 20 pounds and felt a pop and felt pain in his back. Petitioner testified that he reported this to his supervisor Christian Valdez that same day and did a written report. Petitioner testified that Mr. Valdez speaks Spanish. He does not have a copy of the report. It was not given to him. He did not seek medical attention. He continued working. He testified that the heaviest things he had to lift were the pots, which could weigh up to 40 pounds. He testified they were not filled all the way but were filled more than halfway. Petitioner identified RX 2 as the report he filled out.

Christian Valdez testified that he has been employed by Respondent for 15 years. He is the second shift supervisor. He held that position in June 2015. His duties included making sure the employees were working and getting out the production. He currently supervises 4 employees. In June 2015, he supervised less than 10 employees. He testified that Petitioner advised him of the accident. He does not remember the exact date. When Petitioner reported it, he told him to prepare a report to the Risk Department. He prepared the report and sent it to Sue Brown in Risk. The procedure is to prepare the report with the employee and determine if medical attention is required. He did not do any further investigation.

Mr. Valdez identified RX 2 is the report he prepared with Petitioner. The report is dated April 7, 2016. That is the date Petitioner reported his injury to him. He testified that Petitioner never told him about an injury before that date. Petitioner filled out the report. He listed the accident date as June 5, 2015 at 3:00 PM. He described the injury as lifting pots to the table and started to have pain in his back. Petitioner noted on the report that he had not sought medical treatment. He refused medical treatment at the time of filling out the form (RX 2). Petitioner testified he did not want immediate medical care because his back did not hurt that much. Mr. Valdez testified that Petitioner had not missed any time from work. Mr. Valdez testified he is no longer Petitioner's supervisor. Petitioner was moved to first shift. In June 2015, second shift was preparing ribs. They no longer serve ribs, having stopped them 2-3 years ago. Petitioner is now cooking roast beef.

Travis Strnad testified that he is currently the Production Planning Manager for Respondent. He was Petitioner's supervisor on second shift until 2014, when he moved to first shift. Petitioner would load and unload pots of BBQ sauce for ribs. Mr. Strnad then moved to first shift and oversees the first shift production. He testified that Respondent has a procedure for accident reporting. When an employee reports an injury, they fill out a report and ask if he needs to see a doctor. If the employee does not want medical attention, he signs the form. The employee fills out a statement which is then faxed to Sue Brandt in Risk. Mr. Strnad identified RX 2 as the report prepared for Petitioner dated April 7, 2016. He testified he has no other responsibility with respect to an accident other than preparing the reports and sending them to Risk. Sue Brandt prepared the employer's first report of injury on April 8, 2016 (RX 3). Petitioner testified he contacted an attorney who filed an Application for Adjustment of Claim on May 17, 2016.

Petitioner first sought medical treatment at Dreyer Clinic on June 14, 2016 (PX 1). The history states that on 6/10/2015, he picked up a large pot of BBQ sauce and felt a sharp pain in his lower back. He then reported this to Christen Valdez. Over the past 3 months there has been increased discomfort. Physical examination noted full range of motion with slight pain. There was mild tenderness to palpation along the paraspinal musculature. Straight leg raise was negative. Sensation, reflexes, and strength were normal. The assessment was a lumbar strain. Petitioner advised that the initial lumbar strain injury never completely resolved. Petitioner was given exercises and naproxen. He was place on restrictions (PX 1, p 32-33). On June 23, 2016, Petitioner noted minor improvement. He was continued on medication, exercises, and restrictions (PX 1, p 26-27). On June 30, 2016, Petitioner noted minor improvement. He was initiated on physical therapy (PX 1, p 21-23). Petitioner participated in physical therapy at ATI beginning July 7, 2016 (PX 5). On July 21, 2016, he reported mild improvement with therapy. He was continued on work restrictions (PX 1, p 17-18).

Petitioner was discharged from therapy on August 11, 2016. The discharge summary notes 70% improvement with continued functional limits on prolonged standing. Pain was reported as 0/10 at rest and 5/10 with activity (PX 5, p 10). On August 18, 2016, Petitioner reported persistent pain. An MRI was recommended. Petitioner was continued on modified work (PX 1, p 12-14). The MRI performed August 23, 2016 noted multilevel spondylosis and annular bulge at L5-S1 causing mild neural foraminal stenosis. The report notes low back pain status post MVA on July 27, 2105 (PX 1, p 36-37). On August 30, 2016, Petitioner continued to report baseline achiness. He denied radiating pain, numbness, tingling or weakness in the lower extremities. He stated he is tolerating more or less regular work activity without too much discomfort. Petitioner was advised that the MRI did not show acute disc herniation or ligamentous tear. The disc bulges found were not necessarily caused by the work-related injury. It may have been present prior to this as these are more progressive degenerative changes. Petitioner was released to regular work and discharged from care. He was advised to continue stretches and to use ice and heat as needed (PX 1, p 7-10).

Petitioner testified he sought further treatment at Suburban Orthopedics. He initially testified he was recommended by a friend. Petitioner saw Dr. Novoseletsky October 13, 2016. The record notes referral from Dr. Rivera (PX 2). Petitioner also testified that he was referred by Dr. Rivera. Petitioner reported the June 10, 2015 injury. He stated he experienced soreness right after, but thought the pain would get better. He stated he didn't report it to his manager, he just continued working. He mentioned it to his manager a few months later. He was seen by the work clinic and discharged. He wanted a second opinion, so he came to Dr. Rivera and was referred (PX 2, p 45). At trial, Petitioner denied the history that he did not report the injury for a few months. Dr. Novoseletsky's impression was axial low back pain. He started physical therapy and noted consideration of LESI if no response. He allowed Petitioner to continue full duty work (PX 2, p 47).

Petitioner began therapy at RNS Physical Therapy on October 25, 2016 (PX 3, p 46). On November 17, 2016, December 15, 2016, and January 12, 2017, Petitioner reported no change in his condition. Dr. Novoseletsky recommended continued therapy and LESI. He continued Petitioner at full duty work (PX 2, p 34-43). Petitioner underwent a lumbar epidural steroid injection at L5-S1 on January 24, 2017 (PX 2. P 60).

On January 18, 2017, Kevin Smith, DO authored a Utilization Review report to Dr. Novoseletsky non certifying further physical therapy (RX 4). Petitioner was examined by Dr. Kern Singh at Respondent's request on January 26, 2017. Dr. Singh opined that Petitioner suffered lumbar muscular strain which is resolved. He opined that there is no causal connection with Petitioner's axial pain complaint. Petitioner can work full duty without restriction and no additional treatment is warranted. Petitioner is at MMI (RX 1, Ex 2).

Petitioner returned to Dr. Novoseletsky on February 9, 2017. He reported no relief from the injection. Dr. Novoseletsky recommended continued physical therapy, a series of medial branch blocks and continued light duty (PX 2, p 25-28). Petitioner continued therapy and reported feeling the same on March 9, 2017 and April 13, 2017 (PX 2, p 15-23). Petitioner underwent medial branch blocks on the right at L2, L3 and L4, and to the dorsal ramus of L5 on May 10, 2017 (PX 2, p 58-59). On May 11, 2017, Petitioner reported 75% relief of his pain within 30 minutes following the procedure that lasted over 8 hours. He reported still feeling better that before the procedure. Dr. Novoseletsky recommended continued therapy and a second set of blocks (PX 2, p 10-13). He continued work restrictions (PX 2, p 9). Petitioner last saw Dr. Novoseletsky on June 15, 2017. He continued to recommend additional injections, physical therapy, and work restrictions (PX 2, p 4-8). Petitioner continued physical therapy at RNS. On June 27, 2017, the notes reflect that Petitioner has been referred by Dr. Novoseletsky to a neurosurgeon (PX 3, p 187). He continued therapy through July 11, 2017 (PX 3).

Petitioner saw Dr. Cary Templin on July 7, 2017 on referral from Dr. Novoseletsky (PX 4). Petitioner provided a consistent history of accident on June 10, 2015. He reported physical therapy and injections with no benefit. He complained of 6/10 low back pain. He has been working without restriction and taking only anti-inflammatory medication occasionally. He denied leg pain, weakness, numbness. He denied any prior history of back problems prior to the injury. Physical examination noted some loss of flexion and extension with pain. Straight leg raise and neurological testing were negative. Waddell signs were negative. Dr. Templin reviewed the MRI and stated it showing desiccation to the L5-S1 disc. There is a central annular tear with a central protrusion that does not cause significant neural impingement nor central canal stenosis. His assessment was Petitioner is status post a repetitive lifting injury at work with continued lower back pain. He recommended a discogram to determine if Petitioner was a candidate for a lumbar fusion. Petitioner was advised to consider this and advise if he wished to proceed. He was allowed to work without restrictions at that time (PX 4, p 4-5).

Petitioner saw Dr. Templin's PA Brittany MacLeod on April 10, 2019. Petitioner reported treating with a chiropractor the last 2 years, and has been able to tolerate the pain, but over the last 2 months he has been working full duty and has noticed an extreme exacerbation of overall pain, resulting in an inability to work with pain at 10/10 on today's visit. The assessment was ongoing axial low back pain. Petitioner was scheduled for follow up with Dr. Templin. He ordered a new MRI. Petitioner was to work with restrictions of no heavy lifting, no frequent bending, squatting, or kneeling (PX 4, p 7). The MRI performed April 20, 2019 noted disc desiccation at L5-S1, a 2mm diffuse disc protrusion at L2-3 with effacement of the thecal sac, a 3 to 4 mm diffuse disc protrusion at L5-S1 without effacement of the thecal sac (PX 4, p 10). Petitioner saw Dr. Templin on May 3, 2019 complaining of 8/10 back pain. Dr. Templin reviewed the new MRI, noting the findings. Petitioner advised he would like to proceed with the recommended discogram. He was continued on work restrictions (PX 4, p 11).

Dr. Templin testified by evidence deposition taken March 3, 2020 (PX 10). He testified that he took a history from Petitioner of repetitive heavy lifting and carrying of pots weighing 30 pounds with barbeque sauce in them. He would have to lift them and put them on a high table. He developed pain in the lower back. Dr. Templin described his findings including negative straight leg raise and negative neurological testing. He testified that the 8/23/16 MRI noted desiccation of the L5-S1 disc with a central annular bulge but no neural impingement. There were mild Mobic endplate changes at L5-S1. This is not a case where there is radiculopathy. He testified he recommended a discogram to determine if the L5-S1 level was concordant and L4-5 was not. If that was the result, Petitioner might benefit from an L5-S1 fusion. He testified he saw Petitioner again May 3, 2019. The new MRI was very similar to the first one. Petitioner would be expected to have degenerative conditions like this, it is a normal thing (PX 10).

Dr. Templin opined that the work injury is a causative factor in Petitioner's condition. This is because he developed pain after doing his work activities. It is hard to say if the work activities caused the annular tear. More likely Petitioner had some aspect of degenerative change prior to the injury which would make him more prone to the injury. The work activity exacerbated or aggravated the condition to the point he now is symptomatic. He continues to recommend a discogram. Dr. Templin disagreed with Dr. Singh's diagnosis of a lumbar muscular strain because the report is a year and a half after the injury and a muscular strain with appropriate treatment would have been better by this time (PX 10). Dr. Templin testified he is trusting that Petitioner's pain complaints are genuine. Petitioner's height and weight would classify him as obese. That puts a strain on the low back (PX 10).

Dr. Singh testified by evidence deposition taken August 5, 2020 (RX 1). He testified to his examination on January 26, 2017. Petitioner gave him a history of lifting a pot of barbeque sauce weighing about 20 pounds when he felt a sharp pain in his lower back. Petitioner had a normal neurological examination, normal strength, and reflexes. He had an essentially normal examination. Dr. Singh diagnosed a lumbar muscular strain and a central disc protrusion at L5-S1. He opined that 4 weeks of physical therapy three times per week was appropriate and reasonable treatment. He opined that Petitioner sustained a soft tissue strain as a result of his work injury. Petitioner could work without restriction. He had an essentially normal examination, an essentially normal- appearing MRI. He opined that Petitioner did not need any further medical treatment. He had subjective complaints only. He could find nothing to objectify the subjective complaints. He opined that Petitioner was at MMI (RX 1).

Dr. Singh testified he saw Petitioner on only one occasion. He was unaware that Petitioner had undergone an injection 2 days previously. Petitioner did not advise him of that. It would not change his neurological examination or MRI findings, only his pain complaints. There would not be any causal connection because the pain complaints were axial in nature with no radicular findings and a normal examination. Petitioner had just completely nonspecific low back pain. Disc desiccation is generally related to age or genetics. Because of lack of Level I evidence, he does not use medial branch blocks. He did not see any diagnostic benefit to them. He does not utilize discogram. Level I evidence suggests that they do not work. Petitioner's negative Waddell signs indicate Petitioner gave a reasonable examination. He found no evidence of malingering (RX 1).

Petitioner testified that he is still working for Respondent in the same location. He now works in cutting the beef. He testified he was put on this job because of his back. It is easier. He has not missed any time from work. Travis Strnad testified he is currently the Production Planning Manager for Respondent. He currently supervises Petitioner. Petitioner was transferred to first shift in 2017. Petitioner works at a table in the slicing room packing beef weighing 15 to 20 pounds. Petitioner testified that standing a lot hurts his back. It hurts to walk. He does not do anything at home because he has pain. He can do laundry is he has to. He wants the discogram and will have surgery if Dr. Templin recommends it.

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.

Petitioner testified that he was injured in a specific incident on June 15, 2015, when he started to raise a pot of BBQ weighing about 20 pounds and felt a pop and felt pain in his back. This event, if believed would have occurred during employment and at a place where the claimant may reasonably perform employment duties and originates from a risk connected with, or incidental to, the employment.

Petitioner's testimony is consistent with the accident report he completed on April 7, 2016 and every medical history he provided. His explanation that his was part of his job at that time is corroborated by Mr. Valdez and Mr. Strnad. No evidence was of any alternate event precipitating the Petitioner's back complaints was presented except for the notation on the MRI report of a July 27, 2016 MVA. The Arbitrator finds that this is completely inconsistent with the remainder of the medical records and finds Petitioner's testimony that this notation is not accurate persuasive.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he sustained accidental injuries arising out of and in the course of his employment with Respondent on June 15, 2015.

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

Section 6(c) of the Act requires the claimant to give notice of the accident "to the employer as soon as practicable, but not later than 45 days after the accident." 820 ILCS 305/6(c). Section 6(c) further provides that "[n]o 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." Id. The notice is jurisdictional, and the failure of the claimant to give notice will bar his claim. *Thrall Car Manufacturing Co. v. Industrial Comm'n*, 64 Ill. 2d 459, 465, 356 N.E.2d 516, 519, 1 Ill. Dec. 328 (1976). However, a claim is only barred if no notice whatsoever has been given. *Silica Sand Transport, Inc.* v. *Industrial Comm'n*, 197 Ill. App. 3d 640, 651, 554 N.E.2d 734, 742, 143 Ill. Dec. 799 (1990).

"If some notice has been given, but the notice is defective or inaccurate, then the employer must show that he has been unduly prejudiced." *Id.*; *Tolbert v. Ill. Workers' Comp. Comm'n*, 2014 IL App (4th) 130523WC.

Petitioner is claiming a specific injury on June 15, 2015. The undisputed facts, established by the testimony of Petitioner, Mr. Valdez, and Mr. Strnad, is that that Petitioner worked the entire date of his injury and continued his regular duties without missing any time from work until he reported the accident and completed the accident reports on April 7, 2016. He sought no medical treatment until June 2016. Mr Strnad testified to the procedures in place for Respondent including the preparation of the accident reports, requesting if the employee wanted medical attention, and the submission to Risk Management of the reports. Mr. Valdez testified he was not advised of the accident until the date he prepared the report on April 7, 2016. His preparation of the report on that date and the submission to Sue Brandt for preparation of the First Report of Injury on April 8, 2016, conform to the procedures described.

Petitioner's testimony that he told Mr. Valdez about the injury on the date it occurred is contradicted by Mr. Valdez testimony, the procedures that were followed on April 7, 2016 and the medical history recorded by Dr. Novoseletsky on October 2016 where his notes state "He stated he didn't report it to his manager, he just continued working. He mentioned it to his manager a few months later." The Arbitrator finds Petitioner's testimony of reporting the accident the same day and preparing a written report is not credible. The report was not completed until April 7, 2016 as corroborated by RX 2, RX 3, and Mr. Valdez testimony. Petitioner also admitted not providing contemporaneous notice in the history on October 23, 2016. There is no plausible explanation of how this was recorded in the doctor's notes other than that Petitioner provided this information. The Arbitrator finds that notice of the accident was not provided to Respondent until April 7, 2016, well beyond the jurisdictional 45 day limit. Because no notice at all was provided within the required time limit, prejudice to Respondent is not relevant.

Based upon the record as a whole, the Arbitrator finds that Petitioner failed to prove by a preponderance of the evidence that he provided notice of the accident to Respondent within the time limits stated in the Act.

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)

Petitioner is alleging an accident on June 15, 2015. Although Petitioner established prior good health, the chain of events does not apply since Petitioner failed to establish a change immediately following an accident. Petitioner continued to work without restriction or lost time for 10 months before even reporting the episode. He continued to do the same job including the lifting of the BBQ pots he described. He sought no medical treatment for a year. Based upon these facts the Arbitrator finds the Petitioner has failed to establish a chain of events.

Petitioner offered the opinions of Dr. Templin that the work injury is a causative factor in Petitioner's condition. His July 7, 2017 assessment was that Petitioner is status post a repetitive lifting injury at work with continued lower back pain. Respondent offered the opinions of Dr. Singh who opined that Petitioner sustained a soft tissue strain as a result of his work injury. Petitioner could work without restriction. He had an essentially normal examination, an essentially normal appearing MRI. He opined that Petitioner did not need any further medical treatment. He had subjective complaints only, He could find nothing to objectify the subjective complaints.

It is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 406-07, 459 N.E.2d 963, 76 Ill. Dec. 828 (1984); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675, 928 N.E.2d 474, 340 Ill. Dec. 475 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041, 721 N.E.2d 1165, 242 Ill. Dec. 634 (1999). Expert testimony shall be weighed like other evidence with its weight determined by the character, capacity, skill, and opportunities for observation, as well as the state of mind of the expert and the nature of the case and its facts. *Madison Mining Company v. Industrial Commission*, 309 Ill. 91, 138 N.E. 211 (1923). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, 960 N.E.2d 587, 355 Ill. Dec. 705. If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S.*, 339 Ill. App. 3d 599, 607, 791 N.E.2d 80, 87, 274 Ill. Dec. 284 (2003). A finder of fact is not bound by an expert opinion on an ultimate issue, but may look 'behind' the opinion to examine the underlying facts.

The Arbitrator notes that Dr. Templin's testimony does not address important facts in this matter. His treatment did not begin for over 2 years after the accident. He does not indicate he reviewed the initial treating records from Dreyer Clinic. His understanding of the mechanism of injury is of repetitive heavy lifting and carrying of pots weighing 30 pounds with barbeque sauce in them and putting them on a high table and developing pain in the lower back, not the specific accident testified to Petitioner and noted in the accident report. Petitioner did not provide evidence of the repetitive nature of this task. No evidence of the number of times this was done per shift was presented or if it was repetitive at all. Dr. Templin stated he found causation because Petitioner developed pain after doing his work activities. But Petitioner sought no medical treatment for a year. He continued to work without complaint or lost time doing his full duty job for a year. The Commission has considered such a gap in care in determining causal connection. See: *Richard Olcikas v. Dominick's Finer Foods, Inc.*, 2009 Ill. Wrk. Comp. LEXIS 1098, affirmed *Olcikas v. IWCC*, 2012 Ill. App. Unpub. LEXIS 26; 2011 IL App (1st) 103274WC-U; 2012 WL 6951575; *Jacob Haltom v. Center for Sleep Medicine*, 2013 Ill. Wrk. Comp. LEXIS 509; 13 IWCC 563, affirmed *Haltom v. IWCC*, 2015 IL App (1st) 133954WC-U; 2015 Ill. App. Unpub. LEXIS

1568; *Jose Ruben Meraz vs. Minute Men Staffing*, 2015 Ill. Wrk. Comp. LEXIS 30; 15 IWCC 30. Dr. Templin admits that Petitioner has a degenerative condition. He testified that it is hard to say if the work activities caused the annular tear. More likely Petitioner had some aspect of degenerative change prior to the injury which would make him more prone to the injury. Dreyer Clinic records state the disc bulges found were not necessarily caused by the work-related injury. It may have been present prior to this as these are more progressive degenerative changes. Based upon this incomplete and inaccurate basis, the Arbitrator finds Dr. Templin's opinions unpersuasive.

The Arbitrator finds that Dr. Singh's opinion more persuasive. Dr. Templin's disagreed with Dr. Singh's diagnosis of a lumbar muscular strain because the report is a year and a half after the injury and a muscular strain with appropriate treatment would have been better by this time. This ignores the year gap before Petitioner even sought medical attention, that Petitioner reports worsening symptoms 3 months before seeking treatment in June 2016 and on April 10, 2019, Petitioner reported over the last 2 months he has been working full duty and has noticed an extreme exacerbation of overall pain. It also does not account for the fact that Petitioner has a progressive degenerative condition in the lumbar spine.

Based upon the record as a whole, the Arbitrator finds that Petitioner failed to prove by a preponderance of the evidence that his condition of ill-being is causally connected to the accidental injuries sustained on June 15, 2015.

In support of the Arbitrator's decision with respect to (J) Medical and (K) Prospective Medical, the Arbitrator finds as follows:

Based upon the Arbitrator's findings with respect to Notice and Causal Connection, the remaining issues of Medical and Prospective Medical are moot. Petitioner's claim for compensation is hereby denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC006270
Case Name	Erik Lewis v. Village of Bridgeview
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0347
Number of Pages of Decision	21
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Matthew J. Leonard
Respondent Attorney	Terrence Donohue

DATE FILED: 9/12/2022

/s/ Christopher Harris, Commissioner

Signature

22IWCC0347

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

ERIK LEWIS,

Petitioner,

vs. NO: 18 WC 6270

VILLAGE OF BRIDGEVIEW,

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 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 award of 16% loss of use of the left leg. However, based upon Petitioner's injuries to his left thumb, the Commission finds that the Petitioner sustained 35% loss of use of the person-as-a-whole pursuant to Section 8(d)2 of the Act. The Commission has considered the five factors under Section 8.1b of the Act and agrees with the Arbitrator's analysis relative to (i), (iii), (iv) and (v) of Section 8.1(b). However, after reviewing (ii) of Section 8.1(b), the Commission finds that the evidence supports a reduction in the PPD award. At the time of hearing, he was still employed as a Police Officer working desk duty. The job description entered into evidence identified numerous functions of a Police Officer. While Petitioner's treating physician opined that the left thumb fusion will impact some of those job duties, Petitioner is capable of performing the vast majority of those duties enumerated therein, and continues to do so presently. Therefore, the Commission assigns greater weight to this factor and finds that it supports a reduction in the PPD award.

In light of the foregoing, with no single enumerated factor being the sole determinant of disability, the Commission modifies the Decision of the Arbitrator and finds that Petitioner

sustained 35% loss of use of the person-as-a-whole pursuant to Section 8(d)2 of the Act. All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed February 18, 2022, is hereby modified, as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $790.64 per week for a period of 175 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused 35% loss of use of the person-as-a-whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $790.64 per week for a period of 34.40 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused 16% loss of use of the left leg.

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.

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.

September 12, 2022

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

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

/s/ *Marc Parker*
Marc Parker

CAH/tdm
d: 9/8/22
052

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC006270
Case Name	LEWIS, ERIK v. VILLAGE OF BRIDGEVIEW
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Molly Mason, Arbitrator

Petitioner Attorney	Matthew J. Leonard
Respondent Attorney	Terrence Donohue

DATE FILED: 2/18/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 15, 2022 0.77%

/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

ERIK LEWIS
Employee/Petitioner

v.

VILLAGE OF BRIDGEVIEW
Employer/Respondent

Case # **18** WC **6270**

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 **January 21, 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 8, 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.

For the reasons set forth in the attached decision, the Arbitrator finds that Petitioner established a causal connection between the undisputed work accident and his claimed current left knee and left hand conditions of ill-being.

In the year preceding the injury, Petitioner earned $**84,734.00**; the average weekly wage was $**1,629.50**.

On the date of accident, Petitioner was **34** years of age, ***married*** with **5** 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 $**47,022.52** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for non-occupational indemnity disability benefits, for a total credit of $**47,022.52**. The parties agree that Petitioner received all of the temporary total disability benefits that were due. They did not place temporary total disability in dispute. Arb Exh 1.

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act. Arb Exh 1.

ORDER

Permanent Partial Disability

With respect to the left knee, the Arbitrator finds that Petitioner established permanent partial disability equivalent to 16% loss of use of the left leg, representing 34.40 weeks of benefits under Section 8(e) of the Act. With respect to the left hand, the Arbitrator finds that Petitioner established permanent partial disability equivalent to 40% loss of the person as a whole, representing 200 weeks of benefits under Section 8(d)2 of the Act. The total permanency award is 234.40 weeks of benefits at the applicable maximum permanency rate of $790.64 per week.

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

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

Molly C Mason

Signature of Arbitrator

Erik Lewis v. Village of Bridgeview
18 WC 6270

Summary of Disputed Issues

The parties agree that Petitioner, a 34-year-old patrol officer, sustained an accident on February 8, 2018. Petitioner testified he was responding to an ambulance call when a set of wooden stairs collapsed underneath him, causing him to fall to the ground. He fell four to five feet, injuring his left hand, left elbow and left knee. A left knee MRI performed on February 23, 2018 demonstrated a complex oblique longitudinal tear through the body and posterior horn of the medial meniscus. Dr. Forsythe operated on Petitioner's left knee on April 6, 2018, performing a meniscal repair. Dr. Forsythe released Petitioner to full duty with respect to his knee only on August 7, 2018. It is agreed that Petitioner would have been able to resume his regular job had he injured only his knee. Petitioner underwent extensive treatment with Dr. Fernandez for his left thumb. Dr. Fernandez initially recommended conservative care in the form of immobilization and therapy. He later prescribed an MRI, which revealed a Grade II sprain of the ulnar collateral ligament. Following the MRI, he recommended an ulnar collateral ligament repair. On August 27, 2018, Dr. Wiedrich, Respondent's Section 12 hand examiner, obtained comparative stress views under FluoroScan. He recommended therapy followed by cortisone and potentially PRP injections if the therapy failed to help. RX 1A. Dr. Fernandez administered cortisone and PRP injections, neither of which provided relief. He again recommended an ulnar collateral ligament repair. After reviewing additional records, Dr. Wiedrich disagreed with this recommendation, indicating he himself did not discern laxity when he examined Petitioner in August 2018. RX 1B. Dr. Fernandez responded, indicating he did detect laxity with pain on stress testing and thus viewed Petitioner as a candidate for surgery. PX I.

Petitioner returned to work in mid-September 2018 and began performing desk duty.

Dr. Fernandez performed an ulnar collateral ligament repair on October 16, 2019 but this also failed to help. He fused the left thumb MCP joint on August 19, 2020 and performed a fourth surgery on January 8, 2021, removing the surgical hardware and performing a tenolysis to remove scar tissue. On March 24, 2021, he imposed permanent light duty restrictions, indicating Petitioner would not be able to perform law enforcement activities due to the fusion-related permanent losses in motion, which affected Petitioner's grip and pinch. PX J. He discussed the likelihood that Petitioner would require an additional surgery, namely a sesamoid resection and debridement. PX E.

Dr. Fernandez prescribed a functional capacity evaluation on July 16, 2021 (RX 6) but, according to Petitioner, subsequently concluded that such an evaluation could not accurately simulate the various physical duties of a patrol officer.

As of the hearing, Petitioner was continuing to perform desk duty for Respondent.

The disputed issues include causal connection and nature and extent. Arb Exh 1.

Arbitrator's Findings of Fact

Petitioner testified he has worked as a patrol officer for Respondent since May 2007. His job involved responding to service calls, making traffic stops, apprehending suspects, preparing reports and appearing at court as necessary. He has never held a different kind of job. Police work is all he has known. T. 25.

Petitioner testified he was thirty-four years old as of the February 8, 2018 accident. He is now thirty-eight. He is right-handed. T. 22.

Petitioner denied undergoing medical care for his left hand, left knee or left thumb prior to the accident. T. 21-22.

Petitioner testified he responded to an ambulance call at a mobile home community at approximately 4:30 or 5:00 AM on February 8, 2018. T. 15. On arrival, he encountered another police officer and members of Respondent's fire department. He attempted to open the east door of the designated mobile home but was unsuccessful. T. 14. He then went to the west door, which was at the top of a set of wooden stairs. The door was locked. T. 15. As he turned, the stairs collapsed underneath him. T. 15. He fell four to five feet and landed on the ground. T. 16. He felt pain in his left hand, left elbow and left knee. T. 17. He contacted his supervisor and then returned to work, where he sent an Email concerning the accident (PX A) to various supervisors and Respondent's human resources director. T. 18.

Petitioner identified PX B as a group of photographs that accurately depict the stairs, post-collapse. T. 15-16.

Petitioner testified he underwent care at Excel the same day the accident occurred. T. 20. Records in PX C reflect that he saw Dr. Pillar at Excel. Dr. Pillar recorded a consistent history of the accident. He noted complaints of 6/10 pain in the left hand and left knee. He described Petitioner's gait as antalgic. On left hand examination, he noted tenderness to palpation at the MP joint and slightly limited grip strength. On left leg examination, he noted tenderness to palpation along the medial aspect over the proximal tibia and patella. He obtained left hand and left knee X-rays. He interpreted the films as showing no fracture. He diagnosed a left thumb sprain and left leg contusion. He prescribed ice applications and Meloxicam. He released Petitioner to sedentary duty. PX C.

Petitioner also saw his primary care physician, Dr. Agostino, at DuPage Medical Group on February 8, 2018. T. 22. Dr. Agostino recorded a consistent history of the accident and the treatment rendered at Excel. He noted complaints of pain in the left elbow and left knee and over the thenar eminence of the left hand. He started Petitioner on Celebrex and Norco and ordered a left elbow X-ray. He took Petitioner off work. PX D. T. 23.

Petitioner returned to Dr. Agostino on February 12, 2018 and indicated his left knee was no better. He continued to complain of his left elbow and left hand. The doctor recommended repeat left hand X-rays and a left knee MRI. He kept Petitioner off work and recommended an orthopedic consultation. T. 23.

The left knee MRI, performed without contrast on February 23, 2018, showed a complex oblique longitudinal tear of the medial meniscus. PX D.

Left elbow X-rays and repeat left hand X-rays, performed on February 23, 2018, showed no fracture or malalignment. PX D.

On February 27, 2018, Petitioner saw Dr. Payne, an orthopedic surgeon affiliated with DuPage Medical Group. T. 24. The doctor recorded a consistent history of the accident and subsequent care. He noted no complaints relative to the left elbow. He also noted a complaint of left knee pain, for which Petitioner was taking Norco, and complaints of pain and weakness at the base of the left thumb. On left knee examination, he noted positive McMurray's testing and guarding with range of motion testing secondary to pain. On left elbow examination, he noted a full range of motion. On left hand examination, he noted a definite endpoint when stressing the ulnar collateral ligament. He referred Petitioner to Dr. D'Amico for his knee and prescribed physical therapy for the hand. He directed Petitioner to remain off work.

Petitioner testified that Dr. Payne recommended surgery but told him he no longer performs surgery. T. 24.

Petitioner saw Dr. Forsythe, an orthopedic surgeon, on March 6, 2018. After examining Petitioner's left knee and reviewing the left knee MRI, Dr. Forsythe recommended an arthroscopic medial meniscus debridement. He directed Petitioner to remain off work. PX E, pp. 49-51.

Petitioner saw Dr. Agostino on March 13, 2018 for pre-operative clearance. PX D.

Petitioner first saw Dr. Fernandez, a hand surgeon, on March 22, 2018. T. 29-30. Petitioner testified he did some research concerning Dr. Fernandez before seeing him. He learned that Dr. Fernandez is a fellowship-trained, board certified hand and elbow specialist affiliated with Rush. T. 30. At the March 22, 2018 visit, Dr. Fernandez recorded a consistent history of the work accident and subsequent care. He noted complaints of pain and swelling involving the left thumb at the MPJ, particularly the ulnar collateral ligament. He indicated that Petitioner denied any pre-accident thumb complaints. On examination, he noted tenderness at the left thumb MCPJ, particularly with stress testing "and with evidence of a good endpoint indicative of a Grade II injury." He recommended immobilization, a thumb spica splint and radiographic studies. He indicated that Petitioner might ultimately need surgery. PX E, pp. 43-44.

Petitioner was fitted for a custom thumb spica orthosis on March 22, 2018. PX E, pp. 41-42. Petitioner testified that immobilization via the splint did not help. T. 31.

Dr. Forsythe operated on Petitioner's left knee on April 6, 2018, performing an arthroscopic partial medial meniscectomy and a partial synovectomy. T. 25. PX E, pp. 150-151.

Petitioner testified he underwent left knee therapy at Athletico following the surgery. T. 26. He participated in somewhere between thirty and forty therapy sessions. He found the therapy helpful, for the most part. T. 26.

Petitioner returned to Dr. Fernandez on May 9, 2018 and reported that his left thumb pain had worsened over the past seven weeks, despite using the spica splint. Petitioner had not yet undergone the recommended MRI. On re-examination, Dr. Fernandez noted that Petitioner was "very tender to palpation of the" ulnar collateral ligament. He also appreciated laxity with an endpoint. He recommended that Petitioner continue using the splint pending the MRI. He directed Petitioner to remain off work. PX E, pp. 31-32.

The left thumb MRI, performed without contrast on May 19, 2018, showed a Grade II sprain of the ulnar collateral ligament at the left of the first MCP joint. PX E.

On June 13, 2018, Dr. Fernandez noted that Petitioner was still experiencing 6/10 left thumb pain on average and was no longer deriving benefit from the splint. Dr. Fernandez interpreted the MRI as showing "at least a Grade II injury indicative of a tear." On examination, he noted pain to palpation along the ulnar collateral ligament, particularly on stress testing, "with some laxity but with reasonable endpoint." He recommended an ulnar collateral ligament repair. He restricted Petitioner from normal police officer duties, indicating Petitioner could engage in only light use of the left hand with mandatory use of the splint. PX E.

On July 10, 2018, Petitioner returned to Dr. Forsythe. Petitioner reported improvement of his left knee range of motion but indicated he was still experiencing pain and fatigue with long periods of walking. Dr. Forsythe recommended home exercises, noting that Petitioner had exhausted his approved physical therapy visits. He indicated Petitioner should remain off work pending surgery by Dr. Fernandez. PX E, pp. 23-24.

On August 7, 2018, Petitioner saw Dr. Forsythe again and reported that he felt "85% normal" with respect to his left knee. Dr. Forsythe noted no effusion and negative McMurray's on examination. He released Petitioner to full duty only with respect to the knee. PX E, pp. 21-22, 231.

Petitioner testified he has not returned to Dr. Forsythe since August 7, 2018. T. 27. He denied reinjuring his left knee at any point between the accident and August 7, 2018. T. 27-28. As of August 7, 2018, his left knee felt about 85% normal. He was still taking Ibuprofen as needed for pain. T. 28.

At Respondent's request, Petitioner underwent a Section 12 examination by Dr. Wiedrich, a fellowship-trained hand surgeon (RX 1D), on August 27, 2018. In his report of that date, Dr. Wiedrich recorded a consistent history of the work accident and subsequent care. He noted that Petitioner had worn a thumb spica splint since late March. He also noted that Petitioner had been released to full duty with respect to his knee.

On examination, Dr. Wiedrich noted minimal edema about the MP joint of the left thumb. After performing a fluoroscopy, he diagnosed a Grade II sprain to the MP joint ulnar collateral ligament of the left thumb. He found a causal relationship between the work accident and this condition, noting the MRI results and the fact that Petitioner had no prior history of a thumb injury. He described the medical care to date as reasonable and necessary. He described the ulnar collateral ligament as "very stable" but "likely scarred to some degree." He recommended that Petitioner come out of the splint and undergo therapy for six to eight weeks. He indicated Petitioner should undergo a cortisone injection if the therapy did not help and a plasma rich platelet [PRP] injection if the cortisone injection did not help. He saw no need for surgery. He restricted Petitioner to lifting no more than ten pounds with his left hand. RX 1A.

Records in PX E reflect that Petitioner returned to work in mid-September 2018, performing desk duty. Petitioner testified this duty consists of clerical and computer work at the front desk area. He performs data entry and takes "walk-in reports." T. 38. He no longer goes out on the streets in a patrol car. His base salary has not changed but he is no longer able to work overtime, due to his desk duty status. Before the accident, he worked a minimum of ten to twenty overtime hours per month. He also has no access to wages classified as "court time" for appearances at court. Before the accident, he worked a minimum of two hours of "court time" per month. That amount could increase if he had to testify at a trial. T. 43. Both overtime and "court time" are paid out at a time and a half rate. T. 41-43.

On November 28, 2018, Dr. Fernandez noted that Petitioner's thumb remained symptomatic, despite therapy and splint usage, and that Petitioner was performing desk duty. He administered a steroid injection and indicated Petitioner might require a PRP injection. PX E. T. 31.

Petitioner returned to Dr. Fernandez on January 9, 2019 and indicated he was still experiencing moderate pain particularly with pinch and grip. Petitioner also reported that he had recently obtained authorization for a PRP injection. Dr. Fernandez noted some laxity but no gross instability on re-examination. He administered a PRP injection and continued the previous restrictions. PX E. T. 32.

Petitioner testified that the PRP injection did not help. T. 32.

On February 13, 2019, Petitioner saw Dr. Fernandez again and reported no significant improvement following the PRP injection. Dr. Fernandez indicated that Petitioner could either

undergo surgery or live with his symptoms. He noted that Petitioner wanted to proceed with surgery. He continued the previous restrictions. PX E.

Dr. Fernandez issued a narrative report on May 21, 2019, after reviewing Dr. Wiedrich's initial report and addendum. He indicated his examination revealed "laxity on stress testing of the ulnar collateral ligament as well as pain to direct palpation along the ulnar collateral ligament." He recommended surgery, since Petitioner had exhausted conservative measures. He took issue with Dr. Wiedrich's summary of his findings:

> "Dr. Wiedrich points out in his addendum that there was 'some laxity' but no instability. In actuality, in my report I have stated that there was no 'gross instability.' There is indeed however laxity with pain on stress testing compared to the contralateral side. I believe that this is a reasonable indication for surgery given the length of time that has transpired and the conservative treatment that he has had. At this point there is nothing else that I can do or recommend."

PX I.

Dr. Fernandez operated on October 16, 2019, performing an ulnar collateral ligament reconstruction, joint pinning for instability and tenolysis. In his operative report, he documented "complete disruption of the ulnar collateral ligament, particularly from the insertion of the base of the proximal phalanx." T. 32.

At the first post-operative visit, on October 28, 2019, Petitioner rated his pain at 4/10 and indicated he was taking Advil and Norco as needed. Dr. Fernandez obtained left hand and wrist X-rays. He described the pin as "in appropriate alignment with no evidence of migration or failure noted." He recommended that Petitioner perform home exercises and transition into a forearm based thumb spica splint with the IP joint free. He directed Petitioner to remain of work another week and then resume work on November 5th with no use of the left arm. PX E.

On November 13, 2019, Dr. Fernandez recommended more rigorous home exercises and scheduled Petitioner for pin removal. He continued the previous work restriction. PX E.

Dr. Fernandez operated a second time on November 20, 2019, using a pin puller to remove the hardware implant. PX E.

On December 9, 2019, Dr. Fernandez noted that Petitioner had started formal therapy and was using a thumb spica hand-based splint "only when doing more active things." He directed Petitioner to continue attending therapy. PX E.

On January 8, 2020, Petitioner returned to Dr. Fernandez and complained of continued trouble with pinching and wider grip. Petitioner indicated he sometimes felt his pain was worse

than it was preoperatively. Dr. Fernandez told Petitioner his rate of recovery was normal. He recommended that Petitioner continue attending therapy. He released Petitioner to light office work with "less than five pounds in force and repetition." PX E.

Petitioner saw Dr. Fernandez again on February 12, 2020 and indicated he was still experiencing pain and stiffness and "struggling in terms of grip strength." The doctor noted persistent tenderness and stiffness on re-examination. He recommended that Petitioner "give it time." He continued the previous light office work restriction. PX E.

Petitioner had a telephonic visit with Dr. Fernandez on April 7, 2020. Petitioner indicated he was still performing desk duty and was now doing therapy at home due to the pandemic. Dr. Fernandez continued the previous light office work restriction. PX E.

On June 10, 2020, Petitioner saw Dr. Fernandez and complained of 4/10 pain and crepitus with associated stiffness and weakness. Petitioner indicated he was having difficulties even performing desk duty. The doctor performed pinch and grip strength testing, noting 30% less function on the affected side. He described the results as "valid on multiple position testing and rapid exchange." He indicated Petitioner could "do nothing," which would result in permanent restrictions, or undergo more surgery in the form of a tenolysis or fusion. He told Petitioner that, absent further treatment, he would be at maximum medical improvement and able to continue desk duty but would be "limited with regards to force and repetition, particularly with regards to gripping, grasping and use of weapons." He indicated that Petitioner wanted time to think about his options. PX E.

On August 19, 2020, Dr. Fernandez performed a third surgery, namely a left thumb MCP joint fusion with bone autograft, a left hand and thumb tenolysis and a left thumb interphalangeal joint dorsal capsulectomy with joint release. PX E. T. 33.

At the first post-fusion visit, on September 1, 2020, left hand and wrist X-rays showed evidence of retained hardware across the thumb metacarpal with the fusion site continuing to heal. Dr. Fernandez recommended a hand-based thumb spica splint and therapy. He indicated Petitioner could use his left hand only to perform very light office type work. PX E.

At the next visit, on September 23, 2020, Petitioner reported he was improving but still experiencing some pain at the incision and fusion site. Repeat X-rays showed that the fusion site was well-healed and fused. Dr. Fernandez recommended that Petitioner continue therapy and wean out of the splint in about one week. PX E.

On November 11, 2020, Petitioner complained of difficulties with grip and grasp and some residual pain. On range of motion testing, Dr. Fernandez noted an extensor lag of approximately 30 degrees and active and passive flexion to only about 20 degrees compared to 80 or 90 degrees on the contralateral side. He described the fusion itself as "very solid." He recommended a fourth surgery to remove the hardware plate and screws and an IP joint capsulectomy to improve motion. He imposed restrictions of "very light use, 5 or 10 pounds,

but without significant repetition or frequency." He indicated there was a guarded prognosis with regards to Petitioner's ability to return back to regular duty. PX E.

Petitioner returned to Dr. Fernandez on March 24, 2021 and indicated he was still experiencing pain and weakness in his left thumb and hand. On examination, Dr. Fernandez noted discrete tenderness along the ulnar volar aspect along the sesamoid articulation with some mild crepitus. He stated this was "indicative of possible degeneration along the sesamoid and/or synovitis." He noted left thumb IPJ extension/flexion of 10/40 compared with +20/80 on the right. He addressed Petitioner's work capacity as follows:

> "Unfortunately, based on [Petitioner's] objectifiable losses in the fusion, he is incapable of returning back to law enforcement. He essentially has a light duty restriction of a 20-pound range on average. Occasionally, he can do heavier activities than that but I would not recommend 'contact' in which he would place himself at risk performing typical law enforcement duties."

He described this restriction as permanent in nature. He indicated he discussed "the probability of requiring even further treatment, including a sesamoid resection and/or debridement of [the] ulnar portion of the thumb. He indicated the results of this surgery would be "unpredictable with regards to getting [Petitioner] back to regular work without restrictions." He left Petitioner with "an open-ended appointment without follow-up until he wants to proceed with the sesamoidectomy and debridement surgery." PX E.

At Respondent's request, Dr. Wiedrich re-examined Petitioner on May 17, 2021. Dr. Wiedrich noted that Petitioner had undergone several surgeries, including an arthrodesis, and was still symptomatic. He also noted that Petitioner was subject to permanent restrictions and performing desk duty. He indicated he reviewed numerous records, including a job description, Dr. Fernandez's notes and physical therapy notes, in connection with his re-examination.

On examination, Dr. Wiedrich noted a negative grind maneuver, mild tenderness over the thenar musculature, mild tenderness over the radial aspect of the thumb MP joint, mild tenderness over the ulnar aspect of the IP joint of the thumb, good stability of the ligaments without crepitation and good strength of the EPL and FPL tendons. MP range of motion was 30/30 on the left versus 0/65 on the right. IP range of motion was 0/50 on the left versus 0/60 on the right. Grip strength was 70 pounds on the left versus 81 2/3 pounds on the right. Pinch strength was 17 1/3 pounds on the left versus 21 2/3 on the right. The doctor described 5 position Jaymar as a "declining slope." He indicated that Petitioner failed validity testing on five-position grip testing.

Dr. Wiedrich noted residual subjective complaints of pain and "objective loss of motion to the MP joint of the thumb as a result of the arthrodesis." He detected no objective findings to corroborate the complaints of pain. He described the MP joint as "very well fused" and indicated that, post-arthrodesis, "most people are able to resume full normal activities." He

noted no tenderness over the sesamoid bones and indicated that the surgery projected by Dr. Fernandez, i.e., a sesamoid resection and local debridement, "would not be indicated.' He found Petitioner to be at maximum medical improvement and capable of full duty. He noted that, while Petitioner "has diminished grip and pinch of the left hand compared to the right," and while the MP joint was fused, Petitioner failed validity testing and "there is nothing in the job description that [Petitioner] would be unable to do bases on his surgical outcome." RX 1C.

Dr. Gleason, a fellowship-trained orthopedic surgeon (RX 2B), examined Petitioner on July 27, 2021 in connection with Petitioner's still-pending personal injury lawsuit. In his report of that date, Dr. Gleason documented a consistent history of the work accident and subsequent care. He noted complaints of left thumb pain that increased to 5-6/10 with activities like gripping. He also noted a complaint of sharp left knee pain every one to two weeks "related to possibly standing or sitting too long."

Dr. Gleason described Petitioner's gait as non-antalgic. On left knee examination, he noted no effusion, minimal crepitus, no pain on stress testing and negative McMahan's and Lachmann testing. On bilateral hand examination, he noted some limited extension of the left thumb at the metacarpophalangeal joint and good grip strength bilaterally. He described grind and Finkelstein's testing as negative bilaterally. On thumb range of motion testing, he noted 50 degrees of MCP flexion in the right thumb and indicated the left thumb was "fused in approximately 20 degrees" of flexion. He also noted 70 degrees of interphalangeal joint flexion in the right thumb versus 50 degrees in the left. He reviewed various left knee and left thumb/hand radiographic studies.

Dr. Gleason indicated he reviewed Petitioner's discovery deposition, Dr. Wiedrich's reports and various records in connection with his examination.

Dr. Gleason found Petitioner capable of resuming full patrol officer duty. He categorized Petitioner's job as medium physical demand level. He recommended home exercises, weight loss and occasional use of non-steroidal anti-inflammatory medication. RX 2A.

Petitioner last saw Dr. Fernandez on September 8, 2021. T. 36. In his note of that date, the doctor indicated he reviewed Dr. Wiedrich's May 17, 2021 report and Dr. Gleason's July 27, 2021 report. He also indicated that Petitioner was still experiencing pain along the ulnar volar aspect of his left thumb with mild crepitus but no locking or triggering. He reiterated that Petitioner "is incapable of returning back to law enforcement." He indicated that Petitioner could perform heavier activities than those involving 20 pounds but he recommended against contact in which Petitioner would place himself at risk performing typical police work. He again noted the "probability of future surgery." PX E.

Dr. Fernandez issued another narrative report on October 26, 2021, after reviewing Dr. Wiedrich's May 17, 2021 report, Dr. Gleason's report and the description of Petitioner's patrol officer job. He indicated that, when he last saw Petitioner, they "discussed future surgery in the form of sesamoid resection, given the fact that [Petitioner] was having some residual

complaints in that area of the thumb." He also indicated he assigned permanent restrictions on March 24, 2021, explaining that he found Petitioner unable to engage in law enforcement activities as a full duty police officer.

Dr. Fernandez expressed some criticism of Dr. Gleason's methodology, indicating there was no evidence that the doctor performed grip or strength testing. He disagreed with Dr. Gleason's and Dr. Wiedrich's conclusion that Petitioner could resume full duty:

> "It should be noted that a thumb fusion such as the one [Petitioner] underwent is a permanent procedure which results in a permanent loss in mobility specifically the ability to flex the thumb across the palm and as a result also some motion loss at the interphalangeal joint affecting his ability to grip and pinch. This is not even taking into account the residual pain complaints that [Petitioner] has. These are objectifiable and measurable losses."

Dr. Fernandez noted that some of Petitioner's work activities are "essentially defined as heavy or very heavy in nature, at least on an occasional basis." He found Petitioner incapable of performing such activities, indicating that Petitioner's deficits "would affect his ability to apprehend an individual and/or restrain an individual using his hands, especially his left hand." He indicated the deficits also affected Petitioner's ability to effectively use his gun, despite his right hand dominance, since Petitioner would have to use the left hand as a stabilizer. He concluded that the deficits would prevent Petitioner from being able to protect himself and others.

At the end of his report, Dr. Fernandez stated that Petitioner "has never exhibited symptom magnification or malingering or pain behavior and his symptoms, complaints and losses are fully explained by the objectifiable findings." PX J.

Dr. Vitello, a fellowship-trained hand surgeon (RX 3B), examined Petitioner on November 17, 2021, in connection with Petitioner's duty disability claim. He noted that Petitioner was performing desk duty and complaining of left thumb ulnar-sided pain and decreased left hand strength.

On left thumb examination, Dr. Vitello noted immobility of the MP joint secondary to the fusion, localized tenderness over the proximal aspect of the MP joint and no triggering. He noted that the MP joint was fused at 10 degrees of flexion. Key pinch testing, done on a 3-time average, was 22 pounds on the right versus 23 on the left. Three-point chuck pinch done on a 3-time average was 21 pounds on the right versus 18 on the left.

Dr. Vitello found Petitioner capable of performing full and unrestricted police duties, noting the test results, but also felt it was reasonable for Petitioner to undergo a functional capacity evaluation. Dr. Vitello indicated that such an evaluation might offer "more extensive detail regarding left hand function and ability to return to work."

Dr. Vitello opined that the work accident caused Petitioner's left thumb injury, noting that Petitioner had no pre-existing condition. He found Petitioner to be at maximum medical improvement. RX 3A.

Dr. Vender, a fellowship-trained hand surgeon (RX 4B), examined Petitioner on November 22, 2021, in connection with Petitioner's duty disability claim. In his report, he documented a consistent history of the work accident and subsequent care. He indicated he reviewed various documents, including Dr. Wiedrich's initial report, various medical and therapy records and a job description, in connection with his examination.

On examination, Dr. Vender noted that the MP joint was fused in approximately 10 degrees of flexion. He noted no crepitation of the thumb CMC joint and tenderness along the ulnar aspect of the MCP joint. He obtained left thumb X-rays. He interpreted the films as showing a solid arthrodesis of the metacarpophalangeal joint.

Dr. Vender described a fusion of the MP joint as a "relatively limited impairment of the thumb and especially of the hand overall." He did not believe this would prevent Petitioner from performing unrestricted police work. He indicated that, despite Petitioner's residual complaints, the fusion was solid. He could not identify a source of significant pain or persistent pathology. Based on his records review, he attributed the current condition of Petitioner's left thumb to the work accident. He found Petitioner to be at maximum medical improvement. RX 4A.

Dr. Williamson-Link examined Petitioner on November 30, 2021, in connection with Petitioner's duty disability pension. The doctor recorded a consistent history of the work accident and subsequent care. He noted a complaint of 3-4/10 left hand pain, especially with certain activities such as pinching and gripping. He also noted a complaint of occasional left knee pain and locking. On left hand examination, he noted mild tenderness to palpation along the ulnar side of the left thumb and in the webspace, slight swelling compared to the right hand and decreased grip compared to the right hand. On left knee examination, he noted a good passive range of motion, no grinding and no crepitus.

Dr. Williamson-Link found Petitioner unable to resume patrol officer duties based on his "persistent left hand weakness." He viewed this inability as permanent. He found no evidence of any pre-existing conditions. He indicated he was unaware of any additional treatment Petitioner could undergo that could reasonably be expected to enable him to recover from his disability and resume full duty. PX K.

Petitioner identified PX H as a written description of his patrol officer job. This document reflects that a patrol officer has to be able to apprehend and arrest, use both hands to fire a weapon, subdue individuals, recover weapons from suspects and lift/carry bodies and heavy objects. None of these activities is within Dr. Fernandez's restrictions. The bag he

carried at work weighed about 30 pounds. It contained an AED (defibrillator) and other required equipment. T. 63-65.

Petitioner testified he always has some baseline left hand pain. This pain worsens with activity. He takes over the counter medication for this pain. His thumb is fused at 30 degrees of flexion. He continues to perform desk duty. Respondent has not offered him full duty. T. 37-38. Nor has Respondent asked him to qualify with his service weapon. T. 44-45. Before the accident, he played golf a few times a month during warm weather. Since the accident, he has tried hitting balls at a driving range but this caused pain. He also has tried to resume bowling since the accident but it is difficult and painful to use his left hand to support the ball. He used to lift free weights at a gym at work but has not tried this since the accident. Lifting such weights irritates his hand. He finds certain activities of daily life, including tying his shoes, opening jars and Ziploc bags and turning keys, difficult. When he shovels snow or mows his lawn, he uses his left hand in an open position to avoid pain. His home life is busy since he has five children, aged 5, 7, 8, 16 and 18. T. 44. He used to go to a gym called Charter Fitness five days a week but he allowed his membership to lapse in November 2020 because he was unable to use most of the equipment. Cold weather causes his thumb to swell. He also experiences left knee symptoms in cold and humid weather. With respect to his knee, he has good days and bad. He has not tried to run since the accident because he believes this would cause pain. With the exception of his police-related training, he has not undergone training or obtained special certificates.

Under cross-examination, Petitioner testified that, with respect to his knee, Dr. Forsythe released him to full duty on August 7, 2018. Dr. Forsythe placed no restriction on his ability to run. T. 77. He could be a full duty police officer now with respect to his knee injury alone. T. 77-78. He currently earns $44.61 per hour. T. 78. He recognizes that some physicians have found him capable of full police duty. T. 79. He would have to weapons qualify to return to such duty. He qualified once after the accident but that was before the fusion. He has not attempted to qualify since the fusion. If Respondent asked him to do this, he would make the attempt. He has not fired a weapon or been to a shooting range since the accident. T. 81. If his duty disability pension were denied, he would attempt to resume full police duty if he was medically cleared to do so. He has met with a vocational counselor, David Gibson, but has not researched other jobs. He and Gibson did not discuss the amount he could be paid at a different job. T. 83. He has a college degree and, in 2012, obtained a master's degree in public safety administration. T. 84. His injury is to his non-dominant hand. He uses his right hand to write, throw and bat. T. 84. His golf clubs are right-handed. He has not played softball since the fusion. He continues to walk for fitness purposes. He also uses a Total Gym machine at home. This machine is equipped with cables. He avoids using his left thumb as leverage when he uses the machine. T. 86. Dr. Fernandez prescribed a functional capacity evaluation in July 2021. T. 86. He did not undergo this evaluation. He discussed the evaluation with Dr. Fernandez and the doctor concluded that the evaluation could not mimic his job. T. 87. If the issue of such an evaluation arose again, he would consult with Dr. Fernandez before undergoing it. T. 89. He has a pending personal injury claim arising out of the February 8, 2018 accident. He reached a settlement with one defendant but the claim is still pending against other

defendants. T. 89-90. As a police officer, he did not perform physical activities or make arrests all of the time. T. 91. His current annual salary is approximately $95,000. T. 91. Dr. Wiedrich examined him on two occasions, in 2018 and 2021. Each of these examinations lasted about ten minutes. Dr. Gleason's examination was longer than usual. Dr. Williamson-Link spent forty-five minutes examining him. T. 92-93.

On redirect, Petitioner testified he is unable to play softball or golf using only his right hand. He did not own the Total Gym machine before the work accident. T. 94. The firearms instructors at Respondent are Officers Brown or Powell. T. 94. No officer has told him that it is time for him to try to weapons qualify. At the present time, he is the only officer performing desk duty for Respondent. T. 95.

Arbitrator's Credibility Assessment

Petitioner was an articulate, highly believable witness. His years of service with Respondent weigh in his favor, credibility-wise. His treatment records reflect that, when presented with the option of "doing nothing" versus undergoing operations to try to improve his function, he chose the latter.

Dr. Wiedrich, one of Respondent's examiners, described Petitioner as failing validity testing when he tested for strength on May 17, 2021. RX 1C. Dr. Fernandez described the results of similar testing as valid. PX E. In fact, Dr. Fernandez made a point of noting that Petitioner had "never exhibited symptom magnification or malingering or pain behavior." PX J.

Overall, the Arbitrator found Dr. Fernandez's opinions concerning Petitioner's work capacity more persuasive than those expressed by Drs. Wiedrich, Gleason, Vitello and Vender. Dr. Fernandez treated Petitioner over an extended period. He ultimately concluded that a functional capacity evaluation could not accurately simulate Petitioner's multi-faceted job. Respondent's own exhibit establishes that this job consists of 108 "essential" functions and 41 other "important" functions. RX 5. Of the former, only one function, namely "the ability to perform arrest/apprehension duties" is deemed 100% essential. This function includes subduing and handcuffing suspects, firing weapons and, most significantly, "using deadly force when necessary." RX 5, p. 3. A police officer's inability to use such force in a volatile situation has implications not only for his own safety but also that of innocent bystanders and fellow officers. Dr. Fernandez recognized this when he concluded that it was simply too risky to release Petitioner to unlimited physical contact. The Arbitrator dismisses Respondent's suggestion that Petitioner somehow manipulated Dr. Fernandez into concluding that a functional capacity evaluation would not be useful. Doctors, like all professionals, are free to change their minds when presented with additional information. The Arbitrator concludes that Dr. Fernandez was better informed about the most stressful, least predictable aspects of Petitioner's job by virtue of his discussion with Petitioner and his careful review of the job description. PX J. Dr. Fernandez's appreciation of the risks of the job stands in contrast to that of the other physicians involved in this case. Drs. Wiedrich and Vender appeared to give no real consideration to those risks. Dr. Wiedrich indicated that "most people . . . are able to resume

full normal activities" after a successful thumb fusion. RX 1C. That may be true in his experience but "most people" are not police officers charged with apprehending suspects and rescuing injured individuals. Dr. Gleason went so far as to describe Petitioner's job as "medium" duty. RX 2A, p. 6 of 7. A person who could, at any moment, be called upon to disarm and subdue an unruly individual or drag or carry an unconscious adult is not performing medium level activities. As Dr. Fernandez correctly noted, Dr. Gleason concluded that Petitioner was capable of full police duty without ever performing grip or strength testing. PX J.

Arbitrator's Conclusions of Law

Did Petitioner establish a causal connection between the undisputed work accident and his claimed current conditions of ill-being?

Causation is technically in dispute but, at the hearing, Respondent's counsel clarified he was disputing this issue only insofar as it bears on Petitioner's ability to work.

The Arbitrator finds that Petitioner established causation as to his claimed current post-operative left knee and left hand conditions of ill-being. In so finding, the Arbitrator relies on the following: 1) Petitioner's credible denial of any pre-accident left knee or left hand problems or treatment; 2) the fact that the medical records do not mention any pre-accident left knee or left hand problems or treatment; 3) the fact that Petitioner was able to successfully perform the duties of a police officer for years prior to the accident; 4) Petitioner's credible testimony as to the mechanism of injury and the immediate onset of pain in his left hand, left elbow and left knee; 5) the pathology demonstrated on MRI; and 6) the fact that all of the examining physicians found in Petitioner's favor on the issue of causation.

What is the nature and extent of the injury?

Because the accident occurred after September 1, 2011, the Arbitrator looks to Section 8.1b of the Act for guidance in assessing permanency. That section sets forth five factors to be considered in determining the nature and extent of an injury, with no single factor predominating. The Arbitrator assigns no weight to the first factor, any AMA guides impairment rating, since neither party offered such a rating into evidence. The Arbitrator assigns significant weight to the second and third factors, Petitioner's age at the time of the occurrence and occupation. Petitioner was only 34 years old at the time of the accident but he had already devoted a third of his life to police work. He became a sworn officer in 2007, eleven years before being injured. While it seems easy to say that, at his current age of 38, he is still young enough to switch gears professionally, especially given the master's degree he obtained in 2012, that degree is in public safety administration and is thus tailored to the profession he chose when he joined the force. There is no evidence indicating that the degree would enable Petitioner to move seamlessly into another line of work. The Arbitrator also assigns significant weight to the fourth factor, future earning capacity. As of the hearing, Petitioner was continuing to perform desk duty for Respondent. His base salary has not changed but his light duty status means he is not eligible for the extra wages associated with

overtime and "court time." His injury has thus affected his overall income. Additionally, there is no guarantee Respondent will continue to offer him desk duty. His work experience and advanced degree are tailored to active patrol officer duty, which he can no longer engage in per Dr. Fernandez's permanent restrictions. As for the fifth and final factor, evidence of disability corroborated by the treatment records, the Arbitrator relies on the MRI results, operative findings, Dr. Forsythe's full duty release with respect to the knee injury and Dr. Fernandez's narrative reports, which outline the fusion-related deficits.

The Arbitrator has considered all of the foregoing, along with Petitioner's credible testimony concerning his persistent left knee and left hand complaints. With respect to the left knee, the Arbitrator finds that Petitioner is permanently partially disabled to the extent of 16% loss of use of the left leg, representing 34.40 weeks of benefits under Section 8(e) of the Act. With respect to the left hand, the Arbitrator finds that Petitioner is permanently partially disabled to the extent of 40% loss of use of the person as a whole, representing 200 weeks of benefits under Section 8(d)2 of the Act. The hand is a scheduled body part under Section 8(e) but the Arbitrator finds it appropriate to award permanency under Section 8(d)2, given that the permanent restrictions prevent Petitioner from resuming his usual and customary line of employment.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC007911
Case Name	Michael Safraniec v. Benson Electrical Contracting
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0348
Number of Pages of Decision	14
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	James Nawrocki
Respondent Attorney	Robert Maciorowski

DATE FILED: 9/12/2022

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL SAFRANIEC,

Petitioner,

vs. NO: 20 WC 7911

BENSON ELECTRICAL CONTRACTING,

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 accident, causal connection and prospective medical care, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission modifies the Decision of the Arbitrator and finds that Petitioner established that he developed lateral epicondylitis as a result of his November 11, 2019 work-related accident, and that he established that said condition is causally related to the accident. The record demonstrates that Petitioner had no left elbow complaints prior to the work accident. After the accident, Petitioner presented to Northwestern Medicine with complaints of left shoulder discomfort and issues raising his left arm. He had full range of motion of his elbow. He was diagnosed with a left shoulder contusion/rotator cuff strain. Petitioner then began treating with Dr. Rolando Izquierdo of OrthoIllinois on December 9, 2019. Petitioner informed Dr. Izquierdo of his

left shoulder pain and that it now radiated to the left elbow. Due to continued elbow complaints, Dr. Izquierdo referred Petitioner to Dr. Kelly Holtkamp. Petitioner was examined by Dr. Holtkamp on February 3, 2020 and x-rays revealed lateral epicondyle bone spurs and mild to moderate osteoarthritis. Petitioner last treated with Dr. Holtkamp on April 1, 2020. At that time, there was no tenderness over the lateral epicondyle and his elbow range of motion was within normal limits. Stretching of the extensor mobile and resistance to the extensor mobile were both negative. Petitioner was returned to work with no elbow restrictions and MMI was anticipated within one month. Dr. Holtkamp was subsequently deposed and testified that the fall could have aggravated Petitioner's elbow and caused the lateral epicondylitis.

"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 Comm'n*, 93 Ill. 2d 59, 63-64, 442 N.E.2d 908, 66 Ill. Dec. 347 (1982).

Here, there are no records demonstrating that Petitioner had any issues with his left elbow in the months leading up to the accident and there is no evidence supporting that Petitioner had an intervening accident. Shortly after the accident, however Petitioner developed issues with his left elbow and was diagnosed with lateral epicondylitis. The Commission finds that Dr. Holtkamp's opinion that the lateral epicondylitis was caused by the accident is persuasive and supported by the medical records.

Therefore, the Commission modifies the Decision of the Arbitrator and finds that Petitioner established that his lateral epicondylitis is causally related to the November 11, 2019 accident. All else is affirmed and adopted.

IT IS THEREFORE ORDRED BY THE COMMISSION that the Decision of the Arbitrator, filed November 30, 2021, is hereby modified as stated above, and otherwise 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.

September 12, 2022

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

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

/s/ *Marc Parker*
Marc Parker

CAH/tdm
O: 9/8/22
052

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC007911
Case Name	SAFRANIEC, MICHAEL v. BENSON ELECTRICAL CONTRACTING
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	James Nawrocki
Respondent Attorney	Robert Maciorowski

DATE FILED: 11/30/2021

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 30, 2021 0.09%

/s/ Jeffrey Huebsch, Arbitrator

Signature

M. Safraniec v. Benson Electrical Contracting, 20 WC 007911

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)

Michael Safraniec Case # **20** WC **007911**
Employee/Petitioner

v.

Benson Electrical Contracting
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 **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **08/31/2021**. 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, **11/11/2019**, 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, in part,*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**81,226.85**; the average weekly wage was $**1,562.05**.

On the date of accident, Petitioner was **49** years of age, ***married*** with **1** dependent children.

The issue of past medical charges is reserved.

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**.

The issue of Respondent's entitlement to any Section 8(j) credit is reserved.

ORDER

Respondent shall authorize and pay for the left shoulder arthroscopic rotator cuff repair, subacromial decompression with anterior acromioplasty, and possible biceps tenodesis procedure offered by Dr. Rolando Izquierdo, Jr., along with all related services, in accordance with Sections 8(a) and 8.2 of the Act, and as is set forth below.

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/ Jeffrey Huebsch

Signature of Arbitrator

NOVEMBER 30, 2021

ICArbDec19(b)

FINDINGS OF FACT

On 11/11/2019, the claimed accident date, Petitioner was a 49-year-old left-handed union Journeyman Electrician Foreman. Petitioner has worked for Respondent for about 20 years, primarily working on commercial projects and service calls throughout the Chicago area.

On 11/12/2018 (or about 1 year before) Petitioner was examined by an Orthopedic Surgeon, Dr. Rolando Izquierdo, Jr., MD, for bilateral shoulder pain (PX 2) Petitioner testified that the primary purpose of this visit was because of right shoulder pain, but he did ask the doctor to also look at his left shoulder. X-rays were taken of both shoulders and an assessment was made of bilateral shoulder bursitis with bicipital tendonitis in the left shoulder (PX 2) Dr. Izquierdo ordered MRI's of both shoulders, but Petitioner's group carrier only approved the study for the right shoulder.

Petitioner was seen in follow-up by Dr. Izquierdo on 12/18/2018. The right shoulder MRI results were reviewed. The study revealed a 2.9 cm full thickness tear and surgical and non-surgical management was discussed. (PX 2) Petitioner testified that there was no discussion of the left shoulder at this office visit. Although right shoulder surgery was recommended, Petitioner opted not to have it and modified his work activities.

Petitioner testified that the 2018 problem with his right shoulder began approximately 3 months prior to the 11/12/2018 office visit and that the history of a 2008 injury to his shoulders contained in the 11/12/2018 and 12/19/2018 office notes are typographical errors. The Arbitrator notes that no evidence of an injury or medical treatment in 2008 was submitted by either Party.

On 11/11/2019, Petitioner was working at a job in Niles, Illinois at a Coca-Cola warehouse He was doing lighting startup, which had him going room-to-room on a ladder to plug in cables for all of the lighting. The cables were located in the ceiling. In the breakroom, Petitioner proceeded up a 6' ladder and, when he got to the fourth rung, 4 feet up, the ladder kicked forward. Petitioner tried to grab anything, trying to hold on to a ceiling grid, but the hanging ceiling gave way, causing him to fall backward onto the tip of his left shoulder with his arm fully extended. The post accident condition of the ceiling, as well as the ladder, are contained in the 2 color photos introduced as PX 5. Petitioner took the photos on his cellphone to document the damage to the ceiling.

Petitioner then contacted his office and sought treatment at Northwestern Medicine Huntley Hospital. (PX 1) The initial 11/11/2019 chart notes states:

> **History of the Patient: Patient is a pleasant 49-year-old male who works for Benson Electrical. Today while he was at work, he was standing on metal ladder. He fell about four feet down from the ladder and landed on his left shoulder. His entire body weight body weight came on the left shoulder because his shoulder was behind his body. He is having trouble raising the arm and**

complaining of the discomfort. With movement, he rates his pain as 8/10; at rest, it is about 3/10. No head injury. No loss of consciousness. No other injury. (PX 1)

The physical exam revealed tenderness over the left rotator cuff, mainly over the deltoid. No deformity, swelling or bruising was appreciated. Decreased shoulder ROM was noted. The rest of the left arm exam was normal. X-rays were negative for acute findings. There is no mention of any elbow issues, or any complaints of numbness or tingling in the left arm. (PX 1)

The impression was:

Assessment and Plan: Left shoulder confusion/rotator cuff strain. Patient to use Local ice packs and Advil three times a day with food. He should follow given work restrictions, which include no overhead reaching, no more than 5-pound lifting with left hand, minimal pushing, pulling and carrying with left arm and hand. Vickie was notified at his work. She agrees with the plan. We will follow up with him in three days here at Huntley Occupational Health. He should come back early if his symptoms get worse. (PX1)

Petitioner was seen at this clinic on 11/18/2019 and 11/25/2019. (PX 1) He decided to seek other medical attention because they would not prescribe diagnostic testing, only recommending ice and Advil.

Due to the Thanksgiving holiday and availability, 12/09/2019 was the first day that Petitioner could get in to see Dr. Izquierdo.

The 12/09/2019 chart note states:

Chief Compliant

1. Left shoulder pain

History of Present Illness

History per patient:

Date of onset and mechanism of injury: 11/11/2019, while on a ladder they fell off and landed on the tip of left shoulder. Location of pain or injury: Entire left shoulder. The patient has: seen Dr. Izquierdo in the past. Referred by: self. Hand dominance: Left Pain: Yes, Radiation of pain: yes, to the elbow, Timing of pain: intermittent, Pain level at rest: 5/10, Pain level with activity: 9/10, Describe your pain: discomfort, Aggravated by: lying down, Relieved by: activity modification. Associated symptoms: clicking, popping, Numbness: No. Denies: numbness, tingling. Nighttime symptoms: sufficient to awaken from sleep. Medications for this condition: none. Diagnostic testing for this condition: X-ray Northwestern 11/11/19. Treatment for this condition. Physical Therapy No, Injections: No, Surgery: No. Recreational/sport activities: Participation in sports or recreational activities prior to the onset of condition: No. Prior to this incident: the patient reports no pain, injections or diagnostic testing. Current work status: working with restrictions.

Work Injury:

Employer Benson Electric Job Description Journeyman Electrician. The patient has been employed at this company for 21 years. The patient states this is an alleged Workers' Compensation injury. Patient noted the injury was not witnessed. The patient was not able to

work the rest of the day. The injury was reported to a supervisor the same day. The patient did seek medical care at the emergency room. Current work restrictions include: light duty.

The physical exam was very similar to the exam of the left shoulder that was documented on 11/12/2018, with the additional finding of a positive Hawkins sign. The diagnosis was left shoulder bursitis and an MRI was ordered of the left shoulder to evaluate the rotator cuff. (PX 2) Dr. Izquierdo read the study as showing an approximately 3cm (closer to 2cm?) full thickness rotator cuff tear involving the supraspinatus without any retraction and no substantial atrophy. (PX 3, p. 10) Dr. Izquierdo opined that because there was no substantial retraction and no substantial atrophy, this condition was more substantially likely to be an acute tear (PX 3, pp. 10-11)

A surgical repair was recommended when Petitioner saw Dr. Izquierdo on 1/20/2020 for post MRI follow-up. At the same 01/20/2020 office visit, Petitioner was referred by Dr. Izquierdo to Dr. Kelly Holtkamp, MD, a hand/elbow specialists in the same Ortho Illinois practice, for evaluation and treatment of left elbow pain. (PX 2)

Dr. Holtkamp evaluated Petitioner on 02/03/2020 and her chart note states:

Chief Complaint

1. Left elbow pain

History of Present Illness

History per patient:

Reason for visit: A 49 year old left hand-dominate male complains of left Elbow pain. Patient states he was on a ladder when it slipped out from under him and he fell about 4 feet with his arm out in front of him.
Date of onset and mechanism of injury: 11/11/2019.
Location of pain or injury: lateral aspect of left elbow.
The patient has:
Not seen Dr. Holtkamp in the past
Referred by:
Dr. Izquierdo
Pain:
Yes
Radiation of pain: ***yes, to the forearm***
Timing of pain: ***constant***
Pain level at rest: ***5/10***
Pain level with activity: ***08/10***
Describe your pain: ***aching, discomfort***
Aggravated by: ***any movements***
Associated symptoms:
Weakness
Nighttime symptoms:
Not sufficient to awaken from sleep
Medications for this condition:
Advil
Diagnostic testing for this condition:
Previous testing: No
Treatment for this condition:

None
Current work status:
Working full-time
(PX 2)

Dr. Holtkamp diagnosed lateral epicondylitis of the left elbow and recommended conservative care consisting of a wrist splint and physical therapy. (PX 2)

Petitioner attended PT for his left elbow approximately 10 times in February through March 2020 leading Dr. Holtkamp to release Petitioner at full duty with respect to his elbow condition on 04/01/2020. (PX 2)

On 03/12/2020, Petitioner was seen for a Section 12 exam by Dr. Preston Wolin, MD. Dr. Wolin was also given the medical records of Dr. Izquierdo, the 02/03/2020 note of Dr. Holtkamp, the 12/27/2019 left shoulder MRI, and a set of shoulder x-rays (RX 3) Before his 02/04/2021 evidence deposition, Dr. Wolin was given the November/December 2018 prior treatment chart notes and a copy of Dr. Izquierdo's narrative report and occupational therapy notes from February/March 2020 (RX 3)

It was the opinion of Dr. Wolin that neither the left rotator cuff tear or the left lateral epicondylitis were proximately caused by the 11/11/2019 work accident. Dr. Wolin gave the following basis for these opinions:

Left Shoulder

1. **His reading of the 12/27/2019 MRI showed a full thickness tear of the supraspinatus tendon with a 2cm retraction; (p. 16, RX 3)**
2. **The tear was chronic, as he read this MRI to show atrophy; (p. 17, RX 3)**
3. **The alleged 2008 work accident. (p. 38, RX 3)**

Left Elbow

1. **Petitioner did not complain of elbow pain until some 6 weeks post injury;**
2. **Petitioner was unable to give a description of the mechanism of the elbow injury. (p. 22, RX 3)**

As a result of the IME, further medical care was denied. Petitioner has continued working as a Journeyman Electrician Foreman for Respondent by modifying his job duties.

Petitioner was last seen by Dr. Izquierdo on 03/30/2020, with the surgical recommendation opinions being unchanged. (PX 2)

Since the case was now disputed, Petitioner obtained a narrative report from Dr. Izquierdo, filed a Section 19(b)/8(a) motion, and then the process of taking evidence depositions began.

Dr. Izquierdo gave his testimony on 01/28/21. (PX 3) He testified in accordance with his treating chart notes, in that Petitioner sustained a full thickness 2cm tear of the left supraspinatus and that the lack of substantial atrophy meant that this was an acute injury. (p. 10-11, PX 3) This, coupled with Petitioner's age and the history and mechanism of a traumatic event, caused Dr. Izquierdo to opine that the 11/11/2019 work injury was the proximate cause of Petitioner's left shoulder condition and that a surgical repair was the best was the best way to address this condition. (pgs. 17-21, PX 3). Dr. Izquierdo was extensively cross examined as to Petitioner's physical findings and pain complaints noted in 2018 as they compared to December 2019. (pgs. 26-32, PX 3) Dr. Izquierdo was also crossed examined regarding the interpretive radiologist's use of the term "minimally retracted' (in the 12/27/2019 MRI report) and the term "without retraction" (Dr. Izauierdo's term) is the same finding. (p. 44-45, PX 3)

The Parties took Dr. Wolin's evidence deposition on 02/04/2021. It was Dr. Wolin's opinion that neither the left rotator cuff tear, nor the left lateral epicondylitis is attributable to the 11/11/2019

work accident, for the reasons set forth above. (pgs. 16-7, 22, 38 RX 3) Dr. Wolin also opined that there is evidence that Petitioner's left rotator cuff tear was present in November and December, 2018 (p. 31, RX 3), and the 4 foot fall off the ladder did not aggravate it. (p. 33, RX 3). Dr. Wolin's treatment recommendation was that Petitioner undergo a left rotator cuff repair. (p.23, RX 3)

On cross-examination, Dr. Wolin admitted that he did not review the emergency room Records. (p. 39 RX 3), He did not see a left shoulder surgical recommendation by any physician prior to 12/09/2019. (p. 40, RX 3) Dr. Wolin agreed that Dr. Izquierdo charted no left shoulder complaints between December 2018 until December 2019 (p. 41, RX 3) and agreed that the first time work limitations were placed on Petitioner was following the accident of 11/11/2019. (pgs. 42-43, RX 3)

The final evidence deposition was that of Dr. Holtkamp, taken on 06/10/2021. It was her medical opinion that Petitioner his left elbow at the11/11/2019 work accident. Any type of pull or strain can affect the tendon. Direct pressure can affect the tendon. (p. 12, PX 4) Dr. Holtkamp also explained that Petitioner's entire arm hurt after the fall and once his shoulder started feeling better, he felt the pain more in the elbow. (p. 13, PX 4) Moreover, if Petitioner was not getting much use of his left arm, post accident, he may have not noticed the extent of his elbow injury (p. 36, PX 4). Dr. Holtkamp also noted that the 12/09/2019 chart note of Dr. Izquierdo says "HAND DOMINANCE: LEFT PAIN: YES RADIATION OF PAIN: YES TO THE ELBOW". Cross-examination established that there are more than one cause to lateral epicondylitis, including that it can develop idiopathically. It was also confirmed that she documented Petitioner's history as being of a fall with his arm out in front of him. (pp. 15-16, RX 4) There was no notation of elbow symptoms being masked by the patient's shoulder complaints.

Petitioner testified that, if awarded the offered shoulder surgery, he would pursue it. Presently, he works modified duty and takes over the counter medication for his shoulder. As to his left elbow, it is generally good, but he does get a twinge if he turns it a certain way.

The testimony of Petitioner in the instant Section 19(b)/8(a) hearing was conducted on 08/12/2021 with the formal closing of proofs on 08/30/2021, after the Parties agreed upon the Average Weekly Wage.

CONCLUSIONS OF LAW

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

Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d).

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980)), including that there is some causal relationship between his employment and her injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989)

Decisions of an arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e)

In support of the Arbitrator's decision regarding (C) did an accident arise out of and in the course of Petitioner's employment and (F) is Petitioner's current condition of ill-being casually related to the injury, the Arbitrator finds:

Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent on 11/11/2019.

This finding is based upon the unrebutted testimony of Petitioner and the medical records. Petitioner fell 4 feet from a ladder, while installing lighting cables in the ceiling at the Coca Cola warehouse in Niles., landing on the tip of his left shoulder. He documented the damage to the ceiling via his cellphone (PX 5) and called Respondent. He sought emergency care at Northwestern Huntley Hospital and they placed a call to Vickie at Respondent to advise of work restrictions. (PX 1) A consistent history of the accident was given to Dr. Izquierdo. (PX 2)

Petitioner's current condition of ill-being is, in part, causally related to the injury.

There is a causal connection between the accidental injuries Petitioner suffered in the work-related fall of 11/11/2019 and Petitioner's condition of ill-being regarding his left shoulder, to wit: acute full thickness rotator cuff tear, as diagnosed and described by Dr. Izquierdo. This finding is based on the testimony of Petitioner, the medical records and the persuasive opinions of Dr. Izquierdo. Petitioner had a fall from 4 feet, landing on his left shoulder. Immediate medical care confirmed a shoulder strain/contusion. MRI confirmed an acute tear of the rotator cuff.

There is no record of any prior (2008) acute work injury. Petitioner was working for Respondent in 2008. If there was any evidence of a 2008 work accident, Respondent would have submitted it. There was no evidence of any left shoulder treatment from 11/12/2018, when a diagnosis of shoulder bursitis and bicipital tendonitis in the left shoulder was made to the accident date of 11/11/2019. Petitioner continued to work his regular job duties (which obviously included overhead work, as demonstrated by the work that was being performed when the accident occurred) both before and after the 11/12/2018 doctor's visit. Whatever pathology was present in Petitioner's left shoulder before the accident was not significant enough for Petitioner to have sought treatment and did not limit his ability to work as an electrician. Clearly, Petitioner's left shoulder condition post fall led to treatment and work restrictions. At least an aggravation occurred as a result of the fall. To the extent that Dr. Izquierdo's opinions differ from those of Dr. Wolin, the Arbitrator is persuaded by the treating physician's opinions, which do comport better with the evidence adduced.

There is no causal connection between the work-related fall of 11/11/2019 and any condition of ill-being regarding Petitioner's left elbow (resolved left epicondylitis). Dr. Holtkamp's causation opinion is not persuasive, as Petitioner did not fall "with his arm in front of him". The initial medical records do not evidence any elbow complaints or trauma. With a history of a fall off a ladder onto an extremity, a thorough exam would be expected and there just is no documentation of an elbow injury. No initial complaints and no treatment = no causal connection.

In support of the Arbitrator's decision regarding (K) whether Petitioner is entitled to any prospective medical care, the Arbitrator finds:

Petitioner is entitled to prospective medical care relative to his left shoulder rotator cuff tear condition. This finding is based on the Arbitrators findings on the issues of accident and causation, set forth above.

Both Drs. Izquierdo and Wolin believe a shoulder surgery is necessary to repair Petitioner's left rotator cuff. Dr. Iquierdo endorses a new MRI before pursuing surgery. This makes sense, given the time lapse that has occurred since the prior study.

Accordingly, Respondent shall authorize and pay for the left shoulder MRI, left shoulder arthroscopic rotator cuff repair, subacromial decompression with anterior acromioplasty, and possible biceps tenodesis procedure offered by Dr. Rolando Izquierdo, Jr., along with all related services, in accordance with Sections 8(a) and 8.2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC006924
Case Name	Peter Hopp v. Metropolitan Water Reclamation of Greater Chicago
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0349
Number of Pages of Decision	20
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Matthew Gannon
Respondent Attorney	Dennis Noble

DATE FILED: 9/12/2022

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Peter Hopp,
Petitioner,

vs. NO: 19 WC 6924

Metropolitan Water Reclamation
District of Greater Chicago,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 4, 2022 is hereby affirmed and adopted.

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

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

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.

September 12, 2022

o: 09/08/2022 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	19WC006924
Case Name	HOPP,PETER v. METROPOLITAN WATER RECLAMATION OF GREATER CHICAGO
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Matthew Gannon
Respondent Attorney	Michael Chalcraft II, Peter Havighorst

DATE FILED: 4/4/2022

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

/s/William McLaughlin, 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

Peter Hopp Case # **19** WC **6924**
Employee/Petitioner

v.

Metropolitan Water Reclamation District of Greater Chicago
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **William McLaughlin**, Arbitrator of the Commission, in the city of **Chicago**, on **January 28, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

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

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

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

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

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

In the year preceding the injury, Petitioner earned $**106,080.00**; the average weekly wage was $**2,040.00**.

On the date of accident, Petitioner was **50** years of age, ***single*** with **0** dependent child.

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

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

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

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

ORDER

Petitioner's work accident arose out of and in the course of Petitioner's employment by Respondent.

Petitioner's current condition of ill-being is causally related to his July 14, 2018 work injury.

The medical services that were provided to Petitioner were reasonable and necessary. Respondent shall pay reasonable and necessary medical services of $33,847.37, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $1463.80/week for 56 and 5/7 weeks as provided under section 19(b) of the Act.

Arbitrator rules no fees or penalties to be paid.

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

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

Signature of Arbitrator

Findings of Fact

On July 14, 2018 Petitioner, Peter Hopp, was a 50 year old operating engineer who worked for Respondent, Metropolitan Water Reclamation District of Greater Chicago (hereinafter "Water Reclamation"). (Transcript, pg. 7). As an operating engineer, Petitioner operated front end loaders, debris boats, trains, cranes, and other miscellaneous equipment. (Transcript, pg. 9). At the time of Petitioner's injury, he was earning $2,040 per week. (Transcript, pg. 8).

On July 14, 2018, Petitioner was directed by his employer to operate a front end loader for Water Reclamation at its Harlem Yard. (Transcript, pg. 10). July 14, 2018 was a rainy wet day. (Transcript, pg. 14). To get in and out of the cab of the loader, Petitioner climbed stairs that went about three quarters of the way to the front end loader's cab and then took one to two steps from the top of the stairs into the cab. (Transcript, pg. 10). Petitioner attempted to climb from wooden steps that were provided by Water Reclamation onto the front end loader, but the steps were shaky, wet, mossy, and slippery. (Transcript, pg. 17). When Petitioner attempted to step onto the front end loader from the wooden steps, he slipped and fell. (Transcript, pg. 14-17). Petitioner reached out with his right arm to brace for his fall. (Transcript, pg. 14). Ultimately, Petitioners' body slammed down on the wooden steps, causing immediate pain in Petitioners' lower back, buttocks, and his right shoulder. (Transcript, pg. 14-15).

Petitioner immediately reported the fall to his foreman. (Transcript, pg. 19). Petitioner also filled out an incident report. (Transcript, pg. 19). Petitioner then left the scene to go to Excel Occupational Health Clinic. (Transcript, pg. 19).

Petitioner's Physical Condition Prior to the July 14, 2018 Injury

Petitioner testified that before this incident he did not experience any issues or problems with his right shoulder. (Transcript, pg. 11). He had no treatment to his right shoulder prior to the

July 14, 2018 fall. (Transcript, pg. 11). Petitioner testified that before this incident he did not experience any issues or problems with his low back. (Transcript, pg. 11). Petitioner injured his back in the early 1990's, and received a lumbar surgery in 1994, 28 years prior to the injury at issue here. (Transcript, pg. 11-12). Following the lumbar surgery in 1994, Petitioner went back to work and worked in a full duty capacity. (Transcript, pg. 12). Petitioner had a minor back strain in 2007, but continued to work through the strain without issues. (Transcript, pg. 12-13). Prior to his July 14, 2018 injury, Petitioner had no issues lifting weights up to 75 pounds at work. (Transcript, pg. 12-13).

Medical Treatment

Immediately after the incident, Petitioner went to Excel Occupational Health Clinic and presented to Dr. Edward Pillar for examination. (PEX #2, pg. 6-7) (Transcript, pg. 20). He reported pain to his left hip and buttock and numbness in his lower back. (PEX #2, pg. 6-7). The pain in Petitioner's low back was a numbing pain that he rated a 7-8 out of 10. (Transcript, pg. 20-21). He also reported pain in his shoulder. (PEX #2, pg. 6-7). Petitioner advised the clinic that he previously had received a lumbar spine surgery. (PEX #2, pg. 6-7). Petitioner was instructed by Dr. Pillar to ice his injuries and take meloxicam. (PEX #2, pg. 6-7).

Petitioner followed the instructions of Dr. Pillar and went home after his visit. (Transcript, pg. 22). Once he arrived at his home, Petitioner's back locked up and he could not move without immense pain. (Transcript, pg. 22). Petitioner testified that he laid on the floor of his home for hours and his mother eventually came to take him to the hospital. (Transcript, pg. 22).

Petitioner arrived at Lutheran General Hospital at about 9:00 p.m. on July 14, 2018. (PEX #1, pg. 22). Petitioner reported pain in his left buttock, hip, thigh, and in his lower back. (Transcript, pg. 22-23). He was examined by Dr. David Hassard. (PEX #1, pg. 22). Dr. Hassard

ordered an MRI of Petitioners' lumbar spine. The MRI revealed severe stenosis at L1-2, L2-3, L3-4, L4-5, and L5-S1. (PEX #1, pg. 45). Petitioner was instructed to follow up with an orthopedic surgeon and was given a prescription of acetaminophen-hydrocodone. (PEX #1, pg. 18-19).

A. Right Shoulder Treatment

Petitioner took his hydrocodone medications to alleviate his pain and he scheduled a follow up appointment with Hinsdale Orthopedics. (Transcript, pg. 23). Petitioner was examined by Dr. Steven Chudik on July 20, 2018. (Transcript, pg. 23-24) (PEX #3, pg. 6). Petitioner reported pain in his shoulder that had been increasing since the date of the fall. (Transcript, pg. 24) (PEX#3, pg. 6). The pain prevented Petitioner from lifting his arm. (Transcript, pg. 24). At Dr. Chudik's office, Petitioner's right shoulder had limited range of motion and was positive for drop arm. (PEX #3, pg. 7-8). Petitioner was told to undergo an MRI of his shoulder. (Transcript, pg. 24) (PEX #3, pg. 8). At this time, Dr. Chudik instructed Petitioner to remain off work. PEX #3, pg. 9).

Petitioner received the MRI on July 25, 2018. (PEX #3, pg. 17). The MRI revealed multiple tears. (PEX #3, pg. 17). Dr. Chudik recommended that Petitioner attempt conservative treatment prior to any invasive procedure to see if the shoulder would heal. (PEX #3, pg. 17). Dr. Chudik instructed Petitioner to remain off work for an additional six weeks. (PEX #3, pg. 22).

Petitioner went to physical therapy at Athletico, where on September 5, 2018 he was noted to still be in pain and have limited range of motion. (PEX #3, pg. 36, 43). On September 20, 2018 Dr. Chudik ultimately recommended the surgery because conservative treatment failed. (Transcript, pg. 24-25) (PEX #3, pg. 49). Petitioner was again instructed to remain off work at this time. (PEX #3, pg. 51).

On September 27, 2018, Petitioner underwent shoulder surgery at Salt Creek Surgery Center. (PEX #3, pg. 90). Dr. Chudik performed a right arthroscopy with excessive debridement,

a right capsular release of his superior glenohumeral ligament, a subacromial decompression, a rotator cuff repair with an anchor, and a right bicep tenodesis with screws and an anchor. (PEX #3, pg. 90, 92-93). Petitioner's tear in his right shoulder articular surface was ICRS grade 2/3a, meaning it was about a 50% articular surface tear. (PEX #3, pg. 91)

After Petitioner's shoulder surgery, he attended a long course of physical therapy starting on October 1, 2018. (Transcript, pg. 26) (PEX #3, pg. 97). Petitioner followed up with Dr. Chudik on October 8, 2018. (PEX #3, pg. 109). Dr. Chudik noted that there were no post-operative complications and instructed Petitioner to remain off work and continue therapy. (PEX #3, pg. 109-110).

On November 14, 2018 Petitioner's physical therapists noted that he had struggles and setbacks since removing his immobilizing sling and noted that Petitioner had spikes in pain and a slow post operative recovery. (PEX #3, pg. 113).

Petitioner returned to Dr. Chudik on November 19, where Dr. Chudik noted pain in Petitioner's shoulder and numbness over the surgical site. (PEX #3, pg. 118). Petitioner was instructed to continue therapy and remain off work. (PEX #3, pg. 119-120).

By January of 2019, Petitioner's shoulder was making progress. (PEX #3, pg. 130-131). Petitioner's swelling was subsiding, and his range of motion was increasing, but Dr. Chudik kept Petitioner off of work because Petitioner still lacked adequate range of motion and strength for his job. (PEX #3, pg. 131, 133). While Petitioner was in therapy, he attended an e-learning course in February of 2019 through his employer in attempt to go back to work in a light duty capacity. (Transcript, pg. 26-27).

On January 30, 2019, Petitioner underwent a functional capacity evaluation at Athletico. (PEX #3, pg. 136). At the FCE, Petitioner was able to meet some of his job demands, including

range of motion demands for his shoulder, but Petitioner's ability to lift weights with his right arm was not tested due to his continuing back pain following the July 14, 2018 work fall. (PEX #3, pg. 137, 139). At the FCE, it was noted that Petitioner still had back pain, which was a constant soreness in Petitioner's lower back. (PEX #3, pg. 137-139). At this time, Petitioner was still waiting on approval from Respondent's carrier to receive treatment for his back. (PEX #3, pg. 137, 139).

On April 25, 2019 Petitioner went to therapy and to see Dr. Chudik. (PEX #3, pg. 159, 175). Petitioner wanted to get back to work. (PEX #3, pg. 175). Dr. Chudik and Petitioner's therapists noted that he needed some more therapy before beginning work conditioning. (PEX #3, pg. 159, 175). Petitioner's therapists noted that he was still waiting on authorization for treatment of his lumbar spine and this gave Petitioner's therapists pause in transitioning to weightlifting activities, which had not yet begun for Petitioner. (PEX #3, pg. 159). Petitioner was again instructed to remain off work. (PEX #3, pg. 176). By May of 2019, Petitioner's shoulder was at MMI, so he followed up for treatment on his lower back. (Transcript, pg. 27).

B. Lumbar Spine Treatment

Petitioner's lower back treatment was delayed to September of 2019 because Petitioner's treating physicians instructed him to complete treatment of this right shoulder prior to treating for his lumbar spine injury. (Transcript, pg. 25). Additionally, Respondents insurance carrier denied approval for Petitioner's lower back treatment despite Petitioner's low back complaints from the day of the incident on. (Transcript, pg. 28) (*See* PEX #2, pg. 6-7). Petitioner ultimately paid for his back treatment because he could no longer wait for Respondent's approval. (Transcript, pg. 29). Petitioner testified that at this time he was in immense pain and was having difficulty walking. (Transcript, pg. 29).

Petitioner treated with Dr. Lawrence Frank for his low back pain starting on September 13, 2019. (Transcript, pg. 29). Dr. Frank, a board certified physical medicine and rehabilitation specialist, provided deposition testimony in this matter. (PEX #8, pg. 1-6). Dr. Frank's opinion is that Petitioner specifically suffered a low back injury on July 14, 2018. (PEX #8, pg. 13). Additionally, Dr. Frank noted that a fall such as the one that occurred here could cause an asymptomatic back to become symptomatic. (PEX #8, pg. 14, 15). Dr. Frank noted that Petitioner had back and leg pain bilaterally, left foot drop, and a limited ability to walk. (Transcript, pg. 30). Dr. Frank ordered an MRI and an EMG and ordered Petitioner to remain off work for the next four weeks. (Transcript, pg. 31-32) (PEX #8, pg. 22). He diagnosed Petitioner with lumbar radiculopathy. (PEX #8, pg. 22).

On October 24, 2019 Dr. Frank reviewed the MRI and recommended an epidural steroid injection. (PEX #8, pg. 22-23). Dr. Frank later performed a transforaminal epidural steroid injection. (PEX #8, pg. 23-24) (Transcript, pg. 31).

On January 11, 2020 Dr. Frank noted that although Petitioner was doing better in December following his injections, the pain returned in January and was getting worse. (PEX #5, pg. 8-12) (PEX #8, pg. 24). At this time, Petitioner was interested in another injection to relieve his pain, but he ultimately knew that surgery was going to be the only thing that could remove the pain permanently. (PEX #5, pg. 11) (PEX 8, pg. 28). On January 16, 2020, Dr. Frank performed a second epidural steroid injection on Petitioner's lumbar spine at L5. (PEX #5, pg. 34). Dr. Frank then referred Petitioner to Dr. O'Leary and Dr. Walcott, neurosurgeons. (Transcript, pg. 32).

On February 13, 2020, Dr. O'Leary noted that Petitioner completed PT and received two epidurals steroid injections. (PEX #4, pg. 47). Dr. O'Leary recommended that Petitioner undergo an EMG to try to better isolate the source of the pain and also undergo a CT of his lumbar spine to

look at the old surgical implants and plan for a decompression surgery. (PEX #4, pg. 47). The CT scan was performed on February 19, 2020 and revealed disc bulges in L2-3, L3-4, L4-5, and L5-S1. (PEX #4, pg. 39-40).

On March 4, 2020 Dr. O'Leary recommended a Laminoforaminotomy. (PEX #4, pg. 32). The surgery was not approved by Respondent's carrier. On July 7, 2021 Dr. O'Leary referred Petitioner to Dr. Brian Walcott for further care of Petitioner's low back because Dr. O'Leary no longer performed surgery at Northwest Community Hospital. (PEX #4, pg. 7-8).

On August 10, 2021 Dr. Walcott performed a lumbar laminectomy. (Transcript, pg. 33) (PEX #4, pg. 227-28). Dr. Walcott made an incision at L4-5. (PEX #4, pg. 228). He removed the lamina at L4 bilaterally and removed the top of the lamina at L5. (PEX #4, pg. 228). He also removed the facets at L4 and L5 to provide additional decompression of the nerve roots. (PEX #4, pg. 228). Dr. Walcott noted that there was thick hypertrophy of ligaments underlying the bone. (PEX #4, pg. 228). He removed these ligaments. (PEX #4, pg. 228). Dr. Walcott irrigated the surgical site and sutured Petitioner up. (PEX #4, pg. 228).

On October 5, 2021 Petitioner went to physical therapy at Northwest Community Hospital for an initial evaluation post-operatively. (PEX #4, pg. 193-197).[1] He was recommended therapy two times a week. (PEX #4, pg. 197). Petitioner attended therapy from October 5, 2021 to the date of Arbitration, January 8, 2022. (Transcript, pg. 33). On January 6, 2022, Petitioner's therapist noted that he was feeling stiff, but making a good recovery from the surgery. (PEX #4, pg. 62-63). He was advised to continue therapy at this time. (PEX #4, pg. 62-63).

Petitioner was off work from August 10, 2021 to the date of the Arbitration, January 28, 2022. (Transcript, pg. 33). Petitioner received no TTD from August 10, 2021 to the date of the Arbitration. (Transcript, pg. 34).

C. Dr. Harel Deutsch Testimony

Dr. Harel Deutsch testified on behalf of Respondent. (REX #5). Dr. Deutsch did not form any opinions regarding Petitioner's shoulder injury. (REX #5, pg. 22-23). Dr. Deutsch testified that the MRI Petitioner received for his lumbar spine was reasonable. (REX #5, pg. 51). He testified that the injections Petitioner received for his back were reasonable. (REX #5, pg. 23-24). He testified that the lumbar surgery would be reasonable. (REX #5, pg. 24). He testified that therapy after the lumbar surgery would be reasonable. (REX #5, pg. 24). Dr. Deutsch acknowledged that on the date of Petitioner's injury, Petitioner showed up to Excel Occupational Health Clinic and complained of pain in his left hip and buttock and numbness in his lower back. (REX #5, pg. 27). He also acknowledged that Petitioner showed up to the emergency room later that day complaining of pain to the same areas. (REX #5, pg. 28). Dr. Deutsch testified that Petitioner showed no signs of symptom magnification or malingering. (REX #5, pg. 33). Dr. Deutsch noted that the MRI taken of Petitioner's lumbar spine was taken a year after his back injury. (REX #5, pg. 39-40). He then noted that if a year passed between the time of the injury to the time of an MRI, acute injuries likely would not show up on the MRI. (REX #5, pg. 40-42). The core of the basis for Dr. Deutsch's opinion was that fourteen months passed between the time of major spinal treatment and the injury and because Petitioner had prior back injuries. (REX #5, pg. 43). Dr. Deutsch did not review the actual images of any CT scans, but he did note that the stenosis of Petitioner's lumbar spine had advanced in his post incident MRI, when compared to an MRI taken in 2011. (REX #5, pg. 67). Ultimately, Dr. Deutsch admitted that if Petitioner had a pre-

existing condition in his lumbar spine, a fall could aggravate the symptoms of the condition. (REX #5, pg. 52-53).

Conclusions of Law

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

The Arbitrator finds that Petitioner's injuries arose out of and in the course of his employment, specifically arising out of Petitioner's July 14, 2018 work incident.

"The words 'arising out of' refer to the origin or cause of the accident and presuppose a causal connection between the employment and the accidental injury … and in order for an injury to come within the act it must have had its origin in some risk connected with, or incidental to, the employment, so that there is a causal connection between the employment and the injury." Chmelik v. Vana, 31 Ill. 2d 272, 277 (1964). "The words 'in the course of the employment,' on the other hand, refer to time, place and circumstances under which the accident occurred … and it is stated generally that an accidental injury is received in the course of the employment when it occurs within the period of employment at a place where the employee may reasonably be in the performance of his duties, and while he is fulfilling those duties or engaged in something incidental thereto." *Id.*

In this case, the Arbitrator finds that petitioner's right rotator cuff tear and his lumbar radiculopathy arose out of and in the course of his employment. As a hoisting engineer for the Water Reclamation, Petitioner operated front end loaders, debris boats, trains, cranes, and other miscellaneous equipment. (Transcript, pg. 9). On the date of his injury, Petitioner was operating a front-end loader. To get in and out of the cab of the loader, Petitioner climbed stairs that went about three quarters of the way to the front end loader's cab and then took one to two steps from the top of the stairs into the cab. (Transcript, pg. 10). Petitioner attempted to climb from wooden

steps that were provided by Water Reclamation onto the front end loader, but the steps were shaky, wet, mossy, and slippery. (Transcript, pg. 17). When Petitioner attempted to step onto the front end loader from the wooden steps, he slipped and fell. (Transcript, pg. 14-17).

Respondent has not provided any evidence that contradict the above facts. The facts described above, provided by Petitioner's testimony, confirm and support the Arbitrator's finding that the described July 14, 2018 incident arose out of and in the course of his employment.

F. Whether Petitioner's current condition of ill-being is causally related to his July 14, 2018 work injury?

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to the July 14, 2018 work injury.

"Every natural consequence that flows from an injury that arose out of and in the course of one's employment is compensable under the Act absent the occurrence of an independent intervening accident that breaks the chain of causation between the work-related injury and an ensuing disability or injury." Dunteman v. Illinois Workers' Comp. Comm'n, 2016 IL App (4th) 150543WC, ¶ 42. A work-related 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." Id. ¶ 43. As long as there is a "but-for" relationship between the work-related injury and subsequent condition of ill-being, the employer remains liable. Id. ¶ 44.

Proof of good health and change immediately following and continuing after an injury may establish that an impaired condition was due to the injury. Granite City Steel Co. v. Indus. Comm'n, 97 Ill.2d 402 (1983).

In this case, the Arbitrator finds that Petitioner's right shoulder injury and low back injury are causally related to his July 14, 2018 work accident. The medical evidence is consistent with Petitioner's testimony. Petitioner was working in a full duty capacity without restrictions prior to

July 14, 2018. Petitioner testified that before this incident he did not experience any issues or problems with his right shoulder. (Transcript, pg. 11). He had no treatment to his right shoulder prior to the July 14, 2018 fall. (Transcript, pg. 11). Petitioner testified that before this incident he did not experience any issues or problems with his low back. (Transcript, pg. 11). Petitioner injured his back in the early 1990's, and received a lumbar surgery in 1994, 28 years prior to the injury at issue here. (Transcript, pg. 11-12). Following the lumbar surgery in 1994, Petitioner went back to work and worked in a full duty capacity. (Transcript, pg. 12). Petitioner had a minor back strain in 2007, but continued to work through the strain without issues. (Transcript, pg. 12-13). Prior to his July 14, 2018 injury, Petitioner had no issues lifting heavy weights up to 75 pounds at work. (Transcript, pg. 12-13).

Following the July 14, 2018 fall, Petitioner immediately went to Excel Occupational Health Clinic and presented to Dr. Edward Pillar for examination. (PEX #2, pg. 6-7) (Transcript, pg. 20). He reported pain to his left hip and buttock and numbness in his lower back. (PEX #2, pg. 6-7). The pain in Petitioner's low back was a numbing pain in his low back that he rated a 7-8 out of 10. (Transcript, pg. 20-21). He also reported pain in his shoulder. (PEX #2, pg. 6-7).

Specific to his Petitioner's low back: Dr. Frank's opinion is that Petitioner specifically suffered a low back injury on July 14, 2018. (PEX #8, pg. 13). Additionally, Dr. Frank noted that a fall such as the one that occurred here could cause an asymptomatic back to become symptomatic. (PEX #8, pg. 14, 15). However, Dr. Frank's Dr. Frank noted that Petitioner had back and leg pain bilaterally, left foot drop, and a limited ability to walk. (Transcript, pg. 30).

Specific to Petitioner's shoulder: Petitioner received the MRI on July 25, 2018. (PEX #3, pg. 17). The MRI revealed multiple tears. (PEX #3, pg. 17). There is no evidence to support a

contention that Petitioner's shoulder injury was caused by any event other than his fall on July 14, 2018.

Therefore, based on the evidence provided in Petitioner's medical records, Petitioner's testimony, and Dr. Frank's testimony, and Respondent's failure to present evidence to dispute these facts, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to his July 14, 2018 work 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?

Section 8(a) of the Act (820 ILCS 305/8(a) (West 2002)) states, in relevant part: "The employer shall provide and pay 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." 820 ILCS 305/8(a) (West 2002). The claimant bears the burden of proving, by a preponderance of the evidence, her entitlement to an award of medical care under section 8(a). Id.

Throughout Petitioner's course of treatment for his shoulder, Respondent's carrier continued to approve all shoulder related treatment but failed to approve treatment related to Petitioner's lumbar spine. (See PEX #3, pg. 159). Petitioner's lower back treatment was delayed to September of 2019 because Petitioner's treating physicians instructed him to complete treatment of this right shoulder prior to treating for his lumbar spine injury. (Transcript, pg. 25). Additionally, Respondents insurance carrier denied approval for Petitioner's lower back treatment despite Petitioner's low back complaints from the day of the incident on. (Transcript, pg. 28) (*See* PEX #2, pg. 6-7). Petitioner ultimately paid for his back treatment because he could no longer wait for

Respondent's approval. (Transcript, pg. 29). Petitioner was in immense pain and was having difficulty walking at this time. (Transcript, pg. 29).

During his deposition, Dr. Frank testified that the two separate epidural steroid injections performed on Petitioner were reasonable and necessary. (PEX #8, pg. 28-29). He also testified that the recommended lumbar surgery (which had not yet taken place at the time of the deposition) was reasonable and necessary. (PEX #8, pg. 29). Dr. Frank also noted in his deposition that physical therapy following a lumbar surgery is reasonable and necessary. (PEX #8, pg. 33).

Petitioner incurred medical bills in the amounts of: $28,331.73 from Northwest Community Hospital, $1,731.00 from Elmhurst Neurosciences Institute, $2,515.64 from Athletico Physical Therapy, and $1,269.00 from Midwest Advanced Radiology. (PEX # 9, pg. 1).

Therefore, based upon the evidence provided by Petitioner's medical records, Petitioner's testimony, Dr. Frank's testimony, Petitioner's medical bills, and Respondent's failure to present any evidence to contradict the facts above, the Arbitrator finds that Respondent is liable for Petitioner's unpaid medical bills pursuant to the fee schedule.

K. Whether Respondent is liable for unpaid TTD from July 14, 2018 to February 26, 2019 and from August 4, 2021 to January 28, 2022 (56 and 5/7 weeks)?

"TTD compensation is provided for in section 8(b) of the Workers' Compensation Act, which provides, '[W]eekly compensation * * * shall be paid * * * as long as the total temporary incapacity lasts,' which [Illinois courts have] 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." Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n, 236 Ill. 2d 132, 142 (2010).

Petitioner received no TTD from August 10, 2021 to the date of the Arbitration. (Transcript, pg. 34). Petitioner received no TTD from July 14, 2018 to February 26, 2019. The total unpaid TTD is 56 and 5/7 weeks.

Respondent has failed to contradict facts that show that Petitioner's work injury arose out of and in the course of his employment. Respondent has failed to contradict facts that show that Petitioner's right shoulder and lumbar spine injuries are causally connected to his July 14, 2018 work injury.

Therefore, the Arbitrator finds that Petitioner is entitled to 56 and 5/7 weeks of unpaid TTD benefits.

M. Whether petitioner is entitled to penalties/attorney's fees under §19(K), 19(L), and 16?

The Arbitrator concludes that Respondent presented sufficient defense which would preclude the the awarding of penalties or fees. An employer's good faith challenge to liability ordinarily will not subject it to penalties under the Act. Matlock v. Indus. Comm'n, 321 Ill.App.3d 167, 173 (2001). Where an employee is in possession of facts that would justify a denial of benefits, penalties and fees are generally inappropriate. Electromotive Division v. Indus. Comm'n, 250 Ill.App.3d 432, 436 (1993). Good faith must be assessed objectively, thus the question is whether an employer's denial of benefits was reasonable. Id. at 436.

Arbitrator finds Respondent's reliance on the opinions of medical experts to deny benefits was not done in bad faith and did not cause any unreasonable or vexatious delay of payments within the meanings of the Act to warrant sanctions or penalties. Respondent's actions certainly do not rise to the threshold level required for an imposition of any penalties, and all are denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC015095
Case Name	Ava Thayer v. Olympia Fields Country Club
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0350
Number of Pages of Decision	15
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Sean Stec
Respondent Attorney	Katrina Robinson

DATE FILED: 9/12/2022

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

AVA THAYER,

Petitioner,

vs. NO: 21 WC 15095

OLYMPIA FIELDS COUNTRY CLUB,

Respondent.

DECISION AND OPINION ON REVIEW

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

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

September 12, 2022
o: 09/08/2022
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	21WC015095
Case Name	THAYER, AVA v. OLYMPIA FIELDS COUNTRY CLUB
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Sean Stec
Respondent Attorney	Katrina Robinson

DATE FILED: 1/3/2022

/s/Kurt Carlson, Arbitrator

Signature

INTEREST RATE WEEK OF DECEMBER 28, 2021 0.21%

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)

AVA THAYER Case # **21** WC **015095**
Employee/Petitioner/ sstec@gregoriolaw.com
v.
OLYMPIA FIELDS COUNTRY CLUB
Employer/Respondent/ krobinson@rusinlaw.com

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Chicago**, on **October 18, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **May 27, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did*** 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 $**725.41**; the average weekly wage was $**560.00**.

On the date of accident, Petitioner was **64** 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 reasonable and necessary medical services, pursuant to the medical fee schedule, as listed in Petitioner's Exhibit #1.

Respondent shall pay Petitioner temporary total disability benefits of $**373.33**/week for **20 4/7** weeks, commencing **May 28, 2021** through **October 18, 2021**, as provided in Section 8(b) of the Act.

Petitioner's claim for penalties and attorneys' fees pursuant to Sections 19(k), 19(l), and 16 are denied.

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

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

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

Kurt A. Carlson

Kurt A. Carlson

January 3, 2022

FINDINGS OF FACT

There is no evidence in the records that prior to May 27, 2021, Petitioner had ever injured her right hip nor is there any evidence that Petitioner missed any time from work due to right hip problems prior to May 27, 2021. (TR p. 10).

Petitioner began work for Respondent as a Horticulturist on May 17, 2021. (TR p. 38). The record show that her position was to be full-time seasonal. Between May 17, 2021 and May 27, 2021, Petitioner performed various tasks for Respondent that included working on her knees, working in a squatting position, climbing and working on ladders, and walking distances of up to ½ mile. Petitioner worked on her feet 7 ½ hours per day and 90% of her work was performing physical labor that included lifting to 50 pounds at times. (TR pp. 8-10).

On May 27, 2021, Petitioner arrived at work at her usual time, 5:00 a.m. Petitioner was with her supervisor, Kathryn Reay, filling pots for planting with stones, soil, and fertilizer. (TR p. 11). Petitioner and Ms. Reay were at a patio area outside of the ballroom or "Pavilion Room". (TR p. 48). At approximately 8:00 a.m., Ms. Reay left the area to get more work supplies. (TR p. 12).

While Petitioner waited for Ms. Reay to return, she began to pull weeds from the planted area below the patio area. (TR p. 13). Pulling weeds was a task that she would be expected to do as part of her usual job duties. (TR pp. 96-97). At approximately 9:00 a.m., Petitioner exited the planted area where she had been pulling weeds to the asphalt area below the planted area. (TR pp. 14, 17). The planted area was on an incline and the asphalt area was at a slightly lesser incline. (TR pp. 54, 56, 58-59). As Petitioner exited the planted area, she fell on an uneven area of the asphalt towards her right side. Because of the weeds she was grasping in both hands, she was unable to brace her fall. (TR pp. 14-15).

Petitioner immediately felt severe pain in her right side and was unable to get to her feet. (TR pp. 16-17). A coworker assisted Petitioner to her feet and she waited approximately 10 minutes for Ms. Reay to return. (TR pp. 17-19). Petitioner told Mr. Reay about her work accident who drove Petitioner to the company clinic, Ingalls Occupational Health. (TR p. 21).

At the company clinic, Petitioner was examined by a Nurse Practitioner, Latoya Duncan. Petitioner provided a history that states, "…she was pulling weeds and when standing up she fell on pavement down hill…[t]he problem began on 5/27/21." X-rays were taken of Petitioner's right femur and right hip. The radiologist that reviewed the x-rays did not appreciate any fractures. Petitioner's diagnosis was pain in the right hip and pain in the right thigh. Petitioner was prescribed Naproxen and Cyclobenzaprine and directed to ice her injury. Petitioner was also directed to remain off work and to return in 5 days. (Petitioner's Exhibit #2).

After the initial medical examination, Ms. Reay drove Petitioner back to the country club and helped Petitioner into her personal vehicle. Petitioner drove home using her left foot to operate the pedals because it was too painful to use her right leg. (TR pp. 22-23). Petitioner did not leave her house for the remainder of the day on May 27, 2021. The pain in her right hip continued even though Petitioner did not move about at all. (TR p. 23).

Later that night, Petitioner was unable to sleep because of right hip pain. The next morning, Petitioner's son drove her to the hospital. Petitioner testified that she did not reinjure her right hip in any way from the time of

her work accident on May 27, 2021 until she arrived at the emergency room of South Suburban Hospital on May 28, 2021. (TR pp. 22-25).

A history was taken from Petitioner at the Emergency Department on May 28, 2021 that states, "Patient states that she was walking outside on uneven [w]ound and sustained a mechanical fall falling forward with most of the weight falling onto her right knee." (Petitioner's Exhibit #3, p. 10). An X-ray was taken of Petitioner's left pelvis that demonstrated a "Nondisplaced right transcervical femoral neck fracture." (Petitioner's Exhibit #3, pp. 15-16).

Petitioner was admitted to the hospital and the next day, May 29, 2021, Dr. Robert W. Coats performed an open reduction and internal fixation surgery on Petitioner's right hip. (Petitioner's Exhibit #3, pp. 45-46). Petitioner remained in-patient at the hospital until June 3, 2021. (Petitioner's Exhibit #3).

Petitioner received in-home therapy for the next month. (TR p. 30). During that time, she was having trouble getting an appointment for follow-up treatment with Dr. Coats. Accordingly, she was examined by Dr. Ronnie Mandal on June 8, 2021. (TR p. 27). The history recorded by Dr. Mandal indicates that, "The patient was working at Olympia Fields Country Club in horticulture x2 weeks when she was walking straight looking forward when she tripped on asphalt and fell and rolled down the incline asphalt hill sustaining injuries to the right hip and lower extremity." Petitioner complained of pain in the right hip and right knee and was diagnosed with a right proximal femur fracture status post ORIF and right knee pain. Dr. Mandal recommended physical therapy three times per week for 4 weeks and an MRI of her right knee. Dr. Mandal also recommended that Petitioner be examined by an orthopaedic specialist and to remain off work. (Petitioner's Exhibit #4).

On June 15, 2021, Petitioner obtained an MRI of her right knee at Molecular Imaging. Dr. Amjad Safvi, a radiologist, reviewed the MRI and diagnosed Petitioner with mild synovial effusion, a thickened medial patellar plica, a tear of the posterior horn of the medial meniscus, and a Grade 1 sprain of the medial and lateral collateral ligaments. (Petitioner's Exhibit #5).

On June 25, 2021, Petitioner was examined by Dr. Chandrasekhar Sompalli, as referred by Dr. Mandal. Dr. Sompalli took a history from Petitioner that states, "…she was walking straight looking forward when she tripped on asphalt and fell and rolled down the incline asphalt hill sustaining injuries to the right hip and lower extremity." Dr. Sompalli diagnosed Petitioner was right knee and right ankle pain secondary to a work-related injury and directed Petitioner to follow-up with Dr. Coats for her injuries. Dr. Sompalli also directed Petitioner to remain off work. (Petitioner's Exhibit #6).

Petitioner was examined by Dr. Coats on June 28, 2021. Dr. Coats specifically noted that Petitioner's pain "…occurred after an injury while at work." The doctor directed Petitioner to continue weight bearing as tolerated with a walker and to continue her home therapy program. Dr. Coats also directed Petitioner to remain off work and to return in 4 weeks. (Petitioner's Exhibit #7).

On July 27, 2021, Dr. Coats examined Petitioner once again. The doctor directed Petitioner to begin physical therapy, to weight bear as tolerated with a walker and to remain off work. (Petitioner's Exhibit #7).

Petitioner began her physical therapy program at Dr. Coats' office on August 3, 2021, under the care of Dr. Gregory L. Primus. On August 10, 2021, August 17, 2021, and August 26, 2021, Petitioner received physical therapy from Dr. Primus. (Petitioner's Exhibit #7).

On August 27, 2021, Petitioner returned to see Dr. Coats. The doctor directed Petitioner to continue weight bearing as tolerated with a walker, to remain off work and to continue physical therapy. (Petitioner's Exhibit #7).

On August 31, 2021, September 7, 2021, and September 21, 2021, Petitioner received physical therapy from Dr. Primus. (Petitioner's Exhibit #7).

On September 24, 2021, Dr. Coats examined Petitioner and noted that she was moderately improved. The doctor directed her to continue her physical therapy and to remain off work. (Petitioner's Exhibit #7).

On September 30, 2021 and October 7, 2021, Petitioner returned to see Dr. Primus for ongoing therapy. (Petitioner's Exhibit #7). Petitioner testified that she saw Dr. Primus again for therapy on October 14, 2021 and was scheduled to see Dr. Coats again on October 21, 2021.

Petitioner testified that she had not injured her right hip in any way since she fell at work on May 27, 2021. (TR p. 35).

Petitioner has not received any Temporary Total Disability benefits since her work accident and would like to continue her post-operative treatment with Dr. Coats, as directed. (TR pp. 32, 35).

CONCLUSIONS OF LAW

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

The Arbitrator finds that Petitioner suffered an accident that arose out of and in the course of her employment by Respondent, on May 27, 2021.

The Findings of Fact, as stated above, are adopted herein.

To obtain compensation under the Act, a claimant must establish that she was injured in an accident which arose out of and in the course of her employment, and that a causal relationship exists between her employment and her injury. See *Stapleton v. Industrial Commission*, 282 Ill. App. 3d 12, 15, 217 Ill. Dec. 830, 668 N.E.2d 15, 18 (1996), and *Caterpillar Tractor Company v. Industrial Commission*, 129 Ill. 2d 52, 63, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989). "Arising out of" refers to the requisite causal connection between the employment and the injury. In other words, the injury must have had its origins in some risk incidental to the employment. "In the course of" refers to the time, place and circumstances under which the accident occurred. *Illinois Consolidated Telephone Company v. Industrial Commission*, 314 Ill. App. 3d 347, 349, 247 Ill. Dec. 333, 732 N.E. 2d 49 (2000).

Petitioner testified that she was working with her supervisor filling pots for planting with stones, soil, and fertilizer on May 27, 2021. (TR p. 11). Petitioner and Ms. Reay were working in a patio area outside of the ballroom or "Pavilion Room". (TR p. 48). At approximately 8:00 a.m., Ms. Reay left the area where they were working in a flatbed golf cart to get more supplies. (TR p. 12).

While Petitioner waited for Ms. Reay to return, she began to pull weeds from the planted area below the patio area where she had been working. (TR p. 13). Pulling weeds was a task that she would be expected to do as part of her usual job duties. (TR pp. 96-97). At approximately 9:00 a.m., Petitioner exited the planted area where she had been pulling weeds to the asphalt area below the planted area. (TR pp. 14, 17). The planted area was on an incline and the asphalt area was at a slightly lesser incline. (TR pp. 54, 56, 58-59). As Petitioner exited the planted area, she had weeds that she had pulled in both of her hands and her right foot caught on an uneven area of the asphalt causing her to fall on her right side. Because of the weeds she was grasping in both hands, she was unable to brace her fall. (TR pp. 14-15).

Ms. Reay confirmed the area she was working in with Petitioner before she left to get more supplies. (Tr pp. 84-85). Ms. Reay also confirmed that pulling weeds was a work activity that Petitioner would be expected to perform as part of her work duties for Respondent. (TR pp. 96-97). Further, Ms. Reay confirmed that the planted area that Petitioner was pulling weeds in was inclined, as was the asphalt area below the planted area that Petitioner tripped on as she exited the planted area. (TR pp. 88-89)/

Given the circumstances of Petitioner's work accident, it is undisputed that she was in a place that she would be expected to be, at a time that she would be expected to be there, and that the circumstances surrounding her work accident were reasonably foreseeable. Therefore, it seems likely that Petitioner has proved, by a preponderance of the evidence, that she was "in the course of" her employment at the time of her fall.

Any dispute with respect to the Petitioner's accident originates from the "arising out of" element of Petitioner's claim. The Arbitrator notes that a pure unexplained fall is not compensable in Illinois, as it does not satisfy the "arising out of" requirement. *Builders Square, Inc. v. Illinois Workers' Compensation Commission*, 339 Ill.App.3d 1006, 1010, 274 Ill. Dec. 897, 791 N.E.2d 1308 (2003). An injury resulting from a neutral risk, that is one to which the general public is equally exposed, does not arise out of employment. *Caterpillar Tractor Co. v. Industrial Commission*, 129 Ill.2d 52, 59, 133 Ill. Dec. 454, 51 N.E.2d 665 (1989). However, an employee may still satisfy the "arising out of" even in an unexplained fall case by putting forth evidence that which supports a reasonable inference that the fall stemmed from a risk related to the employment. *Baldwin v. Illinois Workers' Compensation Commission*, 409 Ill. App. 3d 472, 478, 351 Ill. Dec. 56, 949 N.E.2d 1151 (2011). It is claimant's burden to present evidence that would permit a reasonable inference that the fall was related to her employment. *See Baldwin* at 478. Employment related risks associated with injures sustained as a consequence of a fall are those to which the general public is not exposed such as the risk of tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work site, or performing some work-related task which contributes to the risk of falling. *See Illinois Consolidated Telephone Co.* at 352.

In the instant case, there are portions of Petitioner's testimony that are unclear regarding the mechanism of her fall. However, both Petitioner and Ms. Reay testified that Petitioner was exiting a work area that was on an incline and exiting towards an area that was slightly less inclined. In addition, it is undisputed that Petitioner was exiting from an area that was composed of a natural surface of grass and dirt to a paved area. Further,

while Ms. Reay testified that she did not see the weeds on the ground that Petitioner testified that she was holding at the time of her fall, it is unclear what area Ms. Reay was looking in, as Petitioner was in a different location when Ms. Reay returned to the scene of Petitioner's fall.

Given the testimony of the Petitioner and Ms. Reay as a whole, it seemly more likely than not that Petitioner's fall was as a result of a risk to which the general public is not exposed and that the uneven ground that she was traversing, combined with the weeds in her hands at the time of her fall are adequate evidence to permit a reasonable inference that the fall was related to Petitioner's employment. Accordingly, the Arbitrator finds that Petitioner has proved, by a preponderance of the evidence, that her accident "arose out of" her employment with Respondent.

Based on the foregoing, the Arbitrator finds that Petitioner has proved, by a preponderance of the evidence, that she suffered an accident that arose out of and in the course of her employment by Respondent on May 27, 2021.

(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, as it relates to her right hip and leg are causally related to her work accident on May 27, 2021.

The Findings of Fact and Conclusions of Law, as stated above, are adopted herein.

A Workers' Compensation Claimant bears the burden of showing by a preponderance of the evidence that her current condition of ill-being is causally related to the workplace injury. *Horath v. Industrial Commission*, 96 Ill. 2d 349, 356, 70 Ill. Dec. 741, 449 N.E.2d 1345 (1983). Expert medical evidence is not essential to support the Commission's conclusion that a causal relationship exists between a claimant's work duties and her condition of ill-being. *International Harvester v. Industrial Commission*, 93 Ill. 2d 59, 63, 66 Ill. Dec. 347, 442 N.E.2d 908 (1982). A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Commission*, 265 Ill. App. 3d 830, 839, 203 Ill. Dec. 327, 639 N.E.2d 886 (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 Commission*, 315 Ill. App. 3d 1197, 1205, 248 Ill. Dec. 609, 734 N.E.2d 900 (2000).

In the instant case, it appears that Petitioner was in good health as it related to her right hip and right leg prior to May 27, 2021. There is no clear and convincing evidence that petitioner had ever previously injured her right hip or right knee prior to May 27, 2021. (TR p. 10). It is also undisputed that from May 17, 2021 through May 27, 2021, Petitioner worked for Respondent in a physical labor position as a Horticulturist. Petitioner performed various tasks for Respondent that included working on her knees, working in a squatting position, climbing and working on ladders, and walking distances of up to ½ mile. Petitioner worked on her feet 7 ½ hours per day and 90% of her work was performing physical labor that included lifting 50 pounds at times. (TR pp. 8-10). The Arbitrator finds these facts sufficient to establish that Petitioner enjoyed good health, as it relates to her right hip and right leg, prior to May 27, 2021.

The Arbitrator also finds that the condition of Petitioner's right hip and right leg changed immediately following her work accident on May 27, 2021. Petitioner was unable to stand up from her fall without

assistance and needed to be helped into the golf cart Ms. Reay was driving, then assisted into Ms. Reay's personal vehicle, and driven to the company clinic. (TR pp. 17-21).

In addition, the Arbitrator finds that Petitioner's treating medical records clearly document an acute injury to her right hip and right leg. When examined at Ingalls Occupational Health Clinic at 10:30 a.m. on the day of her work accident, Petitioner complained of a sharp shooting pain in her right hip and right thigh and was noted to only be able to walk with significant difficulty. Upon examination, Petitioner demonstrated pain on motion, pain to palpation and limited range of motion of the right hip and upper right leg. Petitioner was diagnosed with pain in the right hip and right thigh and it was determined that she was unable to perform her job as a result of her injury. (Petitioner's Exhibit #2).

Petitioner was driven to her personal vehicle after her examination at Ingalls Occupational Health Clinic and required assistance to get into her personal vehicle. Petitioner drove home using her left foot to operate the pedals because it was too painful to use her right leg. Petitioner did not leave her house for the remainder of the day on May 27, 2021. The pain in her right hip continued even though Petitioner did not move about at all. (TR pp. 22-23).

The next day, a history was taken from Petitioner at the Emergency Department of Advocate South Suburban Medical Center that states, "Patient states that she was walking outside on uneven [w]ound and sustained a mechanical fall falling forward with most of the weight falling onto her right knee." (Petitioner's Exhibit #3, p. 10). An x-ray was taken of Petitioner's right pelvis that demonstrated a "Nondisplaced right transcervical femoral neck fracture." (Petitioner's Exhibit #3, pp. 15-16).

Petitioner was admitted to the hospital, and on May 29, 2021, Dr. Robert W. Coats performed an open reduction and internal fixation surgery on Petitioner's right hip. (Petitioner's Exhibit #3, pp. 45-46). Petitioner remained in-patient at the hospital until June 3, 2021. (Petitioner's Exhibit #3).

The Arbitrator notes that the dispute regarding causation is largely based upon the fact that the x-rays of Petitioner's right femur and right hip, that were taken at Ingalls Occupational Health Clinic on May 27, 2021, did not demonstrate the femoral neck fracture that was found at South Suburban Medical Center on May 28, 2021. While this fact is disconcerting, the Arbitrator finds that it is more likely true than not that the x-ray films taken on May 27, 2021 were misread, rather than that some other event caused the fracture to the femoral neck in Petitioner's right hip between the two x-rays.

The Arbitrator bases his finding on several factors. First, it should be noted that the x-rays taken at Ingalls were of Petitioner's right femur and right hip, while the x-ray that demonstrated the fracture at the hospital was of Petitioner's right pelvis. While one would expect all three x-rays to demonstrate the fracture, the difference cannot be discounted. Second, it is undisputed that Petitioner was having difficulty ambulating immediately following her work accident, indicating a significant injury to her lower extremity. Third, the medical records from Ingalls, less than 2 hours after Petitioner's work injury clearly document an acute injury to Petitioner's right lower extremity, despite the negative x-rays. Finally, there is no evidence of any event between the x-rays taken at Ingalls and the x-ray taken at the hospital that would allow for an inference that something else caused Petitioner's right hip fracture. It would be easier to misinterpret an undisplaced fracture as it is a more subtle image.

The Arbitrator notes that a history was taken by Dr. Coats when Petitioner was in the hospital on May 29, 2021 that states, "She sustained a fall at home and had pain of her right hip with difficulty ambulating." (Petitioner's Exhibit #3, p. 157). However, the Arbitrator further notes that this is the only history in the record that does not indicate that Petitioner's injury occurred as a result of a fall at her workplace on May 27, 2021. The Arbitrator notes that there are no details of how Petitioner fell within the history transcribed by Dr. Coats and that the consistent histories provided by Petitioner at Ingalls Occupational Health on May 27, 2021 and in the Emergency Department on May 28, 2021 demonstrate that this was nothing more than an oversight by Dr. Coats. This is particularly apparent as Dr. Coats noted within his office record on June 28, 2021, "The pain occurred after an injury at work." (Petitioner's Exhibit #7).

Based on the foregoing, the Arbitrator finds that Petitioner has proved, by a preponderance of the evidence, that her current condition of ill-being, as it relates to her right hip and right leg, is causally related to her work injury on May 27, 2021.

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

The Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary. In addition, the Arbitrator finds that Respondent has not paid all appropriate charges for all reasonable and necessary medical services.

The Findings of Fact and Conclusions of Law, as stated above, are adopted herein.

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, 349 Ill. Dec. 849, 947 N.E.2d 863 (2011).

The Arbitrator notes that Petitioner submitted medical bills from Parent Advocate South Suburban Hospital for services rendered from May 28, 2021 through June 3, 2021, in the amount of $25,914.18; Midwest Diagnostic Pathology, S.C., for services rendered on May 28, 2021 and May 29, 2021, in the amount of $158.00; Midwest Anesthesiologists, for services rendered on May 29, 2021, in the amount of $5,320.00; Chicago Center for Sports Medicine, for services rendered from May 29, 2021 through September 24, 2021, in the amount of $11,034.32; Illinois Orthopedic Network, for services rendered on June 8, 2021, in the amount of $2,801.86; Midwest Specialty Pharmacy, for services rendered on June 8, 2021, in the amount of $151.07; Premium Healthcare Solutions, for services rendered on June 15, 2021, in the amount of $2,500.00; and Elite Orthopaedics and Sports Medicine, for services rendered on June 25, 2021, in the amount of $269.32. (Petitioner's Exhibit #1).

In reviewing these medical bills, the Arbitrator notes that the Parent Advocate South Suburban Hospital was inpatient hospital care and surgery for Petitioner's right hip. (Petitioner's Exhibit #3). The Midwest Diagnostic Pathology, S.C. bill was for pre-operative testing prior to Petitioner's surgery. (Petitioner's Exhibit #1). The

Midwest Anesthesiologist bill was for anesthesiology services for Petitioner's surgery on May 29, 2021. (Petitioner's Exhibit #3, pp. 45-46). The Chicago Center for Sports Medicine bills were for Petitioner's surgeon and post-operative treatment for Petitioner's right hip. (Petitioner's Exhibit #7). The Illinois Orthopedic Network bill and the Midwest Specialty Pharmacy bills were for post-operative care with Dr. Mandal (Petitioner's Exhibit #4). The Premium Healthcare Solutions bill was for the MRI of Petitioner's right knee, as recommended by Dr. Mandal. (Petitioner's Exhibits #4 & #5). Lastly, the Elite Orthopaedics and Sports Medicine bill was for post-operative care with Dr. Sompalli. (Petitioner's Exhibit #6).

The Arbitrator notes that each of the unpaid medical bills contained in Petitioner's Exhibit #1 is a result of medical treatment for Petitioner's right hip or right leg. Based on the Arbitrator's findings above, both conditions are causally connected to Petitioner's work injury on May 27, 2021.

The Arbitrator notes that Respondent has not provided any evidence to dispute the reasonableness or necessity of medical treatment reflected in the bills contained in Petitioner's Exhibit #1.

Based on the foregoing, the Arbitrator finds that Petitioner has proved, by a preponderance of the evidence, that the medical bills contained in Petitioner's Exhibit #1 were reasonable and necessary. Accordingly, the Arbitrator finds that the medical bills contained in Petitioner's Exhibit #1 should be paid by Respondent, pursuant to Section 8.2 of the Illinois Workers' Compensation Act.

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

The Arbitrators find that Petitioner is entitled to physical therapy and on-going orthopedic care with Dr. Coats. The Findings of Fact and Conclusions of Law, as stated above, are adopted herein.

The Arbitrator notes that at the time of her last evaluation prior to hearing with Dr. Coats on September 24, 2021, Petitioner was still experiencing right hip pain and stiffness and advised the doctor that the physical therapy she was receiving was improving her symptoms. Dr. Coats recommended that Petitioner continue her physical therapy program and home therapy and to return to see him in 4 weeks for follow-up and repeat hip x-rays. (Petitioner's Exhibit #7).

Petitioner testified that she would like to continue her post-operative care with Dr. Coats. (TR p. 32).

The Arbitrator also notes that Respondent has not offered any evidence to dispute the reasonableness or necessity of the medical treatment recommended by Dr. Coats.

Based on the foregoing, the Arbitrator finds that Petitioner has proved, by a preponderance of the evidence, that the post-operative physical therapy that has been recommended by Dr. Coats and her ongoing post-operative orthopedic care is reasonable and necessary medical treatment to cure the effects of Petitioner's work injury and should, therefore, be provided by Respondent.

(L) What temporary benefits are in dispute?

The Arbitrator finds that Petitioner was temporarily totally disabled from May 28, 2021 through the date of hearing, October 18, 2021, a period of 20 4/7 weeks.

The Findings of Fact and Conclusions of Law, as stated above, are adopted herein.

The Arbitrator notes that the Work Status Discharge Sheet that was completed by LaToya Duncan at Ingalls Occupational Health on May 27, 2021 indicates, "OFF DUTY (DUE TO WORK RELATED CONDITIONS)." (Petitioner's Exhibit #2).

The Arbitrator also notes that the next day, May 28, 2021, Petitioner was diagnosed with a femoral neck fracture of the right hip at the Emergency Department of South Suburban Hospital and was admitted to the hospital. (Petitioner's Exhibit #3, pp. 15-16). On May 29, 2021, Dr. Coats performed an open reduction and internal fixation surgery on Petitioner's right hip. (Petitioner's Exhibit #3, pp. 45-46). Petitioner remained in-patient at the hospital until June 3, 2021. (Petitioner's Exhibit #3).

On June 8, 2021, Petitioner was examined by Dr. Mandal and directed to remain off work. (Petitioner's Exhibit 4). On June 25, 2021, Petitioner was examined by Dr. Sompalli and again directed to remain off work. (Petitioner's Exhibit #6).

In addition, the Arbitrator notes that Petitioner was examined by Dr. Coats, following her surgery, on June 28, 2021, July 27, 2021, August 27, 2021, and September 24, 2021. At each visit, Dr. Coats directed Petitioner to remain off work. (Petitioner's Exhibit #7).

Further, the Arbitrator notes that Respondent has not offered any evidence to dispute Petitioner's period of temporary total disability.

Based on the foregoing, the Arbitrator finds that Petitioner has proved, by a preponderance of the evidence, that she was temporarily totally disabled from May 28, 2021 through the date of hearing, October 18, 2021, a period of 20 4/7 weeks.

(M) Should penalties or fees be imposed upon Respondent?

The Arbitrator denies Petitioner's claim for penalties, pursuant to §19(k) and §19(l) of the Act, as well as attorneys' fees, pursuant to §16 of the Act.

The Arbitrator notes that Respondent has refused to pay Temporary Total Disability or medical benefits to Petitioner from the date of accident through the date of hearing. However, the Arbitrator finds Respondent's reluctance to pay benefits under the Act reasonable given the x-ray films that appear to have been misread at Ingalls Occupational Health on May 27, 2021. Further, the Petitioner's testimony seemed unreliable and exaggerated at times. Her memory perhaps faulty.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC009396
Case Name	Gilbert Browning v. Peabody Energy
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0351
Number of Pages of Decision	17
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Neil Giffhorn

DATE FILED: 9/12/2022

/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

BROWNING,GILBERT,

Petitioner,

vs. NO: 19 WC 09396

PEABODY ENERGY,

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 services, 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 July 19, 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 $67,600.00. 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.

September 12, 2022
o071222
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	19WC009396
Case Name	BROWNING, GILBERT v. PEABODY ENERGY
Consolidated Cases	
Proceeding Type	
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	Neil Giffhorn

DATE FILED: 7/19/2021

THE INTEREST RATE FOR THE WEEK OF JULY 13, 2021 0.05%

/s/ Linda Cantrell, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

GILBERT BROWNING
Employee/Petitioner

v.

PEABODY ENERGY
Employer/Respondent

Case # **19** WC **009396**

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 **May 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 **December 12, 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 $**65,000.00**; the average weekly wage was $**1,250.00**.

On the date of accident, Petitioner was **61** 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 **any benefits paid** for TTD, $**0** for TPD, $**0** for maintenance, and **$7,486.26** for medical benefits, for a total credit of **$7,486.26**.

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 related to the treatment of the injury, as provided in §8(a) of the Act, with the exception of the full chiropractic charges to Kathalynas Spine, Sport & Rehabilitation. The Arbitrator finds that Petitioner's treatment at Kathalynas Spine, Sport & Rehabilitation for the periods 12/12/18 through 12/28/18 and 6/10/19 through 7/1/19 was reasonable and necessary and finds that all other dates of treatment at the facility was not reasonable and necessary. Therefore, Respondent shall only pay for office visits with Kathalynas Spine, Sport & Rehabilitation from 12/12/18 through 12/28/18 and 6/10/19 through 7/1/19, pursuant to the Medical Fee Schedule.

Respondent shall have credit for expenses which have already been paid, provided that it indemnifies and holds Petitioner harmless from any disputes arising from the expenses for which it claims credit. The parties stipulate that Respondent paid $7,486.26 in medical expenses under workers' compensation, but this was not paid under §8(j). The Arbitrator thus awards this credit under other benefits.

Respondent shall pay Petitioner permanent partial disability benefits of $**750.00**/week for **100** weeks, because the injuries sustained caused a **20% loss of the body as a whole**, as provided in §8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from **August 25, 2020** through **May 18, 2021**, and may 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.

JULY 19, 2021

Arbitrator Linda J. Cantrell

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

GILBERT BROWNING,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 19-WC-009396
	)	
PEABODY ENERGY,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Collinsville on May 18, 2021 on all issues. The parties stipulate that on December 12, 2018 Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent. The issues in dispute are causal connection, medical bills, and the nature and extent of Petitioner's injuries. All other issues have been stipulated.

TESTIMONY

Petitioner was 61 years old, married, with no dependent children at the time of accident. Petitioner was employed by Respondent as a coal miner for 12 years. Petitioner has been a coal miner for 35 years. He testified that on December 12, 2018 he injured his back while shoveling rock dust underneath a coal belt line. He testified he felt a big pop in his back that ran down his leg. He was able to finish his workshift but it was painful. Petitioner completed an incident report which stated he was "throwing and flinging dust with a shovel when he felt a sharp pain go through [his] lower back, down buttock, to left leg (hamstring)." Petitioner admitted he had a sore back a lot prior to the accident.

Petitioner treated conservatively for some time with modalities such as therapy, traction, and electrical stimulation. Petitioner testified that the electrical stimulation helped him as he continued to work. He testified he continued working because Respondent "had been threatening [them] to ignore accidents we had that was not good for the company." Petitioner stated he tried to keep working and he wanted to avoid surgery. He testified that his pain got so bad he had to do something. Petitioner had pain going down his leg into his ankle and he could barely stand up and had to lay down after each shift. He stated that despite his prior accidents in the mine he had never experienced pain of that severity prior to 12/12/18.

Petitioner testified he worked up until the day the mine closed on 12/14/19. He ultimately underwent an L5-S1 fusion by Dr. Rutz. He testified that after the surgery he no longer had pain

down his leg into his ankle. He still has soreness in his low back with activity, including weed eating, lifting heavy objects, and bending forward for extended periods of time. He stated he has to be cautious with lifting heavy objects and doing yard work. He testified that his hobby of working on old cars has been adversely affected. He takes Mobic once per day for his symptoms. He is currently retired.

On cross-examination, Petitioner admitted to having a lumbar MRI and injections prior to 12/12/18. He had some prior symptoms in his leg but not as bad until after his 12/12/18 accident. He received chiropractic treatment for his prior symptoms. He was released to full duty work by Dr. Rutz following surgery. He last saw Dr. Rutz on 8/25/20 and reported he was doing well at that time.

MEDICAL HISTORY

Petitioner sought treatment at Kathalynas Spine, Sport & Rehabilitation on 12/12/18 where he reported pain in his low back, sacroiliac joint, buttocks, and thighs with pain rated 6 out of 10. He reported his pain had stayed the same since his last visit. He reported his ability to bend over, walk, and work has stayed the same since his last visit. He stated he had been off work for two days and his leg was not as bad. On 12/14/18, Petitioner reported his pain was the same as it was before and that he was going to talk to a Work Comp attorney. Petitioner did not report a specific incident, but stated he knows that bending over in the coal mines for the past 12 years caused his back problems.

Petitioner continued to see Chiropractor Kathalynas for multiple visits throughout December 2018. On 12/28/18, Petitioner stated he had been working the past three days and his lower back was really hurting. He stated he feels a catch in his lower back when he straightens up. It was recommended that he see Dr. Jones for injections as his condition was not improving due to having to go back to work. Petitioner did not return to Chiropractor Kathalynas until 3/13/19.

On 3/8/19, Petitioner was seen for an urgent care visit at the Orthopaedic Institute of Southern Illinois with aching and burning in his low back and left hip. Petitioner reported the symptoms began as the result of pivoting at work. The office note states Petitioner's low back pain has been ongoing since the summer of 2018 when he was shoveling at work and felt a pop in the back of his leg resulting in some bruising; however, he continued to work through it. He reported that two weeks ago he had the same incident while he was shoveling and did a quick turn to the right and felt a pop in the back of his left leg and the bruising returned. Since then his pain has been 6 out of 10 and constant. He has applied ice and heat with minimal relief and continues to work. He was positive for back pain, bruising, and difficulty walking. X-rays revealed some degenerative changes in the SI joints bilaterally as well as the lumbar spine, degenerative changes at the femoral head, and positive calcification of the mid-thigh. Petitioner was diagnosed with a rupture of the left hamstring tendon. He was provided crutches and ordered non-weightbearing until an MRI was performed of the left thigh. He was prescribed Medrol Dosepak. He requested to return to full duty work and was allowed to do so as tolerated. An MRI of the left upper leg was performed on 3/11/19 that revealed a hamstring injury with conjoint tendon tear, edema extending downward surrounding the long head of the biceps femoris muscle,

and edema within the muscle probably due to muscular sprain/partial tear. Petitioner was referred to Dr. Barr; however, he stated he would get a second opinion.

On 3/13/19, Petitioner returned to Chiropractor Kathalynas and reported on and off neck stiffness and dizziness starting a couple of days ago. No new accidents or trauma was reported. Petitioner stated he has to walk stooped over at work and he gets dizzy and nauseous. Physical examination revealed positive Spurling's Test and Distraction Test, moderate on the right at C3-4 through C5-6 without radiation. Chiropractic treatment was recommended for Petitioner's cervical spine. There is no mention of the lumbar spine being symptomatic at this visit. Petitioner saw Chiropractor Kathalynas on March 15, March 18, and March 27, 2019 for neck and upper extremity complaints.

On 4/23/19, Petitioner was seen by Kyle Conrod, PA-C to Dr. Kevin Rutz at Orthopedic Specialists, who noted Petitioner's chief complaint of low back pain and left lower extremity radiculopathy. He reported that on 12/8/18 he was working in the coal mine shoveling dust which involved a twisting and throwing motion. Petitioner experienced severe worsening of his low back pain with radiation to the left buttock and posterior thigh. Petitioner reported some bruising over the distal aspect of the left hamstring following the incident. Petitioner reported an MRI demonstrated a tear of the left hamstring which was not available for review. Petitioner reported a history of intermittent discomfort in his low back; however, he denied any severe radicular pain in the buttock or hamstring. He reported epidural injections for left ankle and foot paresthesias in the past. He admitted to receiving epidural steroid injections in his lumbar spine in the past and stated he had not had any since this incident occurred. He denied any right radicular symptoms upon examination.

Petitioner reported he was able to sit comfortably for less than an hour and felt his condition was worsening overall despite conservative measures. Physical examination demonstrated a slightly antalgic gait with reproduction of low back pain with lumbar flexion. An MRI dated March 8, 2017 was reviewed that revealed advanced degenerative disc disease at L4-5 and stenosis bilaterally at L5-S1 with moderate facet arthropathy bilaterally at that level. A new lumbar MRI was recommended. Petitioner was ordered to continue working full duty without restrictions. PA Conrod's assessment was low back pain with lumbar radiculopathy and left hamstring muscle injury. He was referred to Dr. Matthew Bradley for his hamstring injury. The records do not reflect that Petitioner treated with Dr. Bradley.

The lumbar MRI was performed on 4/29/19 that demonstrated a broad-based left lateral disc herniation at L2-3 with significant narrowing of the left-sided neural foramen, moderately severe spinal stenosis at L5-S1 with bilateral neural foramen narrowing, and moderately severe multilevel endplate and facet joint degenerative changes. Petitioner was referred to Dr. Kathalynas for three weeks of therapy and an L5-S1 interlaminar epidural steroid injection. The injection was performed on 6/14/19 and provided temporary relief.

On 5/1/19, Petitioner returned to Chiropractor Kathalynas complaining of left-sided neck pain and right-sided neck pain as well as upper thoracic and right posterior trapezius discomfort that had not changed since his last visit. There is no mention of the lumbar spine in this note. There are no treating records with Kathalynas until 6/10/19 where it is noted Petitioner presents

today for evaluation and possible treatment as the result of a workplace accident that occurred on 12/12/18 when he injured himself shoveling and flinging rock dust. He described constant throbbing and stabbing low back pain radiating into the left leg with pain at 6/10. He stated he feels his accident at work caused his injury which started on 12/12/18. Petitioner continued to treat with Kathalynas through 7/1/19 with no pain relief. He reported his symptoms were worse since his last visit with increased difficulty bending and walking. He is shoveling at work and his symptoms have increased.

On 8/20/19, Dr. Rutz noted Petitioner felt he was slowly worsening as he had continued low back pain into his bilateral buttock with tightness in his hamstrings. Dr. Rutz noted Petitioner continued to work despite his discomfort and was hesitant to consider surgery. Dr. Rutz recommended an L5-S1 fusion if after three months Petitioner could not live with his symptoms. Dr. Rutz ordered an L5-S1 epidural steroid injection for temporary relief.

Petitioner returned to Dr. Kathalynas on 10/31/19 and reported dull and aching discomfort in his low back and bilateral sacroiliac. He stated that treatment provided him a couple of days of relief. Petitioner continued to receive 11 additional treatments through 12/9/19.

On 11/26/19, Petitioner reported to Dr. Rutz he received only temporary relief from the injection. He continued to have low back pain radiating into his right leg. Petitioner reported no left leg pain. Dr. Rutz scheduled Petitioner for L5-S1 decompression and fusion. Despite his condition, Petitioner continued working until the mine closed on 12/14/19.

On 3/3/20, Petitioner was examined by Dr. Robert Bernardi pursuant to Section 12 of the Act. Dr. Bernardi noted Petitioner had prior back problems with associated leg pain approximately a year prior to his most recent work accident; however, it was noted that Petitioner was given an epidural steroid injection that helped considerably until his accident and was working full duty, without any lost time. Petitioner also reported that his prior back pain "was never as severe as what he is currently experiencing." Dr. Bernardi detected no Waddell signs during examination. After reviewing his records and examining Petitioner, Dr. Bernardi's assessment was multilevel lumbar degenerative disc disease/spondylosis, L5-S1 degenerative facet disease and degenerative spondylolisthesis, multilevel degenerative stenosis, and "low back/bilateral buttock pain of uncertain etiology." Dr. Bernardi concluded that while Petitioner's work accident did not cause or contribute to Petitioner's degenerative disc/facet disease, stenosis, or spondylolisthesis, he found it "reasonable to conclude that the events of 12/12/18 aggravated his pre-existing spinal arthritis." He further stated, "I must say that he struck me as being extremely credible," and again noted that, "[a]s [Petitioner] describes it, that accident is certainly one that could have caused a flare-up of lumbar degenerative disease."

Dr. Bernardi noted that Petitioner's complaints remained consistent throughout the period of treatment. In comparing the pre and post-accident MRI's, Dr. Bernardi pointed out that the one study dated more than 20 months prior to the injury indicates that this was a long-standing problem that did not objectively change. Dr. Bernardi opined that Petitioner could continue to work without restrictions and he had exhausted all reasonable non-operative care. He did not believe that an epidural injection was warranted as that would only address radiculopathy which was not present and that six weeks of physical therapy or chiropractic care was reasonable. Dr.

Bernardi found Petitioner to be at maximum medical improvement and did not believe he warranted surgery.

Petitioner returned to Chiropractor Kathalynas nine times in March and April 2020 for lumbar complaints without any significant improvement or change in symptomatology.

Petitioner underwent surgery on 4/9/20 by Dr. Rutz. Intraoperatively, Dr. Rutz removed a large facet cyst compressing Petitioner's nerve roots. He noted during the follow-up visit on 4/21/20 that Petitioner reported no pain in his legs and continued "appropriate soreness" in his back. On 6/30/20, Dr. Rutz noted Petitioner's leg pain resolved and he continued to have residual aching in his back. Dr. Rutz found Petitioner was progressing well under restrictions and planned to release him on the following visit. On 8/25/20, Dr. Rutz noted Petitioner was doing well overall, though he continued to have some aching in his back with increased activities. Dr. Rutz was pleased with Petitioner's progress and released him at maximum medical improvement with no restrictions.

Dr. Robert Bernardi testified by way of evidence deposition on 5/22/20. Dr. Bernardi is a neurosurgeon and testified consistent with the opinions expressed in his report. He testified he did not understand why Dr. Rutz felt that L5-S1 was the source of Petitioner's symptoms, but admitted Petitioner had spondylolisthesis at that level and facet disease. He felt the pathology at L2-3 and L4-5 could also have been causing Petitioner's symptoms, and he believed that fusing L5-S1 was risky with the advanced degenerative changes in Petitioner's spine. Dr. Bernardi acknowledged Petitioner reported bilateral leg pain following the accident, and that both MRI reports taken after the accident showed evidence of bilateral neuroforaminal narrowing at L5-S1. He reiterated that he found Petitioner credible and found no signs of symptom magnification or malingering.

Dr. Bernardi acknowledged that Petitioner exhausted all conservative options prior to surgery being performed, and that Petitioner's complaints never returned to their pre-injury baseline. He also acknowledged that Petitioner did receive some, albeit temporary, benefit from the epidural steroid injections at L5-S1. He again admitted that Petitioner had pathology at L5-S1 that could account for his complaints, and that his work accident aggravated his pre-existing condition. With respect to the aggravation caused by his work accident, he stated, "I think that's the most plausible explanation for the thing he describes".

When asked if improvement following L5-S1 surgery would establish that level as a symptom generator, he declined to agree, stating it was "very difficult to judge someone's response to an operation" within the first few months following surgery and that individuals can get better for a wide variety of reasons. He also declined to agree that a person who had persistent symptoms for more than a year was unlikely to improve without further intervention. He acknowledged that it was "certainly reasonable to talk to someone about an operation if they've had pain for a year." When asked whether it was reasonable for Petitioner to consider surgery, he stated that it was a surgical preference, but he did not believe it fell below the standard of care, as "[f]or many surgeons a degenerative spondylolisthesis is an indication for lumbar fusion." He also admitted that it was not unreasonable for Dr. Rutz to recommend injections for Petitioner's low back.

Dr. Bernardi further testified he would not recommend the L5-S1 surgery because Petitioner was working full duty and very active as an underground coal miner. Dr. Bernardi again opined that if Petitioner did not receive improvement after six weeks of chiropractic care, it would be unreasonable to continue.

Dr. Kevin Rutz testified by way of evidence deposition on 8/7/20. Dr. Rutz is an orthopedic surgeon who subspecializes in spinal surgery. He estimated that spine surgeries composed approximately 95% of the procedures he performs and he performs independent medical evaluations. Dr. Rutz testified that Petitioner's MRI from 2017 showed advanced degeneration at L4-5, moderate foraminal stenosis bilaterally at L5-S1, and moderate facet arthropathy at L5-S1. Dr. Rutz appreciated the progression of the degeneration at the L5-S1 level with the new MRI. He explained that the fact Petitioner's injections provided temporary relief at L5-S1 gave him a decent baseline of what Petitioner's condition would be if his inflamed condition were calm. While some patients return to their baseline, others who are worse off would only improve for a short while until the medicine wears off and their symptoms return. When Petitioner obtained only temporary relief with each injection, Dr. Rutz recommended surgery. Dr. Rutz acknowledged that the surgery never fully resolved the back pain component of Petitioner's complaints, but it did completely resolve his leg pain.

Dr. Rutz testified that Petitioner's diagnosis of L5-S1 degenerative spondylolisthesis with stenosis, radiculopathy, and right-sided facet cyst was a preexisting degenerative condition; however, he opined that within a reasonable degree of medical certainty Petitioner had a sustained aggravation of his preexisting degenerative condition. He based his opinion on a comparison of the pre and post-accident MRI findings and the nature of the pathology. Petitioner never denied prior back pain, but he had a significant uptick in his symptoms since his accident that never returned to baseline. The only time he did relatively well was a few weeks after an epidural steroid injection and he returned to his new baseline, which was worse, and required medication to keep functioning.

Dr. Rutz opined that Petitioner's condition would not have improved without surgery. Dr. Rutz also disagreed that the injections were not reasonable or necessary, as they had a chance to provide lasting relief to Petitioner, which he stated was important to patients like Petitioner who were hesitant to undergo surgery. He also disagreed with Dr. Bernardi's statement that Petitioner did not suffer from radiculopathy and pointed to the clinical complaints of pain going down Petitioner's buttocks and leg. Symptoms into the buttocks and thighs is evidence of some nerve impingement which Petitioner's MRI confirmed and evidenced radiculopathy. Dr. Rutz testified that Petitioner's radicular complaints resolved with surgery. He believed L5-S1 was the source of Petitioner's symptoms based on the degeneration at L4-5 that was relatively stiff and the development of instability at the level below at L5-S1 and he appreciated significant nerve impingement at L5-S1. He testified he did not treat L2-3 or L4-5 where Petitioner had severe spondylolisthesis because he believed the majority of degenerated discs are not major pain generators, whereas a condition of instability is a common pain generator. He believed Petitioner had a positive outcome from the procedure and his surgical choice was appropriate and related to the work accident.

On cross-examination, Dr. Rutz admitted he only prescribed chiropractic care before surgery for a total of nine individual visits. Dr. Rutz stated he never took Petitioner completely off work until surgery.

CONCLUSIONS OF LAW

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

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. Industrial Commission*, 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. Industrial Comm'n*, 304 Ill. App. 3d 875, 710 N.E.2d 837 (1999) citing *General Electric Co. v. Industrial 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 finds Petitioner credible and Dr. Bernardi noted he found Petitioner to be "extremely credible" and found no signs of symptom magnification or malingering. Dr. Bernardi opined that Petitioner's accident was certainly one that could have caused a flare-up of his pre-existing lumbar degenerative disease. Dr. Bernardi also admitted that Petitioner had pathology at L5-S1 that could account for his complaints and his work accident aggravated this pre-existing condition. Dr. Rutz concluded that Petitioner suffered a sustained aggravation of his preexisting condition. Both physicians acknowledged that Petitioner never returned to his pre-injury baseline.

The law is clear that 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).

Based on the aforementioned law, medical evidence, and testimony, the Arbitrator finds no legitimate basis for a dispute as to causal connection. Rather, the principle dispute is whether Petitioner's L5-S1 fusion was reasonable and necessary. The Arbitrator addresses that issue under the appropriate paragraph. The Arbitrator therefore finds that Petitioner sustained his burden in proving that his current condition of ill-being is causally connected to his accidental work injury.

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

The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Const.*, 388 Ill. App. 3d 380, 383, 902 N.E.2d 1269, 1273 (2009). Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691 N.E.2d. 13 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (2001).

Based upon the above findings as to causal connection and the objective medical evidence clearly showing pathology accountable for his symptoms, the Arbitrator finds Petitioner entitled to the reasonable and necessary medical care administered, including the injections and L5-S1 fusion recommended and performed by Dr. Rutz, with the exception of various treatments received at Kathalynas Spine, Sport & Rehabilitation which is addressed below.

While Dr. Bernardi felt the injections and surgery unnecessary, the Arbitrator finds his opinion unsupported by the evidence. First, the Arbitrator notes that Dr. Bernardi admitted Petitioner exhausted conservative options prior to surgery, and that Petitioner's complaints never returned to pre-injury baseline. He acknowledged it was certainly reasonable to talk to someone about an operation if they have had pain for a year and that opting for surgical intervention was an individual preference which did not fall below the standard of care as degenerative spondylolisthesis is an indication for a lumbar fusion. Dr. Bernardi also admitted it was not unreasonable for Dr. Rutz to recommend injections for Petitioner's low back. Dr. Rutz testified that Petitioner suffered a sustained aggravation of his pre-existing condition that would not have improved without operative intervention. Dr. Rutz removed a cyst which was compressing a nerve root that completely resolved Petitioner's radicular symptoms. Petitioner describes his surgery as a success which improved his condition and resolved his leg pain. Given the clear objective intraoperative findings, the fact that Dr. Bernardi acknowledged Petitioner did not return to his pre-accident baseline, and that Petitioner testified to improvement following surgery, the Arbitrator finds that the treatment administered to Petitioner was reasonable and necessary, with the exceptions as stated below.

The Arbitrator does not find Respondent is liable for payment of the full chiropractic charges to Kathalynas Spine, Sport & Rehabilitation. The Arbitrator finds that Petitioner's initial treatment on 12/12/18 through 12/28/18 was reasonable and necessary. Petitioner presented on 12/12/18 and related his low back, buttock, and thigh pain to his work activities in the coal mines. He did not return to the facility until 3/13/19 after he was examined at the Orthopaedic Institute of Southern Illinois where an MRI was performed. When he returned to Kathalynas on 3/13/19 Petitioner treated for cervical pain and dizziness, wholly unrelated to this claim and his lumbar condition. Further, Petitioner began treatment with Dr. Rutz on 4/23/19 who did not refer Petitioner to Kathalynas until 5/14/19 for a total of nine visits. Per Dr. Rutz's orders, Petitioner received therapy with Kathalynas from 6/10/19 through 7/1/19, a total of seven visits, with no

pain relief. Petitioner thereafter underwent injections and surgery with Dr. Rutz who did not prescribe additional therapy. Therefore, Respondent shall only pay for office visits with Kathalynas Spine, Sport & Rehabilitation from 12/12/18 through 12/28/18 and 6/10/19 through 7/1/19, pursuant to the Medical Fee Schedule.

Respondent shall therefore pay the expenses outlined in Petitioner's group exhibit 1, with the exception of medical bills related to Petitioner's treatment at Kathalynas Spine, Sport & Rehabilitation. Respondent shall pay medical bills incurred at Kathalynas Spine, Sport & Rehabilitation only from 12/12/18 through 12/28/18 and 6/10/19 through 7/1/19.

Respondent shall have credit for expenses which have already been paid, provided that it indemnifies and holds Petitioner harmless from any disputes arising from the expenses for which it claims credit. The parties stipulate that Respondent paid $7,486.26 in medical expenses under workers' compensation, but this was not paid under §8(j). The Arbitrator thus awards this credit under other benefits.

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

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

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that neither party submitted an impairment rating. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes Petitioner retired as an underground coal miner and specifically a mine inspector. He testified it was a heavy job that required extensive walking in a bent-over position and shoveling coal and rock dust. Petitioner testified he retired from employment prior to undergoing surgery with Dr. Rutz and has not been employed since retiring. The Arbitrator places some weight on this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes Petitioner was 61 years old at the time of the injury. The Arbitrator places some weight on this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earning capacity, the Arbitrator notes there is no evidence of reduced earning capacity contained in the record and Petitioner is retired. The Arbitrator places some weight on this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, Petitioner sustained an aggravation of his pre-existing spondylosis and spondylolisthesis with radiculopathy that required an L5-S1 fusion. Petitioner credibly testified that despite improvement from surgery, he continues to have symptoms that vary with his level

of activity. He continues to notice soreness when he bends down for an extended period of time. He stated he is cautious with lifting heavy objects or doing yard work, as these activities increase his pain. His hobby of working on old cars has been adversely affected. He takes Mobic daily for his symptoms. As of Petitioner's MMI date of 8/25/20, Dr. Rutz noted that although Petitioner was doing relatively well, he continued to have some aching in his back with increased activities. 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 the body as a whole under Section 8(d)2 of the Act.

Linda J. Cantrell, Arbitrator

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC012171
Case Name	Yahaira Massa v. O'Reilly Auto Parts
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0352
Number of Pages of Decision	35
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Michael Youkhana
Respondent Attorney	Rich Lenkov

DATE FILED: 9/13/2022

/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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

YAHAIRA MASSA,

Petitioner,

vs. NO: 20 WC 12171

O'REILLY AUTO PARTS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, temporary total disability, and medical expenses and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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).

We affirm the Arbitrator's admission of Dr. Sokolowski's records but address Respondent's arguments in further detail. As the Arbitrator correctly found, Respondent's attorney waived any foundation objections when he stated:

> I don't object to the records in their entirety being admitted. I'm just going to object to the specific causation opinions. *T.62*.

The Arbitrator stated:

> **…if any of the records contain causation opinions that are directed towards the litigation and not the treatment, I recognize a hearsay objection.**

> However, if there are causation opinions in part of the records, I will allow them in as the treating doctor has a duty to only submit bills to workers' comp that are work related. And he has the duty not to submit bills unless there's a subrogation or reimbursement agreement to the health insurance carrier. So I do allow it under those circumstances.
>
> So with that, if you wish to brief anything, of course, I will accept any guidance to make the right decision.
>
> Under that, I'm admitting the records of Dr. Sokolowski as Exhibit No. 5.

T.62-63 (Emphasis added). In the decision, the Arbitrator specifically cited:

> *RG Construction Services v. The Illinois Workers' Compensation Commission*, 2014 IL App (1st) 132137WC (December 31, 2014) wherein the Court stated at page 17 that "…we find no indication that the legislature intended to exclude a treating doctor's opinion, which was offered during the course of the doctor's treatment of the employee and memorialized in the doctor's treating records, from the phrase 'medical and surgical matters.' It stands to reason that the records and reports of a treating physician are likely to contain medical opinions relating to a variety of aspects in the care, treatment, and evaluation of the employee. As a result, we are not persuaded by the employer's position that the simple inclusion of medical opinions within a treating physician's records is sufficient to exclude it from admission pursuant to section 16." *Dec. 18*.

Significantly, Respondent's brief on review does not address the *RG Construction* case and we find that all of its other arguments are moot based on Respondent's attorney's failure to object to the certification (foundation of the records) at the hearing and only objecting to the causation opinions contained therein (hearsay). Nevertheless, we make several findings to specifically address Respondent's arguments:

1) Although there is no subpoena attached to the exhibit, the certification page states, "*In response to the subpoena issued* by the law offices of ARGIONIS & ASSOCIATES, LLC, I hereby certify that the attached records are the only records in my/or [sic] possession or control in relation to the above-named patient." *Px5 (Emphasis added)*. Therefore, "on its face" the records indicate that they were received in response to a subpoena, which creates "a rebuttable presumption that any such records, reports, and bills received in response to Commission subpoena are certified to be true and correct." *820 ILCS 305/16*. If Respondent's attorney had wanted to rebut that presumption, he could have done so at the hearing instead of waiving the foundation objection.

2) Respondent is correct that the records are not complete because the physical therapy records are not included. *R-brief at 13*. In other words, Dr. Sokolowski's bills (*Px6*) were certified and include charges for many physical therapy visits for which there are no supporting records in *Px5*. However, the "certification" page for *Px5* states, "the attached records are *the only records in my/or [sic] possession* in relation to the

above named patient." *Px5 (Emphasis added)*. The question is how can the records be true, correct and complete if they don't include the physical therapy records that are listed on the bill? We acknowledge that Respondent may have had an argument if Respondent's attorney had objected to the foundation of these records. However, since he only objected to the causation opinions (hearsay), we agree with the Arbitrator that Respondent waived this argument.

3) Respondent argues that the Arbitrator found Dr. Sokolowski more credible than Respondent's §12 physician, Dr. Singh, even though "no evidence was submitted to establish any of Dr. Sokolowski's credentials and a finding otherwise would be speculation." *R-brief at 14*. While it is true that Dr. Sokolowski's *Curriculum Vitae* (CV) was not entered into evidence, the records do indicate that he is an orthopedic surgeon. Specifically, the December 3, 2020 Work Status Report reflects that Dr. Sokolowski's practice was "Orthopaedic Surgery of the Spine" *Px5*. Although the credentials of the experts are relevant in terms of the weight given to their opinions, the fact that Dr. Sokolowski's CV is not in evidence does not make his records and opinion inadmissible.

4) Respondent cites *Nat'l Wrecking Co. v. Indus. Comm'n*, 352 Ill. App. 3d 561, 567 (1st Dist. 2004), for the proposition that "the legislature intended certification to be a minimum foundational requirement that must be satisfied before the records may be admitted." *R-brief at 11*. However, that refers to foundation requirements and, as already addressed, Respondent waived any foundation objections.

In summary, we find that Dr. Sokolowski's records were properly admitted pursuant to §16 of the Act.

We next affirm the Arbitrator's finding on the issue of causation but specifically address some of Respondent's arguments:

1) Respondent argues that, while Petitioner claimed at trial that she was undergoing physical therapy at Dr. Sokolowski's office, Petitioner did not introduce these records into evidence at the hearing. Although this is true, and discussed elsewhere in this decision, we do not agree that the failure to introduce these therapy records undermines Dr. Sokolowski's causation opinion.

2) Respondent claims "Dr. Sokolowski does not provide any basis for his opinions and merely couches his conclusions in generalized conclusory statements" because he failed "to identify any pathogenesis in support of his conclusion." *R-brief at 15*. Conversely, Respondent argues, Dr. Singh "provides sound reasoning for his opinions…including the fact that Petitioner had a normal neurologic examination with an essentially normal lumbar MRI. Dr. Sokolowski does not." *Id.* We disagree with Respondent's contention that Dr. Sokolowski did not "identify any pathogenesis." On September 2, 2020, Dr. Sokolowski recounted Petitioner's history of injury at work while lifting a heavy box of car parts, which resulted in back pain which developed to include left lower extremity (LLE) numbness. He specifically

noted a positive left straight-leg-raise (SLR) test and stated that her April 28, 2020 MRI films showed "single level disc disease at L5-S1 with mild foraminal narrowing." He diagnosed axial back pain and lumbar radiculopathy "causally related to work injury." In contrast, Dr. Singh diagnosed a resolved lumbar muscle strain because Petitioner had "nonanatomical [LLE] dysesthesias with a normal neurological examination with essentially a normal MRI scan." *Rx2*. However, he did not specifically include any SLR test findings. We find this significant because Dr. Murtaza, the physiatrist who was referred from Concentra and who recommended that Petitioner undergo an Independent Medical Evaluation, noted on June 5, 2020 that Petitioner had no overall relief from the May 21, 2020 epidural steroid injection (ESI). He diagnosed a herniated disc at L5-S1 with LLE radiculopathy. Furthermore, many of the Concentra physical therapy records reflect that Petitioner had LLE radiculopathy. Therefore, Dr. Sokolowski's examination and diagnosis on September 2, 2020 is very consistent with the prior medical records. In contrast, Dr. Singh's examination and opinion is the outlier and is not supported by the findings of previous medical professionals. We find the opinion of Dr. Sokolowski more persuasive than that of Dr. Singh.

3) Respondent argues that there are inconsistencies between Dr. Sokolowski's records and Petitioner's testimony. *R-brief at 15*. First, on January 22, 2021, Dr. Sokolowski noted that Petitioner was working with restrictions, but Petitioner testified that she had to return to work without restrictions in December 2020. *T.23*. Also, the October 20, 2020 and December 3, 2020 records of Dr. Sokolowski indicate that he performed physical exams on Petitioner, but these were video visits and Petitioner testified that no exam was performed on those dates because of Covid. *T.36-37*. However, Petitioner also testified that the "physical part of the testing" was done by the physical therapist. *T.37*. We admit that this is a little confusing. The physical exam findings do not seem to be artifacts from the first visit on September 2, 2020 because the wording is not identical. We believe the most likely explanation is that the October and December exams were performed by the therapist as Petitioner testified. Although these physical therapy records are not in evidence, there are charges for therapy on those dates. This explains how there could be physical exam findings noted on a "video visit" record. This would also explain Dr. Sokolowski's October 20th notation that Petitioner was fitted for and was issued a "semi-rigid lumbosacral orthosis today."

Although not pointed out by Respondent, the January 22, 2021 visit was also a video visit because Petitioner was in quarantine for Covid. There was no explanation as to how there were physical findings for this date because there is no corresponding charge for therapy on that date, which make sense since Petitioner was in quarantine. In any event, although we are aware of the confusion surrounding the exam findings on various dates, we do not find them to be significant enough to counter our finding that Dr. Sokolowski's causation is the most persuasive.

Respondent also attacks Petitioner's credibility by selectively focusing on certain records that make it seem as though Petitioner's condition had improved, or gave inconsistent information to her providers, etc. However, we note that there are other visits, which Respondent does not mention, that do support her testimony. For example, Respondent argues that Petitioner testified she experienced pain with radiation into the leg immediately following her accident but, on March 6, 2020 and March 9, 2020, Petitioner told Dr. Bahmanbeigi (Concentra) there was no radiation. *R-brief at 16*. However, what Respondent does not include is that the March 9, 2020 Concentra physical therapy record indicates "radiating/shooting symptoms into LLE. …radiating pain will sometimes travel down into her L foot. … able to walk for about 5 min. before onset of symptom…" Her exam by the therapist was "consistent with left SIJ dysfunction and sciatic nerve irritation." On March 12, 2020, Petitioner complained of "shooting pain down the left leg today." And, on March 16, 2020, a different Concentra physician, Dr. Houseknecht, recorded Petitioner's complaint of "still has pain in left lower back to [sic] shoots down the left leg" and a positive left SLR on exam. Our conclusion is that Dr. Bahmanbeigi's exams were not as thorough as those of the physical therapist and Dr. Houseknecht and we find that the records as a whole support Petitioner's credibility. In addition, Petitioner's supervisor, Julio Rocha, testified that Petitioner reported the accident to him the day it occurred and told him she had a sharp pain in her lower back and left leg. *T.44-48*. This supports Petitioner's testimony of experiencing immediate radiating pain.

Next, Respondent argues that Petitioner testified she always followed her doctor's recommendations but "on March 16, 2020, Petitioner's doctor charted that Petitioner was not following her home exercise program [HEP] as ordered." *R-brief at 16 (citing Px1, p.17)*. Once again, Respondent selectively focuses on only part of the record. We initially note that the record cited (Px1, p.17) is a physical therapy note - not a physician's note. In any event, while it is true that the March 16th physical therapy record states, "Patient non-compliant with HEP," the valid explanation for this is written a few sentences prior: "she feels good today, but was having shooting pain down her left buttock into the left posterior thigh over the weekend. She reports not being able to perform her HEP this weekend." We also note that the physical therapy record, from just several days prior on March 11, 2020, indicates that Petitioner *was* performing her HEP daily. We find that Petitioner's inability to perform her home exercise program on the weekend prior to March 16th is not an example of her disregarding her doctor's recommendations nor a negative reflection on her credibility.

Respondent also argues that "for some unknown reason Petitioner stopped treating at Concentra despite not being discharged from her treatment there. (PX 1)." *R-brief at 16*. However, this is not true. Although the April 15, 2020 physical therapy record indicates a plan for continued therapy, it also states, "Patient to return to the referring physician." Two days later, Petitioner was seen by Dr. Murtaza (on referral from Concentra) and he did not order additional physical therapy at that time. Instead, he ordered an MRI, work restrictions and medications.

We do not find any of Respondent's other examples of alleged medical inconsistencies persuasive but want to address Mr. Rocha's testimony as it relates to Petitioner's credibility. Mr. Rocha is Respondent's district manager who testified that he had seen Petitioner work on at least 11 occasions since the accident and she was "pretty quick at her job duties" and he does not

remember her complaining *in the store* about back or left leg pain on any of these occasions. *T.51 (Emphasis added)*. However, he testified that Petitioner did *call* him in December 2020 (about 2 months prior to the hearing) to complain about her back pain. *T.51-52*. He last saw Petitioner working in the store "a week ago" and did not see anything that appeared to be an issue with her performance of her job duties. *T.54*. However, on cross-examination, he admitted that since the date of accident, he has not seen Petitioner carrying heavy auto parts and, on one occasion, she asked him to pick up some rotors for her. *T.55*. He also testified that, when Petitioner complained to him in December 2020 about working without restrictions, he told her that "restrictions were not allowed due to the information that was given by the doctor." *T.56*. In our view, Mr. Rocha's testimony does not contradict Petitioner's complaints at all and, actually, supports her testimony.

Regarding the award for past medical expenses, the parties stipulated at oral arguments that this issue will be decided upon final disposition per settlement or trial. Therefore, we vacate the award for past medical expenses.

We affirm the award of prospective medical treatment but strike that paragraph in the Order section and replace it with "Respondent shall authorize the lumbar epidural injection and continued reasonable, necessary and causally-related treatment with Dr. Sokolowski."

Finally, we make the following modifications to the decision:

- In the last sentence of the first paragraph on page 6, we correct "stain" to "strain."

- In the fifth sentence on page 7, we correct "flection" to "flexion."

- In the first full paragraph on page 10, we strike the incorrect date of "10/20/1010."

- Also on page 10, in the first sentence of the last paragraph, we replace "12/30/2020" with "12/3/2020."

- On page 23, we strike the first paragraph in its entirety along with the first and second sentences of the second paragraph.

- In the first sentence of the third paragraph on page 24, we change the phrase "physical treatment" to "physical therapy."

- We strike the last sentence in the last paragraph on page 24 that "She is entitled to work status as prescribed by Dr. Sokolowski during the course of her treatment." We find that it is inappropriate to determine, in advance, the reasonableness and necessity of any potential work restrictions that might be recommended.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the award for past medical benefits is hereby vacated and, per the stipulation of the parties, this issue will be decided upon final disposition per settlement or trial.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize the lumbar epidural injection and continued reasonable, necessary and causally-related treatment with Dr. Sokolowski 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 this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $10,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 13, 2022

/s/ *Maria E. Portela*

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

SE/
O: 7/26/22
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ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC012171
Case Name	MASSA,YAHAIRA v. O'REILLY AUTO PARTS
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	27
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Michael Youkhana
Respondent Attorney	Chase Gruszka

DATE FILED: 4/26/2021

INTEREST RATE WEEK OF APRIL 20, 2021 0.04%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Yahaira Massa
Employee/Petitioner

v.

O'Reilly Auto Parts
Employer/Respondent

Case # **20** WC **12171**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joseph Amarilio**, Arbitrator of the Commission, in the city of **Chicago, Illinois**, on **February 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. ☒ 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, **February 25, 2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**51,244.44**; the average weekly wage was $**985.47**

On the date of accident, Petitioner was **40** years of age, ***single*** with **0** dependent children.

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

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

ORDER

Medical benefits
Respondent shall pay reasonable and necessary unpaid medical services, pursuant to the medical fee schedule, of $127.17 to Concentra Urgent Care, $12,850.00 to Dr. Mark Sokolowski, and $1,144.13 to Metropolitan Institute of Pain, as provided in Sections 8(a) and 8.2 of the Act. Respondent is entitled to credit for bills paid.

Prospective Medical
Respondent shall authorize the lumbar epidural injection recommended by Dr. Sokolowski. Further, all future treatment related to the lower back shall be authorized unless the Respondent has a valid medical opinion that disputes the same. Additionally, Respondent shall allow Petitioner to work with the restrictions recommended by Dr. Sokolowski or pay TTD.

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

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

Joseph D. Amarilio

_____
Signature of Arbitrator JOSEPH D. AMARILIO

ICArbDec19(b)

APRIL 26, 2021

ILLINOIS WORKERS' COMPENSATION COMMISSION

YAHAIRA MASSA,	)	
	)	
Petitioner,	)	
vs.	)	**20 WC 12171**
	)	
O'REILLY AUTO PARTS,	)	
	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION OF ARBITRATOR

I. PROCEDURAL HISTORY

This matter was heard before Arbitrator Joseph Amarilio (the "Arbitrator") on February 22, 2021in the City of Chicago, County of Cook and State of Illinois. Ms. Yahaira Massa ("Petitioner") testified in support of her claim and Mr. Julio Rocha was called to testify on behalf of the Respondent. The submitted exhibits and the trial transcript have been examined by the Arbitrator.

The parties stipulated that Petitioner was involved in a February 25, 2020 work accident arising out of and in the course of her employment with Respondent; that the parties were operating under the Illinois Workers' Compensation Act ("Act") on the accident date, and that the parties' relationship was one of employer and employee. (AX 1). The parties stipulated that Petitioner gave notice of the accident within the time limits stated in the Act; Petitioner's average weekly wage in accordance with Section 10 of the Act was $985.47; and, at the time of the accident Petitioner was 40-years-old, single and had no dependents. (AX 1).

The parties proceeded to hearing on the following three (3) disputed issues: (1) whether Yahaira Massa's ("Petitioner") current claimed condition of ill-being is causally connected to a 2/25/2020 work accident with O'Reilly Auto Parts ("Respondent"); (2) whether Respondent is liable for unpaid medical bills; and, (3) whether Petitioner is entitled to prospective medical treatment, specifically, the approval of a lumbar epidural steroid injection and physical therapy. (AX 1).

II. Statement of Facts and Conclusions of Law

1. Accident

Petitioner testified that she was employed by Respondent, O'Reilly Auto Parts ("O'Reilly"), as a Manager for three years. (TR pp. 7-8). As a Manager, Petitioner was responsible for managing her team, doing daily returns, inventory, sending out deliveries to customers, taking care of walk-in customers, and stocking parts. (TR p. 8). While working for O'Reilly on 2/25/20, Petitioner was injured while doing her daily routines. (TR p. 9-10). At trial, Petitioner testified that as she was doing her daily routines, she picked up a caliper core and injured her lower back. (TR p. 10). The caliper core weighed approximately 35 – 40 lbs. (TR p. 10). She took two days off to see if rest would help. When she returned to work the pain increased again so she came to Concentra (PX 3, p.12) Petitioner did not seek medical treatment until 3/6/2020, or 9 days after the accident, however, she reported working in pain during this period, as corroborated by the District Manager, Julio Rocha. (TR p. 11; TR p. 46-47; PX, 1 p. 1).

2. Treatment

1. Concentra Occupational Health

Petitioner's treatment records from Concentra Occupational Health were obtained by Petitioner's counsel pursuant to subpoena and admitted into evidence as Petitioner's Exhibit 1 without objection. (PX 1, p. 1; TR p. 58).

At the direction of her employer, on 3/6/2020, Petitioner presented to Concentra Occupational Health. She was seen by Dr. Khojasteh Bahmanbeigi with complaints of low back pain. (PX 1, p. 1). During the visit, Petitioner told Dr. Bahmanbeigi that she had left lower back

pain. (PX 1, p. 1). The pain was described as "aching" in nature and "moderate" in severity. (PX 1, p. 1). No lower extremity numbness was noted, nor was there any paresthesis, lower extremity tingling or lower extremity weakness appreciated. (PX 1, p. 1). Petitioner's lumbosacral spine appeared normal, with tenderness noted in level L3 to S1. (PX 1, p. 1). Petitioner exhibited good toe and heel walking, and bilateral straight leg tests were negative. (PX 1, p. 2). Similarly, Petitioner had a negative Waddell test. (PX 1, p. 2). Petitioner's low back x-rays were unremarkable. (PX 1, p. 3). Dr. Bahmanbeigi's assessment was a lumbosacral strain and the plan was for Petitioner to start Cyclobenzaprine and physical therapy 3 times per week for 2 weeks. (PX 1, p. 3). Petitioner was released to return to work the following day (3/7/2020) with restrictions consisting of working 8 hours per day, lifting up to 10 pounds, pushing and pulling up to 20 pounds, and with limited bending and trunk rotation. (PX 1, p. 4). A series of low back x-rays taken on 3/6/2020 were negative. (PX 1, p. 28).

On 3/9/2020, Petitioner returned to Concentra for an initial physical therapy evaluation and evaluation with Dr. Bahmanbeigi. (PX 1, pp. 5; 10). After an examination, Dr. Bhamanbeigi's assessment was that Petitioner was approximately 25% of the way toward meeting the physical requirements of her job. She noted negative Waddell test. (PX 1, p. 11). Petitioner was ordered to proceed with physical therapy and continue working modified duty. (PX 1, pp. 11-12).

During the 3/9/2020 physical therapy evaluation, Petitioner told the physical therapist that she injured her back at work on 2/25/2020 and that her current pain level was 6/10. (PX 1, p. 5). When asked about the specific mechanism of injury, Petitioner told the therapist that "she was lifting a box off a shelf at work, and then turned and twisted her back while placing it on the floor behind her." (PX 1, p. 5).

On 3/9/2020, during her second medical visit being the initial physical therapy evaluation, the physical therapist recorded that's Petitioner's chief complaint was left-sided buttock pain with radiating and shooting pain symptoms into the left lower extremity. She reported radiating pain will sometimes travel down into her left foot. (PX 1, p. 5).

She further reported that she was able to walk for about 5 minutes before experiencing symptoms. (PX 1, p. 5). On examination of her lumbar spine, Petitioner exhibited flexion and extension of 90%. (PX 1, p. 6). The therapist's assessment was that therapy was indicated and that Petitioner was a good candidate for therapy, and that she exhibited a demonstrated good prognosis for improvement. (PX 1, p. 7).

On 3/11/2020, Petitioner returned to Concentra for physical therapy. (PX 1, p. 13). During the 3/11/2020 visit, Petitioner reported that her left SI joint was "very sore after sitting for 6 consecutive hours at jury duty." She said that she did not go in work because her pain was so intense. (PX 1, p. 13). Petitioner further reported that she could perform activities of daily living independently but not recreational activities. She further reported being unable to participate in one or more community or life events due to impairments associated with the current injury. (PX 1, p. 14)

At her 3/12/2020 physical therapy visit, Petitioner reported shooting pain down the left leg. (PX 1, p. 15). Petitioner reported that she could perform activities of daily living independently. She further reports being unable to participate in one or more community or life events due to impairments associated with the current injury. (PX 1, p. 13). The therapist recorded that Petitioner tolerated the current treatment well and that she was progressing as expected. (PX 1, p. 15). Petitioner tolerated her treatment well and was progressing as expected. (PX 1, p. 16).

On 3/16/20, Petitioner was seen by Dr. Kristin Houseknecht at Concentra in follow-up. (PX 1, p. 20). At the outset of the visit, Petitioner told Dr. Houseknecht that her symptoms were ongoing but that they were "gradually improved." (PX 1, p. 20). Dr. Houseknecht charted that Petitioner attended 3 physical therapy visits and that she has demonstrated functional improvement. (PX 1, p. 21). Dr. Houseknecht's assessment was that Petitioner was 50% of way toward meeting the physical requirements of her job. (PX 1, p. 50).

At a 3/16/2020 physical therapy visit, Petitioner told the physical therapist that she had not been performing her home exercise program over the weekend. She also he reported having

shooting pain down her left buttock into the left posterior thigh over the weekend. (PX 1, p. 17). The therapist charted that Petitioner was non-compliant with the home exercise program. (PX 1, p. 17). Petitioner again tolerated the treatment well and was progressing as expected. (PX 1, p. 19).

During a 3/18/2020 physical therapy visit, Petitioner told the physical therapist that she was in pain the day prior and that she would hardly walk, but that she felt better. (PX 1, p. 52). Petitioner tolerated the treatment well. (PX 1, p. 54).

At a 3/20/2020 follow-up visit with Dr. Bahmanbeigi Petitioner reported for the first time that she had bilateral low back pain. (PX 1, p. 59).

At a 3/20/2020 physical therapy visit, Petitioner told the therapist that her pain was not as severe as it was earlier in the week. (PX 1, p. 55). Petitioner rated her pain as 5/10 and that she could perform activities of daily living independently. but not recreational activities. She further reported being unable to participate in one or more community or life events due to impairments associated with the current injury. (PX 1, p. 55). The therapist charted that Petitioner's overall progress was as expected. (PX 1, p. 56).

At a 3/27/2020 physical therapy visit, Petitioner told the therapist that she had been "feeling well since her previous visit." (PX 1 p. 34, p. 62).

On 3/30/2020, Petitioner told the physical therapist that her "back [was] a little irritated cause she was overworked and felt she wore her SI belt too tight." (PX 1, p. 65). Her diagnosis was lumbosacral strain with radiculopathy. Her chief complaint was bilateral lower back pain. (PX1, p 59)

At a 4/3/2020 injury recheck visit with Dr. Bahmanbeigi, Petitioner rated her pain as 4-5/10. (PX 1, p. 38).

On 4/10/2020, at the work injury recheck visit Dr. Bahmanbeigi noted back pain. Her symptoms remain unchanged and the left lower back has persisted and some days the pain is worse. The pain radiates to the left buttock and left thigh. The symptoms occur frequently. She describes the pain as achy in nature. The severity of the pain is moderate. She diagnosed her condition as lumbosacral stain with radiculopathy (PX1, p.47)

On 4/13/2020, Petitioner's physical therapist charted that Petitioner's progress was slower than expected. (PX 1, p. 22) and that she is still in a lot of pain. (PX 1, p. 49)

At a 4/15/2020, the physical therapist recorded Petitioner reported pain in her left SIJ that radiates down the back of her left leg. Petitioner rated her low back pain as 4/10. (PX 1, p. 24). She further reported that she could perform activities of daily living independently but not recreational activities independently. The therapist opined that the Petitioner reached 15% of her goal and had only made minimal progress in physical therapy. (PX 1, p. 24).

There are no records evidencing further treatment after 4/15/2020 with Concentra. She was instructed to return to her referring physician. (PX 1, p. 25).

2. Metropolitan Institute of Pain - Sajjad Murtaza, M.D.

Petitioner's medical records from Dr. Murtaza and the Metropolitan Institute of Pain were obtained by Petitioner's counsel pursuant to subpoena and admitted into evidence as Petitioner's Exhibit 3 without objection. (PX 3, p. 1.; TR p. 60).

On 4/17/2020, Dr. Sajjad Murtaza at Metropolitan Institute of Pain saw the Petitioner for an initial evaluation at the recommendation of Concentra Occupational Health (PX3, P. 1). Dr. Murtaza recorded that Petitioner was involved in a work-related injury on February 25, 2020 while working at O'Reilly Parts as a store manager. She was processing returns at the time of the injury. She was moving a product from the left side to her right side on a shelf and then she twisted, she had significant pain in her back that radiated into the left buttock and into her left leg. She stated the pain was initially 10/10. She took two days off to see if rest would help.

When she returned to work the pain increased again so she came to Concentra. She had undergone about 15 sessions of physical therapy which only helped a day or two and the pain returned to baseline. She took cyclobenzaprine which helped. On average her pain now is 6 to 7 out of 10, the worst to the left buttock, but which does radiate down the left leg into the foot and toes with associated numbness. (PX3, p.12) The lumbar spine examination revealed tenderness to palpation to the left lumbosacral paraspinal musculature and over the left gluteal musculature and the left SI joint. The pain increases with flection, extension, and rotational maneuvers to the left greater than the right. There is mild decrease in sensation to the left posterior leg. Positive straight leg raise test on the left, negative on the right. Dr. Murtaza rendered a diagnosis of lumbar radiculopathy with a component of SI joint pain. He ordered an MRI and placed her on work restrictions including no lifting more than 20 pounds, no bending more that six times an hour, no pushing or pulling more that 30 pounds, limited squatting and kneeling, alternated sitting and standing every 45 minutes as needed alternate sitting and standing every 45 minutes as needed, and limited to an 8-hour work day. He also refilled her cyclobenzaprine 10 mg at nighttime to help with pain and to sleep at night. (PX3, p. 13)

(PX 3, p. 12). Petitioner reported that since the accident, she had undergone 15 sessions of physical therapy, which only helped for a day or two. (PX 3, p. 12). Petitioner further reported that on average, her pain was 6-7/10, but that her Cyclobenzaprine helped at night. (PX 3, p. 12). Dr. Murtaza's assessment was of lumbar radiculopathy with a component of SI joint pain. (PX 3, p. 13). The plan was to obtain a lumbar spine MRI and to continue with work restrictions. (PX 3, p. 13).

On 4/28/20, Petitioner underwent a lumbar spine MRI at Smart Choice MRI. (PX 3, p. 4). The reading radiologist's impression was low-grade degenerative disc and joint disease in the lower lumbar spine, with findings pronounced at L5-S1 where there was multifactorial mild to moderate right and minimal left neural foraminal narrowing without spinal stenosis. (PX 3, p. 5).

On 5/1/2020, Petitioner returned to Dr. Murtaza in follow up. (PX 3, p. 10). Petitioner reported that on a good day, her pain was 4/10, while on a bad day, it was 8/10. (PX 3, p. 10). Dr.

Murtaza recommended a left L5-S1 transforaminal ESI, which he believed would benefit Petitioner "significantly after just one injection." (PX 3, p. 10).

On 5/21/2020, Petitioner underwent the L5-S1 ESI without issue. (PX 3, pp. 1-3).

On 6/5/2020, Petitioner returned to Dr. Murtaza in follow up for the 5/21/2020 ESI. (PX 3, p. 8). Petitioner reported that the day after the injection, she felt sore and felt tingling again. And, when she went back to work her pain returned. ((PX3, p.8) Her pain returned back to an 8/10 level. She complained of numbness to the entire left lower extremity. Overall, Petitioner reported no relief from the ESI and physical therapy. She states that the pain continued to affect her quality of life and awakened her from sleep.

Dr. Murtaza, again noted that the MRI shows annular disc bulge at L5-S1 and rendered his assessment that the Petitioner has an L5-S1 herniated nucleus pulposus with left lower extremity radiculopathy. Given that Petitioner reported no relief and that she was three months post-accident, Dr. Murtaza recommended an independent medical examination for any further recommendations. He kept her on the same work restrictions that she had been on and refilled her ibuprofen and cyclobenzaprine which provides some temporary relief. (PX 3, p. 8).

On July 20, 2020, Petitioner presented to Dr. Kern Singh for a Section 12 Examination at Respondent's request. (RX 2). The Section 12 examination report reflects that Petitioner was experiencing lower back pain rated 8 out of 10 with left lower extremity dysesthesias into the foot. Dr. Singh is his report recorded pain increased with standing, sitting, rising from sitting, climbing stairs, walking, lying on the side with knees bent, rolling over in bead, lying on back, and lying on the stomach. Physical examination consisted of monofilament testing, motor strength, reflexes, and Waddell signs. Petitioner tested negative for Waddell signs.

Dr. Singh's review of the lumbar MRI reflects L5-S1 decreased disk signal intensity with minimal height loss. Dr. Singh diagnosed Petitioner with a lumbar strain and opined that it is causally connected to the work injury. He opined that Petitioner had a non-anatomical left lower extremity dysesthesia with a normal neurological examination and normal MRI. Dr. Singh

opined that Petitioner could return back to work without restrictions and that she was at maximum medical improvement. (RX 2)

Petitioner testified that Dr. Singh only examined her for three minutes. Ms. Massa testified that during the examination, Dr. Singh had Petitioner bend forward, backwards, side to side.

On November 16, 2020, Dr. Singh authored an addendum report. Dr. Singh evaluated the September 2, 2020 visit progress notes of Dr. Mark Sokolowski. Dr. Singh again opined that Petitioner did not require additional treatment, that she could work without restrictions, and that she was at maximum medical improvement. (RX 6)

3. Mark Sokolowski, M.D., Petitioner selected orthopedic surgeon

On 9/2/2020, Petitioner presented to Dr. Mark Sokolowski on a self-referral. (PX 5). Dr. Sokolowski did not testify at trial, nor did he testify via evidence deposition. Instead, his medical records were offered into evidence as Petitioner's Exhibit 5. (PX 5). There was no evidence offered regarding Dr. Sokolowski's education, training, experience or practice.

On September 2, 2020, Petitioner presented to Dr. Mark Sokolowski complaining of lower back pain. (PX5, pp. 7-8. Physical examination revealed tenderness over the left lumbosacral junction, axial back pain with flexion, left-sided straight leg raises reproducing left S1 paresthesia, and paresthesia in her left S1 dermatome. Dr. Sokolowski's review of the lumbar MRI reflects single level disc disease at L5-S1 with mild foraminal narrowing. He also found a herniated disc at L5-S1. Dr. Sokolowski diagnosed Petitioner with axial back pain and lumbar radiculopathy. Dr. Sokolowski recommended physical therapy, an epidural steroid injection, and placed her on restrictions consisting of a 10-pound lifting limit, limited bending and squatting, and a maximum 8-hour workday. (PX 5, p. 8). Petitioner testified that completed the recommended sessions of physical therapy and her symptoms still remained unchanged.

During the 9/2/2020 visit, Petitioner told Dr. Sokolowski that the ESI by Dr. Murtaza provided "short-term" improvement. (PX 5). Petitioner rated her back pain as 8/10. (PX 5). Dr.

Sokolowski reviewed the 4/28/20 MRI and identified disc disease at L5-S1. (PX 5). Dr. Sokolowski opined that Petitioner's diagnosis were axial back pain and lumbar radiculopathy. (PX 5). He also charted that it was diagnostically valuable that her prior ESI provided some short-term improvement. (PX 5).

On 10/20/1010, October 20, 2020, Petitioner followed up with Dr. Sokolowski complaining of lower back pain radiating down to her left leg. *Id.* at 5. Dr. Sokolowski recommended that Petitioner continue physical therapy, an L5-S1 transforaminal epidural injection, and kept her on the same restrictions. *Id.* Petitioner followed up with Dr. Sokolowski on December 3, 2020, and January 22, 2021 where he kept her on the same restrictions and continued recommending the L5-S1 transforaminal epidural injection. (PX5. pp. 1-4)

Petitioner testified that on December 21, 2020, she returned to working without restrictions. Petitioner testified that working with the restrictions placed by Dr. Sokolowski helped alleviate her lower back issues and that working without restrictions is increasing her lower back issues. She testified at trial that her symptoms were not improved. Petitioner testified at trial that she was still having lower back pain with numbness and tingling going down her left leg to her toes. Petitioner testified that she hasn't had the epidural steroid injection recommended by Dr. Sokolowski because the workers' compensation insurance won't authorize it. Petitioner testified that she did not reinjure her lower back in any way since the work accident.

During a 10/20/2020 video visit, Petitioner told Dr. Sokolowski that she completed 3 sessions of physical therapy to date. (RX 5). There was no comment on the efficacy of the therapy. (PX 5). Dr. Sokolowski charted that he reviewed Petitioner's physical therapy notes, but no notes are included with the records. (PX 5). Petitioner was fitted for and issued a semi-rigid lumbar orthosis and told to use it when she has pain. (PX 5).

On 12/30/2020, Petitioner saw Dr. Sokolowski for a video visit, where Petitioner told the doctor that she had been participating in physical therapy since the last visit. (PX 5). Petitioner reported that her lumbar and left leg pain diminished with physical therapy and that she continued to work. (PX 5). Dr. Sokolowski charted that he reviewed Petitioner's physical therapy

notes and that his recommendation was for Petitioner to undergo a repeat lumbar ESI at L5-S1. (PX 5). There were no physical therapy notes included with the records. (PX 5).

On 1/22/2021, Petitioner attended a video visit with Dr. Sokolowski where she told him that she continued to have lumbar and leg pain, and that she was awaiting approval for the ESI recommended at the last visit. (PX 5). Dr. Sokolowski noted that Petitioner was working with restrictions. (PX 5). Dr. Sokolowski recommended a left L5-S1 ESI, and that Petitioner continue to work modified duty. (PX 5).

At trial, Petitioner testified that she is currently undergoing physical therapy at Dr. Sokolowski's office. (TR p. 35). There are no physical therapy records, notes or evaluations contained within Petitioner's Exhibit 5.

3. 10/6/20 Utilization Review

On 10/6/2020, five months after Petitioner last saw Dr. Murtaza, a utilization review signed by Texas physician, non-certified Dr. Murtaza's recommendation for pain medication on 5/21/20. (RX 5).

4. Section 12 Medical Examination and Addendum Report: Kern Singh, M.D.

Pursuant to Respondent's request, on 7/20/2020 Petitioner underwent a Section 12 medical examination with Kern Singh, M.D. at Respondent's request. (TR p. 28; RX 1; RX 2). Dr. Singh did not testify at trial, nor did he testify via evidence deposition. Instead, his curriculum vitae, Section 12 report and addendum report, and curriculum vitae were offered into evidence.

The curriculum vitae reflects that Dr. Singh is a board-certified orthopedic spine surgeon affiliated with Rush University Medical Center. (RX 3). Dr. Singh has been board-certified in orthopedic surgery since 2007. (RX 3, p. 1). As outlined in Dr. Singh's curriculum vitae, Dr. Singh has received 13 honors and awards while at Rush University Medical Center related to treatment of the spine. (RX 3, pp. 1-2). Dr. Singh is also currently an Assistant Professor of Orthopedic Surgery at Rush University Medical Center. (RX 3, p. 1). Dr. Singh has been the

editor of four textbooks including the editor of "Synopsis of Spine Surgery" and "Pocket Atlas of Spine Surgery." (RX 3, p. 16). He is also the Associate Editor of the Journal of Contemporary Spine Surgery and Editor of the American Journal of Orthopedics. (RX 3, p. 16).

At the 7/20/2020 Section 12 examination, Dr. Singh reports that while she was at work at O'Reilly Auto Parts, she was returning several items to a shelf when she bent over to pick up an item weighing between 20 – 70 pounds. (RX 2, p. 1). Dr. Singh reported that she had low back rated as 8/10, with left lower extremity dysesthesias into the foot. (RX 2, p. 1). Dr. Singh reported that nothing would relieve her pain and that physical therapy and the prior ESIs did not help. (RX 2, p. 1). Dr. Singh reviewed Petitioner's certain medical records from Concentra, Dr. Murtaza, physical therapy notes and personally reviewed Petitioner's 4/28/20 lumbar MRI images. (RX 2, p. 2). Dr. Singh read the lumbar MRI as normal. (RX 2, p. 2).

After reviewing Petitioner's medical records and performing his examination, Dr. Singh provided a 7/20/20 "IME Quick Report" immediately after the examination, which indicated that Petitioner reached maximum medical improvement and was able to return to work without restrictions. (RX 1). Dr. Singh formulated the following opinions and outlined them in his 7/20/2020 report:

1. Petitioner's diagnosis is a resolved lumbar muscular strain.
2. Petitioner's subjective complaints are not supported by the objective findings. In support, Dr. Singh explained that Petitioner has non-anatomical left lower extremity dysesthesias with a normal neurological examination with essentially a normal MRI scan.
3. Dr. Singh found that Petitioner did sustain a soft tissue muscular strain of the lumbar spine which has resolved and is causally related.
4. Dr. Singh opined that four weeks of physical therapy (3x/week) was appropriate, reasonable and causally related to the accident.
5. Aside from the physical therapy, Petitioner's treatment was excessive, unnecessary and prolonged in nature.
6. No further treatment was recommended.

7. No work restrictions are appropriate, nor are any work restrictions related to the 2/25/2020 accident.

(RX 2, pp. 2-3).

On 11/16/2020, Dr. Singh issued an Addendum Report at Respondent's request. Dr. Singh did not examine Petitioner. He based his report on certain medical records provided by Respondent to produce an addendum to his prior Section 12 report. (RX 6). Prior to authoring the report, Dr. Singh reviewed Petitioner's updated medical records from Dr. Sokolowski and the 10/6/20 Utilization Review. (RX 6, p. 1). After review of the updated records, Dr. Singh provided the following opinions:

1. Petitioner's diagnosis was a resolved soft tissue muscular strain, which was causally related to the 2/25/20 work accident.
2. Petitioner's prognosis was good and that she could work full duty without restrictions.
3. Petitioner had a normal neurological examination and her lumbar MRI was read as normal.
4. Petitioner's treatment had been excessive and prolonged in nature.
5. No additional treatment was recommended.
6. Petitioner reached maximum medical improvement for the resolved lumbar soft tissue muscular strain.

(RX 6, pp. 1-2).

None of Petitioner's treating physicians received, reviewed or offered opinions on Dr. Singh's 7/20/20 Section 12 report or his 11/16/20 Section 12 addendum report.

5. Current Condition

Petitioner testified that her current symptoms are "lower back pain on [her] left side and then the tingling and numbness shooting down [her] leg to [her] toes." (TR p. 24). Petitioner testified that her symptoms have not improved at all since the 2/25/2020 accident. (TR p. 24).

Petitioner testified that she has been working full duty for the last two months, or since the middle of December 2020. (TR p. 30) She has been working in pain. As such, Petitioner has been working 10 hours per day and pulling "heavy parts." (TR p. 30). She has not reinjured her back or made her back worse while working full duty. (TR p. 30). The last time Petitioner told anyone at Respondent that she was experiencing back pain was when she told her District Manager in December 2020. (TR p. 31). Petitioner has not told anyone at Respondent about her concerns about her low back pain and leg pain since December 2020. She was, however, told by her supervisor, Mr. Rocha, that she would have to work full duty based on Dr. Singh's release. (TR pp. 31-32)

Petitioner testified that she is currently undergoing physical therapy at Dr. Sokolowski's office. (TR p. 35).

6. Testimony of Julio Rocha, Jr.

Julio Rocha, Jr., Petitioner's District Manager with O'Reilly, testified at trial. (TR p. 41). Mr. Rocha testified that he has been employed by O'Reilly for the last 17 years and that he has risen up through the ranks to his current role of District Manager. He became District Manager since February 2020, the month of Petitioner's accident (TR p. 42). As a District Manager, Mr. Rocha is responsible for supervision of the eight (8) stores within his district, including the store at which Petitioner is currently a manager. (TR p. 43). Mr. Rocha has known Petitioner for the last 10-13 years and that he has observed her over that time period but on a "hi" and "bye" basis. (TR pp. 43-44). Mr. Rocha explained that as District Manager, he has the occasion to go into the individual stores and observe the employees working, including Petitioner. (TR pp. 47-48).

Mr. Rocha understood Petitioner brought a workers' compensation claim against O'Reilly Auto Parts and that it was in connection with a February 25, 2020 accident at work. When asked by defense counsel if the date of this hearing was the first time he heard about the accident, Mr. Rocha said no. She reported the accident on the date of accident. She called him in a few hours before the afternoon. She told him that she injured herself while doing her morning routines with returns (TR p. 44) He believes that he told her to take it easy; that she should be careful with what she was doing, and he may have instructed her to go home that day, but he does not remember. (TR 46) After reporting the accident, during the days and week after the accident, he recalled that she did bring up that she still had lower back pain with a sharp pain going down her left leg. (TR 47)

Since Petitioner's 2/25/2020 accident, Mr. Rocha has observed Petitioner working at least 11 times over the last year. (TR p. 48). On one such occasion approximately a few months after the accident, Mr. Rocha was in Petitioner's store and observed her working. (TR p. 49). Mr. Rocha testified that on this occasion, he observed Petitioner helping out customers. (TR p. 49). When she helped out customers, she was "pretty quick at her job duties." (TR p. 49). When asked what he meant by this, Mr. Rocha explained that Petitioner was "fast at answering the phones and helping out customers." (TR p. 49). According to Mr. Rocha, Petitioner was "quick to help" and that he observed her moving around quickly when servicing customers. (TR pp. 49-50). For another example, Mr. Rocha testified that he personally observed Petitioner go quickly to the back of the store's parts department and then return to the front of the sales floor. (TR p. 50). Mr. Rocha further testified that he observed Petitioner work quickly and without issue on at least 11 different occasions. (TR p. 51).

When Mr. Rocha observed Petitioner on these eleven occasions working without issue after the accident, he does not remember Petitioner ever complaining about back pain of left leg pain. (TR p. 51). Mr. Rocha did not testify how long he was able to observe the Petitioner. The only testimony tendered as to length of time was that he saw her on a "hi and bye" basis which appears to be for the time period before the accident.

One week prior to the trial, Mr. Rocha last visited Petitioner in the subject store. (TR pp. 53-54). During this visit, Mr. Rocha observed Petitioner working without issue or complaint. (TR p. 54). Mr. Rocha was present when Petitioner testified. He heard Petitioner testify that the last time she complained to him about her back and leg pain was about December 2020. She called him and told him of her low back and left leg pain. (TR 51) Mr. Rocha last saw her in her store one week before the hearing and did not see anything that appeared to be an issue with her performance. (TR 54)

On cross examination, Mr Rocha testified that when her saw her the week before she was working the counter and helping customers and was doing paperwork in her office. He did not see Petitioner carrying any auto parts. He testified that from the date of her accident in February 2020 through the date of hearing, he never saw her carrying heavy auto parts. He does recall that one time she asked him for help some rotors for her. (TR 54-55). Mr. Rocha testified that he was not aware of Petitioner ever having filed a workers' compensation claim prior to the instant claim. (TR 55) Petitioner was not recalled testify.

7. Prospective Treatment

At trial, Petitioner testified that she wants and seeks further treatment consisting of an injection and physical therapy as recommended by Dr. Sokolowski to obtain pain relief. (TR p. 32). Dr. Singh did not recommend further treatment. Dr. Sokolowski does. (RX 2; RX 6).

III. CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d). To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his or her claim *O'Dette v. Industrial Commission,* 79 Ill. 2d 249, 253 (1980) including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Commission*, 129 Ill. 2d 52,

63 (1989). It is well established that the Act is a humane law of remedial nature and is to be liberally construed to effect the purpose of the Act - that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. Every injury sustained in the course of the employee's employment, which causes a loss to the employee, should be compensable. *Shell Oil v. Industrial Comm'n,* 2 Ill.2nd 590, 603 (1954). 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)

Petitioner testified in open hearing before the Arbitrator who had opportunity to view Petitioner's demeanor under direct examination and under cross-examination. The Arbitrator finds the Petitioner was a sincere and credible witness. Her testimony overall was corroborated by the stipulated facts, the medical records and the record as a whole. The Arbitrator also finds that Mr. Rocha was a sincere and credible witness under the facts and circumstances of his testimony. Although the Arbitrator notes that Mr. Rocha did not bring Petitioner's employment file.

With respect to the admissibility of Petitioner's Exhibit 5, Dr. Mark Sokolowski's Records, the Arbitrator finds as follows:

At trial, Petitioner offered the records of Dr. Mark Sokolowski as Petitioner's Exhibit 5. (TR p. 62; PX 5). In response, Respondent's counsel asserted an objection to causation opinions contained in the records. Respondent's counsel did not "object to the records in their entirety being admitted." (TR p. 62). Respondent's counsel asserted that there were objectionable causation opinions contained within the records. (TR p. 62). The Arbitrator acknowledged Respondent's objection and admitted the records pursuant to Section 16 of the Act. (TR pp. 62-63). However, the Arbitrator did allow the parties to brief the issue of if the causation opinions contained in the records were admissible and to "accept any guidance to make the right decision." (TR p. 63). As such, the Arbitrator will now discuss his opinion regarding the same.

The Arbitrator finds that the records of Dr. Mark Sokolowski contained in Petitioner's Exhibit 5 were properly admitted into evidence under Section 16 of the Act. Any defect in

authentication, if any, was waived. Respondent's failure to address the admissibility of the records deprived the Petitioner from addressing or curing the issue. Moreover, Respondent did not object to the records being admitted into evidence in their entirety. Rather, Respondent objected to unspecified causation opinions contained in the medical records of Dr. Sokolowski. Also, by objecting to the disputed causation opinions generally, and not identifying which opinions were objectionable, the Respondent waived this issue as well. Even if the objections to the causation opinions were not waived, the Arbitrator finds that the causation opinions are admissible into evidence under Section 16 of the Act and *RG Construction Services v. The Illinois Workers' Compensation Commission*, 2014 IL App (1st) 132137WC (December 31, 2014) wherein the Court stated at page 17 that " …we find no indication that the legislature intended to exclude a treating doctor's opinion, which was offered during the course of the doctor's treatment of the employee and memorialized in the doctor's treating records, from the phrase 'medical and surgical matters.' It stands to reason that the records and reports of a treating physician are likely to contain medical opinions relating to a variety of aspects in the care, treatment, and evaluation of the employee. As a result, we are not persuaded by the employer's position that the simple inclusion of medical opinions within a treating physician's records is sufficient to exclude it from admission pursuant to section 16. Further, although the employer criticizes the arbitrator's comment that Commission proceedings should be "simple and summary," we note section 16 of the Act actually contains that explicit phrase. That section provides that "[t]he process and procedure before the Commission shall be as simple and summary as reasonably may be."

The Arbitrator notes that Respondent elected not to obtain the deposition of Dr. Sokolowski prior to trial although the Respondent was aware of the causal opinions of Dr. Sokolowski contained in his treating medical records. The Respondent also failed establish that it was prejudiced by the admission of the causal opinions of Dr. Sokolowski. In light of the above, the Arbitrator concludes that the treatment records and the causation opinions contained therein were properly admitted pursuant to Section 16 of the Act and properly admitted within the Arbitrator's discretion.

With respect to Issue (F), is the Petitioner's present condition of ill-being causally related to the injury, the Arbitrator finds as follows:

The parties stipulated that Petitioner suffered an accident arising out of and in the course of her employment; however, Respondent disputes that Petitioner's current condition of ill-being is causally connected. (ArbX1.) The Arbitrator finds that Petitioner's has proven by a preponderance of the evidence that her current condition of ill-being to her low back with radicular pain down her left leg is causally related to her work accident. The medical records demonstrate that Petitioner's injury resulted in medical treatment and subsequent disability. There is no evidence of any other trauma to Petitioner's right low back and left sided radicular leg pain, either before or after the accident at work. The Arbitrator notes that there has been no superseding, intervening accident to break the chain of causation. Therefore, based on the foregoing, the Arbitrator concludes that Petitioner's current condition of ill-being relative to low back and leg is causally connected to the work accident.

It is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine the weight to give to testimony, and resolve conflicts in evidence, particularly medical opinion evidence. *Berry v. Industrial Comm'n*, 99 Ill.2d 401, 406-07 (1984). Not only may the Commission decide which medical view is to be accepted, it may attach greater weight to the opinion of the treating physician. *International Vermiculite Co. v. Industrial Comm'n*, 77 Ill.2d 1 (1979). In this case, the Arbitrator finds the factual findings and opinions of the treating physicians to be more persuasive than Respondent's Section 12 examiner.

The "chain of events" legal theory also supports a finding of causation. It well established under the law that 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). 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).

In this case, the evidence clearly reflects that Petitioner had no treatment to her low back prior to the accident. On cross examination, Respondent inquired about two motor vehicle accidents. Petitioner denied any back injury. Respondent did not produce any evidence whatsoever to rebut her testimony.

The evidence further supports that Petitioner worked for the respondent for over ten years, three years as a manager, a physically active position. She did so without incident or complaint to her low back. Therefore, Petitioner was in a condition of "good health" relating to her low back prior to work accident as evidenced by Petitioner's credible and unrebutted testimony, her ability to work full-time and full-duty prior to the accident, the supporting testimony of her District Manager, and, also the total absence of any medical evidence to the contrary. The medical evidence bolsters this causal link. Petitioner gave a consistent history of injury in each of her medical records; complained of low back symptoms starting with the date of accident which developed in additional radicular leg pain. Petitioner consistently related that her symptoms did not exist prior to the accident. She consistently related that since her accident she experienced pain, pain that waxed and waned in intensity with increased and decreased physical activity from the date of accident through the date of hearing.

With respect to Issue (J), were the medical services provided to Petitioner reasonable and necessary, and has Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

Respondent disputes its liability to pay for Petitioner's outstanding medical bills related to her work accident on the basis of causal connection. However, as discussed above, the Arbitrator found that Petitioner's condition of ill-being in her lower back is causally related to her work accident.

According to Respondent's 3/6/2020 Payment Ledger (RX 4), Respondent has paid for the following medical treatment:

Treatment Date	Provider
3/6/20	Occupational Health Center – Concentra
3/9/20	Occupational Health Center – Concentra

3/11/20	Occupational Health Center – Concentra
3/12/20	Occupational Health Center – Concentra
3/16/20	Occupational Health Center – Concentra
3/18/20	Occupational Health Center – Concentra
3/20/20	Occupational Health Center – Concentra
3/23/20	Occupational Health Center – Concentra
3/27/20	Occupational Health Center – Concentra
3/30/20	Occupational Health Center – Concentra
4/3/20	Occupational Health Center – Concentra
4/6/20	Occupational Health Center – Concentra
4/10/20	Occupational Health Center – Concentra
4/13/20	Occupational Health Center – Concentra
4/15/20	Occupational Health Center – Concentra
4/17/20	US MedGroup of Illinois PC – Dr. Murtaza
4/28/20	CarelQ RAD
5/1/20	US MedGroup of Illinois PC – Dr. Murtaza

At the time of the hearing on February 22, 2021, the Petitioner presented medical bills from Concentra Occupational Health. (PX2) The Arbitrator finds that the treatment rendered by the physicians and medical staff was reasonable and necessary to treat Petitioner for the work-related injury she sustained on February 25, 2020. The Arbitrator also finds that that such charges were generated as a result of treatment that was reasonable and necessary. The Arbitrator finds that the unpaid bills in Petitioner's Exhibit 2, totaling $127.17 are to be paid by Respondent according to the medical fee schedule.

At the time of the hearing on February 22, 2021, the Petitioner presented medical bills from Dr. Mark Sokolowski. (PX6). The Arbitrator finds that the treatment rendered by the physicians and medical staff was reasonable and necessary to treat Petitioner for the work-related injury she sustained on February 25, 2020. Therefore, the Arbitrator finds Respondent is responsible for the medical charges and that such charges were generated by treatment that was reasonable and necessary. The Arbitrator finds that the bills in Petitioner's Exhibit 6, totaling $12,850.00 are to be paid by Respondent in accordance with Sections 8(a) and 8.2 of the Act.

On April 17, 2020, the Petitioner presented to Metropolitan Pain Institute for treatment upon referral from Concentra Occupational Health. At the time of the hearing on February 22,

2021, the Petitioner presented medical bills from Metropolitan Pain Institute. (PX 4) The Arbitrator finds that the treatment rendered by the physicians and medical staff was reasonable and necessary to treat Petitioner for the work-related injury she sustained on February 25, 2020. The Arbitrator also finds that since the Petitioner's condition of ill-being was causally related to her injury on February 25, 2020, the respondent is responsible for the medical charges and that such charges were generated as a result of treatment that was reasonable and necessary. The Arbitrator finds that the bills in Petitioner's Exhibit 4, totaling $1,144.13 are to be paid by Respondent according to the medical fee schedule. Respondent is entitled to credit for medical expenses previously paid.

On 10/6/2020, five months after Petitioner last saw Dr. Murtaza, a utilization review signed by Texas physician, non-certified Dr. Murtaza's recommendation for pain medication on 5/21/20. (RX 5). The Arbitrator is mindful that Dr. Murtaza is a company clinic referred physician whose treatment was not directly challenged by Dr. Singh. In light of the above facts and conclusions, the Arbitrator fails to find the UR report to be persuasive.

The Arbitrator reviewed the medical records, and based on the above facts and conclusions, finds that Petitioner's medical services were reasonable and necessary. The Arbitrator finds that Respondent is liable for the related medical bills that remain outstanding and shall pay for medical treatment pursuant to Sections 8(a) and 8. 2. The Respondent is entitled to credit for any medical bills previously paid in accordance with Sections 8(a) and 8.2 of the Act.

With respect to Issue (K), is Petitioner entitled to any prospective medical care, the Arbitrator finds as follows:

The central issue before the Arbitrator is whether Petitioner's need for prospective treatment in the form of an ESI and physical therapy as recommended by Dr. Sokolowski is reasonable and necessary. Treatment denied based on the findings and opinions of Respondent's Section 12 examiner, Dr. Kern Singh. The Arbitrator does find Dr. Singh's credentials impressive but finds his findings and opinions wanting.

The Arbitrator finds that the Petitioner is entitled to additional medical treatment and is entitled to prospective medical treatment. The Petitioner consistently complained of lower back pain, left radicular pain and some numbness and tingling going down to her left foot. She has not improved with the conservative care while being forced to work full duty. The medical records are replete with statements by Petitioner that work activities were causing her increased pain. Rest reduced the pain. Siting for long periods, such as sitting for six hours for jury duty, caused her to experience increased pain with radiculopathy. Pain that caused her not to do her home physical therapy for one weekend. Simply stated, Petitioner was not afforded an opportunity to heal. Petitioner is entitled to do so.

Petitioner has done everything asked of her. She deserves a chance to get better. Thus, the Arbitrator finds that the respondent is responsible for the lumbar epidural injection and continued care with Dr. Sokolowski. The Arbitrator also agrees with Dr. Sokolowski that Petitioner should be on work restrictions consisting of restrictions consisting of a 10-pound lifting limit, limited bending and squatting, and a maximum 8-hour workday. The full duty work even with Petitioner's ability to self-limit some of the lifting with the help of others, including her supervisor on at least one occasion, is clearly impairing and delaying her recovery.

The Arbitrator finds that the records from Dr. Bahmanbeigi, Dr. Murtaza, and Dr. Sokolowski reflect that the Petitioner experienced symptoms consisting of lower back pain, radicular symptoms, and functional deficits requiring continued treatment. The Arbitrator also notes that Section 12 examiner, Dr. Singh's opinion is not persuasive due the evidence and reasons described above. Clearly the Petitioner has credibly expressed lower back pain with radiculopathy. She is not at maximum medical improvement.

On 7/20/20, Dr. Singh conducted a Section 12 examination. He concluded: that Petitioner's diagnosis was a resolved lumbar muscular strain and that Petitioner's subjective complaints were not supported by the objective findings. And, yet Dr. Singh found completely negative Waddell signs. In support, Dr. Singh explained that Petitioner has non-anatomical left lower extremity dysesthesias with a normal neurological examination with essentially a normal MRI scan.

The Arbitrator finds that none of the treating physicians opined that her subjective complaints were inconsistent with the objective findings; including the company selected clinic and the company clinic referred physician, Dr. Murtaza. None found a positive Waddell test not even Dr. Singh. All specifically found a negative Waddell test. The Arbitrator finds that none of the treating physicians opined that Petitioner had reached maximum medical improvement.

Dr. Singh opined that Petitioner had an essentially negative MRI in contrast to the treating physicians and the reading radiologist all of which found pathology. Both Dr Murtaza and Dr. Sokolowski) found that the Petitioner has a herniated disc at L5-SI after reviewing the same MRI scan as Dr. Singh. Both Dr Murtaza and Dr. Sokolowski diagnosed the Petitioner as having a herniated disc at L5-SI with left sided radiculopathy. Accordingly, the Arbitrator is unable to find the findings and opinions of Dr. Singh to be persuasive. The only finding that he shared with all other treating physicians was that Petitioner Waddell test was negative.

The Arbitrator concludes that Respondent shall authorize lumbar epidural injection, physical treatment, and related continued treatment with Dr. Sokolowski. The Arbitrator also agrees with Dr. Sokolowski's opinion regarding Petitioner's light duty work status. The Arbitrator finds that payment for the prospective treatment is also the responsibility and lability of the Respondent.

Petitioner offered credible testimony that she continues to experience constant pain which increases while performing simple activities of daily living and her duties at work. Her testimony is consistently corroborated by the medical records and reports. Petitioner is entitled to undergo the injections, physical therapy and related treatment prescribed by Dr. Sokolowski to relieve and cure her of her current condition of ill-being. Based on the foregoing, the Arbitrator concludes that Petitioner is entitled to proceed with the treatment prescribed by Dr. Sokolowski. Petitioner is further is entitled to Respondent's prompt authorization of the prescribed treatment and at Respondent's expense, subject to the limitations of Sections 8(a) and 8.2 of the Act. She is entitled to work status as prescribed by Dr. Sokolowski during the course of her treatment.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC021429
Case Name	Tamika Elujoba v. Cash America Pawn
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0353
Number of Pages of Decision	13
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Michael Rom
Respondent Attorney	Guy Maras

DATE FILED: 9/13/2022

/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

Tamika Elujoba,

Petitioner,

vs. NO. 20WC 21429

Cash America Pawn,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19b having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue(s) of medical expenses, causal connection, necessity of treatment, reasonableness of charges, prospective medical care, 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 February 15, 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 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.

September 13, 2022

SJM/sj
o-7/13/2022
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	20WC021429
Case Name	ELUJOBA, TAMIKA v. CASH AMERICA PAWN
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	Michael Rom
Respondent Attorney	Guy Maras

DATE FILED: 2/15/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 5, 2022 0.77%

/s/Charles Watts, 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)

Tamika Elujoba
Employee/Petitioner

Case # 20WC021429

Consolidated Cases _____

v.

Cash America Pawn
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 Charles Watts, Arbitrator of the Illinois Workers' Compensation Commission, in the city of Chicago, on 11/17/2021. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, 07/29/2020, 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 $25,689.56; the average weekly wage was $ 494.03.

On the date of accident, Petitioner was **42** 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 $**6,703.36** for TTD, $**NA** for TPD, $**NA** for maintenance, and $**NA** for other benefits, for a total credit of $**NA**.

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 $329.35 per week for 67-6/7 weeks commencing 7/30/2020 thru 11/17/2021 as provided in Section 8(b) of the Act.

Respondent shall pay to the Petitioner's attorney $110,268.00 in medical bills as provided in Section 8(a) and 8.2 of the Act. Said bills are listed in the body of the decision (Section J).

Prospective medical treatment under Section 8(a) is hereby awarded under the terms and findings on the attached Statement of Facts and Law. Specifically, Respondent shall authorize an FCE as recommended by Petitioner's treating physician, 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.

_____ **FEBRUARY 15, 2022**

Signature of Arbitrator

Attachment to Arbitration Decision

Tamika Elujoba
Employee/Petitioner

Case No. 20WC021429

v.

Cash America Pawn
Employer/Respondent

FINDINGS OF FACT

On July 29, 2020, the Petitioner, Tamika Elujoba (Petitioner), was working for the Respondent, Cash America Pawn (Respondent), as a store manager. Petitioner's job duties as a store manager consisted of helping customers, inspecting merchandise and viewing merchandise on Google and EBay. (T.7, 8). Petitioner's job required her to stand for eight hours per day and required bending and picking up merchandise. (T.8). Petitioner testified that the largest item that she would lift (air conditioner) weighed approximately 50 pounds. (T.9).

Prior to July 29, 2020, the Petitioner had never had any problems with or medical treatment to her back. (T.9). It was stipulated by the parties that on July 29, 2020 Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent. (Arb. Ex.1, T.10). On that date, a coworker was spraying the floor with a disinfectant when Petitioner stepped back to close the jewelry counter and slipped and fell on the slippery sprayed floor. (T.10 – 11). Petitioner testified that she fell forward, tried to catch herself while slipping and twisted her back. Petitioner testified that she landed on her right knee. (T.11). Petitioner noticed low back and right leg pain after she fell. After the incident, Petitioner continued working an additional 15 – 20 minutes until closing time when she closed the register and went home.

Petitioner waited until later that night after midnight, July 30, 2020 before she reported to the emergency room at Jackson Park Hospital where she came under the care of Dr. Joe Eggebeen who performed x-rays to her knee and administered treatment to her low back. The records from Jackson Park Hospital indicate that Petitioner was instructed to follow up with an orthopedic doctor at Mt. Sinai. (PX 1)

On August 5, 2020, Petitioner sought treatment at Concentra where she came under the care of multiple doctors including Dr. Andrew Mack and Dr. Aviz Taiwo. On August 7, 2020, x-rays were administered to Petitioner's low back and Petitioner was directed to undergo a course of physical therapy at Concentra. (T.16) (PX3).

On September 30, 2020, Petitioner sought treatment from Dr. Kevin Koutsky at the direction of Concentra. Dr. Koutsky recommended MRI to Petitioner's low back. (T.17 – 18) (PX 2).

On October 13, 2020, MRI was performed on Petitioner's low back which revealed disc herniation at L4-5 and L5-S1. Dr. Koutsky referred Petitioner for pain management with Dr. Sajjad Murtaza who performed an epidural steroid injection on January 7, 2021. Petitioner testified that the epidural steroid injection did not provide any relief for her right leg pain. (T.20). Petitioner further testified that the physical therapy did not provide any relief for her pain. (T.20).

In March of 2021, Dr. Koutsky recommended that Petitioner undergo low back surgery which was performed on April 20, 2021 at ION Surgical Center. (PX5) The surgery consisted of a right sided laminectomy and discectomy. Following surgery, Petitioner underwent a further course of physical therapy as well as home physical therapy through Stellar Home Health Care. (T. 21) (PX 14). Petitioner further used an ice machine sent by QMD Assist which was used following her low back surgery. (T. 22) (PX10). Petitioner also underwent an extensive course of pharmaceuticals including Hydrocodone. (T. 23).

On September 15, 2021, Dr. Kevin Koutsky recommended that Petitioner undergo a functional capacity evaluation which has not been performed as of the date of the trial. Petitioner testified that after the surgical procedure, her right leg no longer hurt. (T. 24).

On May 4, 2021, Petitioner underwent an Independent Medical Examination with Dr. Thomas Gleason at the request of the Respondent. The IME took place two weeks after Petitioner's surgery at which time Petitioner testified she was feeling horrible. (T. 25).

Petitioner testified that after the surgery, her leg pain was healed however she still suffers from back pain. (T.27). Petitioner testified that it was her desire to undergo the functional capacity evaluation as recommended by Dr. Kevin Koutsky.

CONCLUSIONS OF LAW

The Arbitrator adopts the findings of fact in support of the Conclusions of Law.

Decisions of an Arbitrator should be based exclusively on the evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The burden of proof is on a claimant to establish the elements to his right to compensation and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. Board of Trustees vs. Industrial Commission, 44 Ill.2d 214 (1969).

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 inconsistences with his testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill.2d 396 (1968); Swift v. Industrial Commission, 52 Ill.2d 490 (1972). 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 Arbitrator finds, after observing Petitioner testify at trial and a review of the records, that Petitioner was completely credible. Petitioner's demeanor at trial and manner in which she answered questions exhibited forthrightness because her answers were easily and quickly made. Petitioner never seemed to search for answers or appear rehearsed.

CAUSAL CONNECTION

The Arbitrator concludes that there is a causal connection between Petitioner's current condition of ill-being of her low back and the accidental injuries of July 29, 2020. The parties stipulated that Petitioner sustained accidental injuries to her low back on that date.

Petitioner bears the burden of proving by a preponderance of the evidence all of the elements of the claim. R & D Thiel v. Workers' Compensation Commission, 398 Ill.App.3d 858, 867 (2010). Among the elements that the Petitioner must establish is that his condition of ill-being is causally connected to his employment. Elgin Bd. Of Education U-46 v. Workers' Compensation Commission, 409 Ill.App.3d 943, 948 (2011). The workplace injury need not be the sole factor, or even the primary factor of an injury, as long as it is a causative factor. Sisbro, Inc. v. Indus. Comm'n, 207 Ill.2nd 193,205 (2003).

The Petitioner credibly testified that she was in a previous condition of good health as it related to her low back before the stipulated accidental injuries of July 29, 2020. Medical records reveal no issues regarding her low back prior to that date. The prior condition of good health is further evidenced by the fact that Petitioner was working in her full duty capacity for the Respondent prior to the date of accidental injuries.

The parties stipulated to the accidental injuries to Petitioner's low back on July 29, 2020. Petitioner's treating orthopedic surgeon, Dr. Kevin Koutsky is triple board certified in orthopedic surgery, spine surgery and in independent medical evaluations. (PX. 13, page 4). Dr. Koutsky testified that following his examinations and as a result of the findings on MRI, he recommended

a right sided decompression and discectomy and L4-5 and L5-S1. Dr. Koutsky testified that he performed a peer to peer review in relation to a utilization review performed by the Respondent. (PX 13 and 15) Dr. Koutsky testified that, Petitioner had failed conservative management, medications, physical therapy and lumbar injections. Petitioner's ongoing symptoms interfered with her function and that her presentation was consistent with her MRI pathology. (PX. 13, page 13). None of these medical problems existed prior to the accident of July 29, 2020.

Concerning causal connection, Dr. Koutsky testified as follows:

> My opinion is that her condition of lumbar radiculopathy is causally related and directly related to the work injury that occurred on July 29, 2020 when she slipped on the wet floor and landed on her right knee. As she did have, no question, some pre-existing changes, but they were not causing symptoms until she fell and sustained the injury to her lower back. Those symptoms of lumbar radiculopathy remained refractory due to conservative management including medications, therapy and injections. Her ongoing symptoms continued to interfere with her function, so this led to the need for lumbar decompression surgery. (PX. 13, pages 18 and 19).

The parties further deposed Respondent's utilization review doctor, Dr. Andrew Farber. Dr. Farber testified that Petitioner had failed conservative management and had ongoing neurologic symptoms and physical exam findings that warranted surgical intervention. Dr. Farber was deposed and testified that additional physical therapy was not likely to be beneficial and the surgical procedure was accordingly indicated. (PX. 15, page 9).

Respondent's independent medical examiner, Dr. Thomas Gleason testified that he felt that Petitioner's problems were a long standing degenerative condition which was chronic and long standing and related to the ageing process. (RX. 1, page 32).

The Arbitrator adopts the opinions and findings of Dr. Kevin Koutsky and finds that the Petitioner's current complaints, need for surgical intervention and a functional capacity evaluation are related to her July 29, 2020 accident.

MEDICAL EXPENSES

The Arbitrator concludes that all medical treatment rendered and prescribed by Dr. Koutsky and Concentra including post-surgical care was reasonable, necessary and related to the accidental injuries of July 29, 2020. The Arbitrator notes that the utilization review report finds that the treatment was reasonable per the peer to peer review. (PX 15) Specifically, Dr. Faber indicated that the injured worker presented to Dr. Koutsky with complaints of low back pain and that lumbar spine evaluations revealed positive right sided straight leg raising tests, lumbar muscle tenderness and spasm with limited ROM. Dr. Faber noted that Dr. Koutsky advised that the injured worker is with stenosis at L4-5 and L5-S1 in the lower back and had failed conservative management including medications, physical therapy and injections and that there was evidence of impingement on the existing left L4-5 nerve root per the MRI and neurological deficits documented on exam. Therefore, medical necessity, in relation to the surgery, had been established. (Id.) The Arbitrator further notes that Petitioner testified that the surgical procedure performed by Dr. Koutsky eliminated her right leg pain.

The Arbitrator awards all such medical treatment to the Petitioner. The Respondent's sole objection was on liability and having found a causal relation between Petitioner's back condition and the work accident, the Arbitrator orders Respondent to pay all medical bills pursuant to Section 8(a) and the medical fee schedule. The Respondent shall pay to the Petitioner the following medical bills:

1. Jackson Park Hospital: $2,511.11
2. Concentra Medical Center $549.57
3. Illinois Orthopedic Network $52,034.44
4. Midwest Specialty Pharmacy $3,819.94
5. QMED Assist $16,886.91
6. Stellar Home Health $22,146.92
7. Metro Anesthesia Consultants $12,319.11

TEMPORARY TOTAL DISABILITY

The Arbitrator concludes that Petitioner was temporarily totally disabled (TTD) from July 30, 2020 through November 17, 2021 (the date of the hearing) for a total of 67-6/7 weeks. The determinative inquiry for deciding whether a Petitioner is entitled to TTD is whether Petitioner's condition has stabilized or in other words whether the Petitioner has reached maximum medical improvement. Interstate Scaffolding v. IWCC, 236 Ill.2d 132 (2010). Petitioner credibly testified that she has been recommended to undergo a functional capacity evaluation by Dr. Koutsky.

Dr. Koutsky did not place Petitioner at maximum medical improvement nor did he release her to return to any occupation pending a functional capacity evaluation.

The Respondent paid Petitioner TTD from July 30, 2020 through November 11, 2020 and as such shall receive credit for that period only. The remainder is due and owing to the Petitioner.

FUTURE MEDICAL TREATMENT

As noted above, Dr. Koutsky recommended a functional capacity evaluation. The Arbitrator orders Respondent to approve the FCE as recommended by the treating physician Dr. Kevin Koutsky.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC001318
Case Name	Michael Fuscone v. Village of Hanover Park; Intergovernmental Risk Management Agency
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0354
Number of Pages of Decision	12
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Andrew Kriegel
Respondent Attorney	Gina Panepinto

DATE FILED: 9/14/2022

/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

Michael Fuscone,

Petitioner,

vs. NO: 20 WC 1318

Village of Hanover Park; Intergovernmental
Risk Management Agency,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 29, 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.

The bond requirement in Section 19(f)(2) of the Act is applicable only when "the Commission shall have entered an award for the payment of money." 820 ILCS 305/19(f)(2). As there are no monies due and owing, there is no bond set by the Commission 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.

September 14, 2022

MP:yl
o 9/8/22
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/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	20WC001318
Case Name	FUSCONE, MICHAEL v. VILLAGE OF HANOVER PARK; INTERGOVERNMENTAL RISK MANAGEMENT AGENCY
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Andrew Kriegel
Respondent Attorney	Gina Panepinto

DATE FILED: 3/29/2022

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

/s/Elaine Llerena, 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

Michael Fuscone
Employee/Petitioner
v.
Village of Hanover; Intergovernmental Risk Management Agency
Employer/Respondent

Case # **20** WC **001318**

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 **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **January 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 **October 15, 2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned $**99,421.48**; the average weekly wage was $**1,862.96**.

On the date of accident, Petitioner was **43** 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 $**27,215.27** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**27,215.27**.

Respondent is entitled to a credit of $**26,625.03** under Section 8(j) of the Act.

ORDER

Petitioner failed to prove that he sustained an accident that arose out of and in the course of his employment with Respondent on October 15, 2019.

No benefits are awarded.

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

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

Elaine Llerena **MARCH 29, 2022**
Signature of Arbitrator

STATEMENT OF FACTS

These three matters (19WC000943, 19WC000944 and 20WC001318) as consolidated were tried before on January 24, 2022, before Arbitrator Elaine Llerena. Respondent disputes the accidents, that the injuries arose out of and in the course of Petitioner's employment, that Petitioner's current condition of ill-being is causally connected to the accidents, Petitioner's earnings, and Petitioner's entitlement to medical bills and temporary total disability benefits. (AX1)

On April 15, 2017, September 16, 2018, and October 15, 2019, Petitioner was employed as a firefighter/paramedic with Respondent Village of Hanover Park Fire Department. (T. 7) Petitioner has worked as a firefighter/paramedic for 24 years. *Id.* Petitioner is a licensed paramedic through the State of Illinois and works in an ambulance as well as a fire engine. (T. 8) His duties include responding to emergency calls for medical needs, accidents, car accidents as well as responding to fires. *Id.* Additional duties include having to extricate people from scenes of fire, extinguishing fires and investigating the cause of fires. *Id.* Petitioner also testified that, on occasion, he might lift as much as 100 pounds. *Id.* He also noted that he occasionally performs his work on uneven ground or surfaces. (T. 8-9)

April 15, 2017, Work Injury

Petitioner testified he was working for Respondent on April 15, 2017, when he sustained a work injury arising out of and in the course of his employment while searching a structure that was on fire for both victims and the source of the fire. (T. 10-11) He described that the floors of the house were covered in empty beer bottles approximately 6 to 7 inches deep. *Id.* While making his way across the downstairs portion of the house Petitioner was walking and crawling over the beer bottles when he felt a pinch in his right knee. (T. 11-12, 77; DX6) The Employee Statement of Incident confirmed that at the time of Petitioner's work injury he was maneuvering through piles of glass bottles. (T. 76-77; DX6) Petitioner thereafter notified the commander on scene of the incident. (T. 12)

Petitioner treated at AMITA Health on April 30, 2017. (T. 13; PX8, p. 36) Petitioner advised his treating providers that he had injured his right knee two weeks prior while walking around on unstable flooring. (PX8; p. 36)

Petitioner testified that thereafter he treated with Dr. Sean Jereb, an orthopedic physician. (T. 13, PX11) On June 14, 2017, Dr. Jereb noted that Petitioner suffered a work injury while walking on an uneven surface. (PX11, pg. 695) Petitioner reported having finished physical therapy and overall improvement, but pain when squatting. *Id.* Dr. Jereb diagnosed Petitioner as having chondromalacia patellae of the right knee, administered an injection to Petitioner's right knee and ordered physical therapy. (PX11, pg. 698) Dr. Jereb released Petitioner to return to work. *Id.* On June 28, 2017, Dr. Jereb found that Petitioner has reached maximum medical improvement (MMI), released Petitioner from care and returned Petitioner to work, full duty. (PX11, pg. 694)

Petitioner testified that after his therapy his right knee felt okay and he was able to go back to work in his previous position. (T. 14) He further testified that he did receive wage benefits for any missed time and that his medical treatment was paid. (T. 45-46)

September 16, 2018, Work Injury

Petitioner testified that he then sustained a second work injury arising out of and in the course of his employment on September 16, 2018. (T. 15) Petitioner testified that he was in a fire truck that had parked at a Jewel Osco parking lot to buy food and other essentials for shift meals. (T. 16) He testified that buying food was a contractual part of the job and that they were allowed to shop for meals once a shift. (T. 18) Petitioner had taken off his seatbelt and was about to get off the right-side seat when the radio strap he was wearing became entangled with the seatbelt. (T. 16-17) Petitioner explained how his radio was attached to his body by a lanyard that hooks to his belt loop on to the back of his pants. *Id.* He explained that when the seatbelt was released it hooked onto the mechanism that holds his radio. (T. 17) As he was getting out of the fire truck, he was jerked back, and he ultimately fell to the ground from the height of approximately one and half to two feet, injuring his right knee. (T. 16-18)

Petitioner testified that he felt immense pain. (T. 18-19) He was assisted off the ground by a co-worker and an ambulance was called to the scene. (T. 19, 81) Petitioner testified that he advised his fire station of the work injury. (T. 19; DX7)

Petitioner was taken to St. Alexius Hospital in Hoffman Estates and was seen at the emergency room where he advised the medical providers how he injured his right knee (T. 19; PX10, pg. 13-14) The emergency room records reflect Petitioner falling out of a fire engine because of an issue with a seatbelt and injuring his right knee. (PX10, p.13-14) X-rays of Petitioner's right knee were taken and he was provided with a brace for his right knee and given work restrictions. *Id.*

He was next seen at Alexian Brothers shortly thereafter before ultimately seeing Dr. Jereb on September 19, 2018. (Tr. 21-22; PX11, pg. 388-389) Petitioner described the September 16, 2018, work accident to Dr. Jereb. Id. Dr. Jereb ordered a right knee MRI. *Id.*

Petitioner underwent the right knee MRI on September 24, 2018, the results of which revealed no discrete meniscal tear, mild edema at the meniscocapsular junction to the posterior horn of the medial meniscus which was suspicious for partial tearing of the fascicles, and degenerative changes. (PX11, pg. 701-702)

On October 24, 2018, Dr. Jereb noted that Petitioner had been off work and using a hinged knee brace. (PX11, pg. 705) Petitioner complained of significant medial knee pain. *Id.* Dr. Jereb diagnosed Petitioner as having a right knee partial medial meniscal tear and ordered a videoarthroscopy and partial medial meniscectomy. *Id.* Dr. Jereb kept Petitioner off work pending the surgery. *Id.*

On November 6, 2018, Dr. Jereb performed a right knee arthroscopy and partial medial meniscectomy. (PX11, pg. 703-704) During the surgery, Dr. Jereb found an acute horizontal cleavage tear of the posterior horn of the medial meniscus. *Id.*

Petitioner continued to follow up with Dr. Jereb and underwent post-operative physical therapy. (PX11, pgs. 494-670) Petitioner also underwent work conditioning. (PX11, pg. 711-732) Dr. Jereb released Petitioner to full duty work without restrictions on February 11, 2019. (PX11, pg. 496) Dr. Jereb determined Petitioner was at maximum medical improvement regarding his right knee. *Id.*

Petitioner testified that his right knee felt weaker after his return to work, but that it did not stop him from being able to do his job. (T. 26-27) He did feel some clicking and tightness on his right knee after a few months and had a follow-up with Dr. Jereb on June 5, 2019. (Tr. 27; PX11) Petitioner testified that he felt the weakness in his right knee made him more cognizant of it and that he had to alter the way he performed his physical duties. (T. 27-30) He had to step in or out of work vehicles in a different manner and kneel differently, relying on his left leg and left knee. (T. 28, 30) Following his return to work in February 2019, he testified he

was taking anti-inflammatory medications for his right knee. (T. 28-29) Petitioner testified that he also noticed some swelling in his left knee. (T. 30-31) He testified that he never had swelling issues in either knee prior to the 2017 or 2018 injury. *Id.* He also testified that he never had to take anti-inflammatories after hard days at work for his knees, explaining that he only had anti-inflammatories for a previous injury to his back. (T. 31, 32) On June 5, 2019, Dr. Jereb recommended additional therapy, which Petitioner underwent in the summer of 2019 (T. 32; PX11) Petitioner continued to work in his full duty position while undergoing physical therapy. (T. 36)

Petitioner underwent an independent medical examination (IME) by Dr. Kevin Walsh on August 20, 2019, pursuant to Section 12 of the Act at Respondent's request. (DX1, Dep.Ex.1) Dr. Walsh issued his report on September 22, 2019. *Id.* Dr. Walsh noted that Petitioner sustained a right knee injury at work on September 16, 2018, when the radial strap got caught, causing Petitioner to trip and fall on his right knee. *Id.* Dr. Walsh determined that Petitioner's diagnosis of chondromalacia of the knee is degenerative in nature and was not caused, aggravated, or accelerated by the September 16, 2018, work accident. *Id.* Dr. Walsh opined that Petitioner had reached MMI in February 2019 and did not require any additional treatment because of the September 16, 2018, work accident. *Id.*

October 15, 2019, Work Injury

On June 5, 2019, Petitioner returned to Dr. Jereb complaining of left knee pain. (PX11, pg. 486-493) Petitioner reported that his left knee started bothering him several weeks earlier and had started catching and clicking. (PX11, pg. 488) Petitioner also complained of pain with driving. Id. Dr. Jereb diagnosed Petitioner as having left knee pain and patellofemoral syndrome of the left knee. (PX11, pg. 488-489) Dr. Jereb ordered physical therapy. (PX11, pg. 489, 493)

On October 15, 2019, he advised his supervisors that his left knee pain was getting progressively worse, and that he felt that he could no longer perform his job safely with the pain issues he was having in his left knee. (T. 32-33, 35) Petitioner explained that over the last month or more he was having more issues with more pain and more swelling on his left knee. (T. 33) He also explained that he could not point a specific thing that happened at work, but that it slowly started to bother him more and more. (T. 32-34)

Petitioner testified that prior to the September 2018 injury and subsequent surgery he had never had any issues in his left knee like he was currently experiencing. (T. 34) Petitioner treated with Dr. Jereb again on October 18, 2019, with complaints to his left knee. (T. 36, PX11, pg.129-130) The medical records reflect that in the prior month his left knee had begun hurting him again. (PX11, pg. 129-130) Petitioner complained of left knee pain with bending and work activities being difficult; specifically getting in and out of the ambulance was a noted problem. (PX11, pg.130)

Petitioner underwent an MRI of the left knee on October 19, 2019, the results of which showed irregular contour and fraying of the medial meniscus at the free edge and body, possible grade I sprain of the medial collateral ligament, moderate joint effusion, and Baker's cyst. (PX11, pg. 313)

Dr. Jereb performed a left knee arthroscopy and partial medial meniscectomy on October 29, 2019. (PX11, pg. 315-316[1])

Petitioner continued to follow up with Dr. Jereb and underwent post-operative physical therapy. (PX11) Petitioner returned to work, full duty, in February 2020. (T. 38-39) Petitioner testified that he has not treated nor

[1] Also in PX9.

seen Dr. Jereb since he returned to work and that he has no further medical treatment scheduled for his right or left knee. (T. 39-40)

On May 28, 2020, Petitioner underwent a second IME with Dr. Walsh pursuant to Section 12 of the Act at Respondent's request. (DX1, Dep.Ex1) Dr. Walsh opined that the chondromalacic changes in Petitioner's left knee were degenerative in nature and were not related to any specific work accident. *Id.* Dr. Walsh also found that the medial meniscal tear was unrelated to any work injury. *Id.* While Dr. Walsh found Dr. Jereb's treatment of Petitioner's left knee reasonable and necessary, he did not find the treatment related to any work accident. *Id.* Dr. Walsh noted that Petitioner's therapist had suggested overcompensation as a cause of Petitioner's left knee issues and dismissed this suggestion, explaining that it was not at all likely that knee arthroscopy to one knee would lead to a knee arthroscopy on the opposite knee. *Id.* Dr. Walsh also noted that Dr. Jereb had diagnosed Petitioner as having patellofemoral syndrome in the left knee on June 5, 2019. *Id.* Dr. Walsh explained that patellofemoral syndrome is a condition where the kneecap maltracks and the maltracking is a personal condition related to the unique anatomy of the patient's knee and lower extremity. *Id.* Dr. Walsh further explained that it is a condition a person is born with and not caused by a work injury, that it can cause degenerative changes in the knee and noted that Petitioner had degenerative changes in the patellofemoral joint. *Id.* He felt this was more likely than not the cause of Petitioner's degenerative changes, and not a specific work injury. *Id.* Dr. Walsh found that Petitioner was at MMI and could return to work, full duty. *Id.*

Dr. Walsh's evidence deposition was taken on November 30, 2021. (DX1) Dr. Walsh's testimony was consistent with his IME reports. Dr. Walsh acknowledged that Petitioner's job fell into the heavy-duty category. (DX1, pg. 25) Regarding the possibility of overcompensation, Dr. Walsh testified that it does not usually occur from walking. (DX1, pg. 30) Dr. Walsh explained that, possibly, if someone had been using crutches for four to five months, then the opposite knee might be painful, but this was not what occurred in Petitioner's case. *Id.* Dr. Walsh acknowledged that Petitioner was not just walking, but that he had returned to his full duty job as a fireman when his left knee pain began. (DX1, pg. 31) Dr. Walsh opined that it was not at all likely that Petitioner's left knee became painful because Petitioner was favoring it out of fear of re-injuring his right knee. *Id.* Dr. Walsh further explained that following a knee arthroscopy with a partial meniscectomy, the patient is encouraged to put his full weight on that knee, so there is no need to overcompensate. (DX1, pg. 34) Further, Dr. Walsh opined that if there was some fear that Petitioner was going to overcompensate with the opposite knee, then Dr. Jereb would have put work restrictions on Petitioner. (DX1, pg. 34-35)

Petitioner testified that his right and left knee generally feel weaker and that when performing many of his work activities, he will have soreness and swelling on both knees. (T. 41) Petitioner testified that prior to the knee injuries he never had any issues with his right knee or left knee swelling. *Id.* Petitioner testified that while his knees did not stop him from being able to perform his job or chores around the house, it has made him slow down and alter the way he performs certain activities. (T. 41-42) Petitioner explained that he is a handy person and that he now must alter how long he can be on his knees and how he bends down because of his knees. (T. 42) Petitioner takes Ibuprofen for his knee pain, which he did not do prior to the work injuries. (T. 43) Petitioner testified that he never had any medical treatment for either knee prior to the April 2017, and October 2019, work injuries. *Id.*

Respondent Witness and Employee Representative Lt. Peter Rossberg testified on behalf of the Respondent. Lt. Rossberg testified that he was testifying pursuant to subpoena. (T. 88) He testified to his background, rank and responsibilities including taking injury reports from employees. (T. 85-86) He testified that on October 15, 2019, he was the acting Battalion Chief for Respondent and talked to the Petitioner and created his statement. (T. 85; DX5) Lt. Rossberg testified that he was unsure what to do with the statement since the Petitioner was not sure his left knee pain was due to work, had been having pain for about a month and

couldn't tie it to a specific incident. (T. 87) He testified that the statement Defense Exhibit 5 is what Petitioner reported to him. (T. 88)

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Industrial Commission,* 223 Ill.App.3d 706 (1992); *Caterpillar Tractor Co. v. Industrial Comm'n*, 83 Ill. 2d 213, 218, 414 N.E.2d 740, 46 Ill. Dec. 687 (1980).

The Arbitrator finds that Petitioner testified credibly regarding what occurred on October 15, 2019. He testified that he reported pain in his left knee and that he could not continue to work to Respondent, which is documented Defense Exhibit 5. Petitioner explained that he felt that he could no longer perform his job safely. Petitioner further explained that over the last month or more he was having more issues with more pain and more swelling on his left knee. Petitioner could not point to a specific thing that happened at work, but that it slowly started to bother him more and more. Petitioner's testimony regarding what occurred on October 15, 2019, was confirmed by Lt. Rossberg, who testified Petitioner reported that he had been having pain for about a month and couldn't tie it to a specific incident. Additionally, the Arbitrator notes that the medical records reflect that on June 5, 2019, Petitioner saw Dr. Jereb complaining of left knee pain and problems and did not allege any specific work accident. Dr. Jereb diagnosed Petitioner as having left knee pain and patellofemoral syndrome in the left knee, a condition people are born with. As explained by Dr. Walsh, patellofemoral syndrome is a personal condition related to the unique anatomy of the patient's knee and lower extremity and it was more likely than not the cause of Petitioner's degenerative changes in the patellofemoral joint, and not a specific work injury.

The Arbitrator finds that the Petitioner failed to articulate a compensable work accident and the record as a whole does not support an accident or onset of injury related to his left knee on October 15, 2019.

Based on the above, the Arbitrator finds that Petitioner has failed to prove by the preponderance of the evidence that an accident occurred that arose out of and in the course of Petitioner's employment with Respondent on October 15, 2019.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's finding that Petitioner failed to prove that he sustained a compensable work accident on October 15, 2019, this issue is moot.

WITH RESPECT TO ISSUE (G), WHAT WERE THE PETITIONER'S EARNINGS, THE ARBITRATOR FINDS AS FOLLOWS:

Respondent provided a wage statement for the year preceding the alleged October 15, 2019, work injury, as Defense Exhibit 4. The wage statement shows that Petitioner earned $99,421.48, including mandatory overtime, in the year preceding the alleged work injury. Therefore, Petitioner's average weekly wage was $1,862.96.

However, based on the Arbitrator's finding that Petitioner failed to prove that he sustained a compensable work accident on October 15, 2019, this issue is moot.

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:

Based on the Arbitrator's finding that Petitioner failed to prove that he sustained a compensable work accident on October 15, 2019, this issue is moot.

WITH RESPECT TO ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's finding that Petitioner failed to prove that he sustained a compensable work accident on October 15, 2019, this issue is moot.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's finding that Petitioner failed to prove that he sustained a compensable work accident on October 15, 2019, this issue is moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC003682
Case Name	Gregory Riddick v. State of Illinois – Dept of Juvenile Justice IYC Joliet
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0355
Number of Pages of Decision	20
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Bryan Shell
Respondent Attorney	Danielle Curtiss,

DATE FILED: 9/14/2022

/s/ Kathryn Doerries, Commissioner

Signature

22IWCC0355

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

GREGORY RIDDICK,

Petitioner,

vs. NO: 13 WC 03682

STATE OF ILLINOIS,
DJJ, ILLINOIS YOUTH CENTER, JOLIET,

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, occupational disease, causal connection, temporary total disability, and medical expenses-including prospective medical care, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission, herein, corrects a scrivener's error in the Arbitrator's decision, page 9, 2nd line from the top, to strike "2000", to replace with "2020".

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 reasonable and necessary medical expenses contained in Petitioner's Exhibit 15 and Petitioner's Exhibit's 25 through Petitioner's Exhibit 62 which are related to the right knee condition and were incurred subsequent to June 10, 2016 as provided in §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall be given credit towards any awarded medical expenses that have been paid by Respondent prior to the September 14, 2021 hearing, either directly via workers' compensation coverage or through a group health policy through §8(j), and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner 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)*.

September 14, 2022

o- 8/16/22
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	13WC003682
Case Name	RIDDICK, GREGORY v. STATE OF ILLINOIS/DJJ ILLINOIS YOUTH CENTER JOLIET
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Bryan Shell
Respondent Attorney	Danielle Curtiss

DATE FILED: 11/29/2021

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

/s/ Paul Cellini, 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 **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)/8(a)

GREGORY RIDDICK
Employee/Petitioner

v.

Case # **13** WC **03682**

Consolidated cases: _____

STATE OF ILLINOIS / DJJ ILLINOIS YOUTH CENTER JOLIET
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 **Paul Cellini**, Arbitrator of the Commission, in the city of **Joliet**, on **September 14, 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, **January 10, 2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**66,384.14**; the average weekly wage was $**1,276.62**.

On the date of accident, Petitioner was **53** 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 $**208,611.47** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**208,611.47**.

Respondent is entitled to a credit for any payments made under Section 8(j) of the Act.

ORDER

Petitioner has failed to prove that he sustained accidental injury to the right shoulder arising out of rehabilitation for the right knee condition that is related to the January 10, 2013 accident.

No benefits are awarded related to the right shoulder.

Petitioner's right knee condition remains causally related to the January 10, 2013 accident.

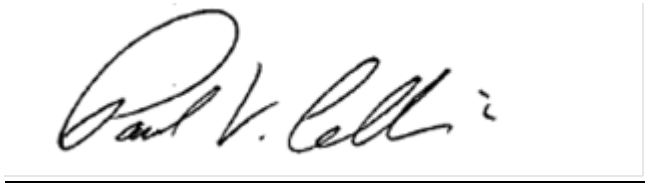
Respondent shall pay reasonable and necessary medical expenses contained in Petitioner's Exhibit 15 and Petitioner's Exhibits 25 through Petitioner's Exhibit 62 which are related to the right knee condition and which were incurred subsequent to June 10, 2016, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit towards any awarded medical expenses that have been paid by Respondent prior to the September 14, 2021 hearing, either directly via workers' compensation coverage or through a group health policy through Section 8(j), 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 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

NOVEMBER 29, 2021

STATEMENT OF FACTS

This matter was previously tried pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act ("the Act") before Arbitrator Doherty on 6/10/16. The arbitration decision was issued on 7/21/16, finding Petitioner had right knee, neck and low back conditions that were related to a 1/10/13 work accident. A review and cross-review of that decision were filed by the parties and a final decision was issued by the Commission on 12/29/17. On review, the Commission affirmed the decision regarding the right knee but reversed the decision regarding the neck and back, finding Petitioner had sustained only strain injuries to these body parts which had resolved prior to the hearing date. A recommended right knee total replacement surgery was found to be causally related to the accident. (Rx3).

The current hearing was held in large part based on Petitioner's allegation of a right shoulder injury which occurred during rehabilitation and recovery from the September 2018 right total knee replacement and October 2018 revision surgeries. As to the Respondent disputing the issue of "accident" in this case, based on pretrial discussions, the Respondent acknowledged that the law of the case dictates that the final finding of a compensable 1/10/13 accident cannot be further disputed, but that "accident" is indicated as an issue in the current hearing based on the argument that any alleged injury to the right shoulder subsequent to 1/10/13 is in dispute. The prior decision indicates the 1/10/13 accident involved an altercation with inmates where Petitioner was attacked by two inmates, injuring his right knee, neck and back.

Petitioner is right hand dominant. His employment with Respondent as a correctional officer ended on 11/1/19, which he indicated was because he didn't want to go back to work due to his post-injury physical condition, as it can be a violent place. He also testified that his doctor restricted him from an inmate altercation environment. Petitioner's job duties with Respondent included transporting inmates, aged 14 to 21, including off premises, supervising inmates in solitary and working in the dorms. The latter included taking them to school, to meals in the dining room and out for recreation. He testified that the environment at the facility is hostile and inmates get into fights often where he would have to intervene.

It appears that Petitioner's treatment was essentially on hold while the arbitration and Commission decisions were pending. In June 2018, Petitioner reported to the Veteran's clinic an acute onset of left knee pain when he awoke. He was diagnosed with gout, possibly related to a rich meal. The remaining VA records between 2017 and 2021 relate to diabetes and unrelated skin conditions. (Px1A and 1B).

Petitioner returned to Dr. Rubenstein for his right knee on 2/16/18. A work note from this date states Petitioner had been temporarily totally disabled since 3/5/14. Due to cardiac concern the total knee replacement surgery

was postponed while undergoing a cardiac work-up. Petitioner ultimately underwent a right total knee replacement surgery on 9/13/18. (Px9A). The hospital records from St. Joe's indicate Petitioner was in the hospital from 9/13/18 until his 9/14/18 discharge. (Px12).

Records from ATI Physical Therapy between 9/23/18 and 10/10/18 do not reference right shoulder complaints. On 10/3/18, it was noted that the Petitioner needed voice cues to relax his shoulders and keep his trunk rigid in using his walker. (Px16A).

Petitioner was doing well at a 10/5/18 follow up with Dr. Rubenstein, where it was indicated his wound was fully healed (Px9A). Petitioner testified had a planned trip to go to Lake Geneva on the weekend of 10/6 and 10/7/18. He testified the doctor at this visit said this would be fine and did not restrict his walking. He went with his girlfriend and her two grandchildren (12 and 8 year old's). They used an indoor pool, where Petitioner said he was just wading and standing in the water. He wasn't exerting himself significantly and didn't feel too bad with walking, noting he was using a staff like a cane.

On 10/7/18, he had swelling, stiffness and pain in his right knee. When he returned to physical therapy on 10/9/18, ATI noted that Petitioner had swum in a pool with an open wound and did a lot of walking with family in Wisconsin. There was concern for infection and he was discharged and advised to follow up with Dr. Rubenstein. (Px9A & Px16A).

Petitioner underwent a knee aspiration with Dr. Rubenstein on 10/10/18 for suspected infection (Px9A), and this was followed by a 10/11/18 revision surgery, involving incision and drainage of the surgical site with replacement of plastic parts and antibiotic implantation. Petitioner remained hospitalized through 10/17/18 at St. Joe's. This included in-house physical therapy and training for use of a rolling walker. On 10/11 and 10/12/18, Petitioner was noted to have ambulated to the restroom with pain. On 10/14/18, he was gradually increasing his weightbearing. On 10/16/18, it was noted that Petitioner had had episodes of tachycardia and therapy had to be discontinued. Petitioner was "also reporting right shoulder pain, worse with increased use of shoulder during PT." (Px12).

During his hospitalization, Petitioner testified that he was unable to get a nurse using the call button on 10/13/18 so he tried to get to the restroom himself using a walker. In doing so, he testified that he stumbled and tried to brace himself with his right arm out to his side using the wall, resulting in right shoulder pain. Petitioner testified he had no prior right shoulder symptoms, complaints or injuries. The 10/17/18 hospital discharge note, in addition to knee recommendations, states: "Lidoderm patches ordered for right shoulder", and that regular ice and a heating pad were recommended for the "back/shoulder." The Arbitrator was unable to locate any other information in these records about why a right shoulder or "back/shoulder" recommendation was made. (Px12). Petitioner testified that he let Dr. Rubenstein know, during his daily rounds, what happened with his right shoulder prior to discharge from the hospital, and that Dr. Rubenstein provided him with pain medication.

On 10/22/18, Petitioner remained on IV antibiotics at home and was significantly improved. He was to continue working with his therapist to regain range of motion. On 11/5/18, almost all of the drainage had resolved. IV antibiotics were continued and on 11/26/18, Dr. Rubenstein reported Petitioner was on only oral antibiotics and was to continue to work with a physical therapist. (Px9A).

On 12/31/18, Dr. Rubenstein indicated there was no further sign of infection and that Petitioner was going to continue with therapy. At this visit, Dr. Rubenstein referenced a shoulder condition: "His shoulder though is still giving him some concern and he has still some tenderness and pain around the shoulder, which has been going on since he started hopping on his leg at the time of the infection from the walker." The shoulder had full

range of motion but with pain over the rotator cuff muscles. Dr. Rubenstein states: "I think this is just a little muscle pull from when he was using the walker and I think the physical therapy will help him." On "an unrelated basis", Petitioner also had an episode of gout in the left knee which was treated and resolved. A note was issued that therapy was to continue for the knee and that an evaluation and therapy for the right shoulder should be added to the protocol. (Px9A).

Petitioner attended physical therapy at PTSIR from 10/25/18 through 2/6/19 (approximately 34 visits). The initial evaluation notes Petitioner did well after his initial total knee replacement, and was "walking with a stick", before going into the water on a trip to Lake Geneva, noting his doctor gave him the okay. He ended up with infection and underwent the revision surgery. Nothing is indicated in this initial note regarding the right shoulder, and no treatment appears to have been directed to the right shoulder at this facility. Low back pain was indicated as a diagnosis along with the right knee condition. Several notes indicate the Petitioner was working out at a gym (L.A. Fitness) for an hour at a time, but also indicates he sometimes was not performing his recommended home exercise program. On or about 11/18/18, the therapist noted Petitioner was able to walk at home without a walker and was advised to discontinue its use. On 12/24/18, it was noted that Petitioner walked with a cane in the community. A 1/21/19 initial evaluation from PTSIR notes a history for the right shoulder condition: "The patient had a second knee replacement surgery and he believes that his shoulder started to hurt when in the hospital using the walker during recovery. It notes Petitioner is right handed and that he had sharp pain with certain movements, but the pain was not constant, it was all dependent on movement. (Px9A; Px18).

It appears that medication management was being supervised by Midwest Anesthesia and Pain Specialists from 2016 through 2018. This facility notes three diagnoses – lumbar spine, neck and right knee – and continues Petitioner off work. On 1/29/19, Dr. Heyduk indicates that Petitioner had been receiving medications from this facility and Dr. Rubenstein, and that narcotic medications were being discontinued from this facility as long as they were being prescribed by Dr. Rubenstein. (Px11).

On 1/30/19, Dr. Rubenstein found some typical synovitis and noted Petitioner reported he felt something pop in the knee last week with increased pain and swelling, which was broken up by the therapist. On 3/6/19, Dr. Rubenstein noted ongoing right knee weakness and recommended work conditioning. Petitioner complained of right shoulder pain "which began while he was using a walker in the hospital postoperatively, and I think it is just a little bit of a strain." He suggested a right shoulder MRI, stating in a request for workers compensation approval: "As I have mentioned before I think his shoulder discomfort is the direct result of using the walker during the prolonged period of time he needed to keep him off his knee due to the infection. I think it is likely just to be a tendonitis, but I certainly like to know for sure before we do anything more aggressive. In the meantime, he is not ready to return to work." (Px9A).

Petitioner was discharged from physical therapy at PTSIR on or about 2/6/19, it appears as to the knee, based on work conditioning having been prescribed. (Px18). Petitioner testified his treatment at PTSIR was directed only to the knee and that he did not perform any upper extremity exercises at this facility through 2/6/19.

Petitioner testified he continued to have right shoulder pain throughout this time. He also testified that using the walker/crutches caused him "slight" pain, but it is unclear what time period he was referring to.

A 2/21/19 note indicated Petitioner was discharged from PTSIR shoulder therapy to a home exercise plan. (Px9A).

On 4/10/19, Dr. Rubenstein noted full knee extension and 110 degrees of flexion, and that the therapist recommended ongoing (3 to 4 weeks) work conditioning. Right shoulder MRI was delayed due to Petitioner's

claustrophobia, noting the shoulder condition was unchanged. Petitioner reported neck and back pain "which he's had before" and which he indicated was aggravated a little in work conditioning. The 4/17/19 right shoulder MRI showed a 2 cm x 1 cm full thickness distal supraspinatus tear, a large joint effusion into that area, mild subacromial encroachment secondary to AC joint and acromion degenerative changes and no unequivocal labrum tear. (Px9A).

Petitioner attended work conditioning at ATI from 3/18/19 to 5/14/19, which he testified included both upper and lower extremity exercises. The intake form makes no reference to the right shoulder, only the right knee. On 4/12/19, it was indicated that upper extremity resistance was limited by shoulder pain and poor mechanics. On 4/18/19, it was noted that Petitioner had to be watched or he was checking off exercises as completed when he had not completed them. On 4/19/19, Petitioner's upper body exercises were limited as Petitioner had obtained an MRI which showed a rotator cuff tear. On 4/22/19, Petitioner was unable to increase his upper extremity exercises due to shoulder complaints. On 5/2/19, Petitioner was progressing but was noted to occasionally demonstrate self-limiting behavior. On 5/6/19, the therapist indicated Petitioner refused to attempt a curl-to-press exercise with the right arm. The 5/14/19 discharge notes limitations which appear knee-related, and states: "However, due to left shoulder pain and dysfunction is only able to press overhead 20 pounds." He was discharged at MMI "due to left shoulder limitations." He was also noted to have reached a medium work duty level, and his job was indicated as being at the medium duty level. (Px16). Petitioner testified that his right shoulder symptoms increased with work conditioning, noting that he had problems lifting weight over shoulder height with the right arm.

On 5/8/19, Petitioner was doing well with the right knee with essentially full strength. As to the shoulder, Dr. Rubenstein opined that Petitioner "is going to require repair with a tear of that size to get a nice result. . . otherwise he is going to continue to have shoulder pain." He was having "similar difficulties" with the neck and back, which were somewhat better but not completely since he completed work conditioning. A note advises to "please be aware of right shoulder limitations when doing work conditioning." On 5/22/19, Petitioner's knee was doing well, and his main problem was the shoulder. In the history in this note, the doctor states: "As you recall, his shoulder started to give him problems when he was in work conditioning and going on to the heavier weights where at one point, he felt something tear as he caught his arm lifting the weights." He again requested workers compensation authorization for the shoulder surgery due to being caused by activities required to rehab his knee in work conditioning. He continued to hold Petitioner off work. On 9/6/19, Petitioner was noted to be in a holding pattern pending an IME with Dr. Miller. Dr. Rubenstein did not believe Petitioner required further knee treatment other than a normal yearly maintenance visit. (Px9A).

Orthopedic surgeon Dr. Miller examined the Petitioner and performed a record review at Respondent's request on 10/2/19 pursuant to Section 12 of the Act. As to the right shoulder, Dr. Miller stated: "(Petitioner) related the onset of pain in his right shoulder to stumbling in the hospital in 10/18 after his right knee irrigation and debridement. He states that he reached out with his right arm to avoid falling and he had the onset of pain. He complains of pain in the right lateral shoulder and scapula areas. He stated the pains are present every day but are somewhat irregular. They are aggravated by activity with no apparent pattern." His shoulder occasionally woke him up at night. He had increased shoulder pain with driving, going into his back pocket, lifting overhead, reaching out, and reaching behind his head. He rated the pain as 6/10 and also reported shoulder weakness but denied numbness. Right shoulder exam reflected no tenderness, negative impingement tests, no evidence of clinical instability, positive O'Brien's test with supination and pronation, positive Speed's test for scapular pain and pain with range of motion. Dr. Miller noted the right shoulder MRI report and advised his own review of the films reflected the AC joint degeneration and the cyst in the greater tuberosity and "lots of degeneration in the distal rotator cuff." Noting he saw a cuff tear with intact labrum and biceps, Dr. Miller also indicated "the radiologist completely ignored the fact that there was Goutallier grade 2 or 3 supraspinatus muscle atrophy

which would indicate chronicity. Both the cysts and the muscle atrophy would indicate that this condition has been present for at least a year or longer." (Rx2).

In answering specific questions posed by Respondent's counsel, Dr. Miller indicated the initial report where he saw complaints of the right shoulder was Dr. Rubenstein's 12/31/18 report, which he notes to be "almost 6 years after the accident in question." He opined that the 4/17/19 MRI films showed cysts and atrophy that would "indicate that his condition has been present for at least a year or longer." He saw no indication in the PTSIR records of shoulder complaints and only a single mention of the right shoulder on the last follow up in the ATI records. There was no evidence of an injury in the physical therapy records. He stated: "At the time of my examination, he stated that his right shoulder was injured in 10/18 when he tried to prevent himself from falling while in the hospital. Therefore, since this was more than 6 years after the accident in question, there is absolutely no objective evidence to connect his right shoulder to the accident in question." As to causation, he stated: "There is actually no objective evidence of any aggravation, acceleration or affected in any way [sic] on either of his knees or his right shoulder by the accident in question. The 6 year delay in onset of symptoms to his right shoulder is far too long to attribute anything that can be connected to the accident in question." Regardless of causation, Dr. Miller believed a cortisone injection and/or physical therapy would be reasonable for the right shoulder condition, and if this failed Petitioner would be a surgical candidate for rotator cuff repair. (Rx2).

Regarding Petitioner's right knee, Dr. Miller opined that Petitioner's right knee condition also was not causally related to the 1/10/13 accident but rather that the condition was related to longstanding bilateral knee arthritis with no objective evidence of any aggravation or acceleration of the condition "in any way" due to the accident. Outside of that specific opinion, Dr. Miller opined that the treatment to date and medications prescribed had been reasonable but not causally related, based on Petitioner's complaints. Dr. Miller believed Petitioner was not totally disabled and would limit him to light duty with limited walking, noting Petitioner stated he could lift 25 to 30 pounds. (Rx2). It is obvious that Dr. Miller's opinion regarding the right knee is in opposition to an already settled issue based on the prior Commission decision pursuant to the law of the case.

A 10/10/19 letter from Respondent to Petitioner indicates that benefits were being terminated as of 10/16/19 based on Dr. Miller's opinion that he needed no further treatment causally related to the 1/10/13 accident. (Px9A).

In his 10/7/19 note, Dr. Rubenstein, awaiting the IME results, stated his opinion, "as you know", was that the Petitioner's rotator cuff tear occurred while hospitalized in October 2018 when he was using his arms for ambulation and had a further aggravation while in work conditioning. After reviewing Dr. Miller's report on 10/23/19, Dr. Rubenstein noted that Miller essentially denied that any significant injury occurred to Petitioner on 1/10/13 and noted only a knee contusion "which is not certainly my opinion . . . This just comes down to a legal opinion whether an injury sustained in the hospital while recovering from his knee replacement would be tied to his original work injury, knowing that the knee replacement was an approved procedure related to his original injury. I am not personally aware of the legal aspects of this but would state that it is my opinion that his shoulder problem arose in the hospital when he fell and attempted to prevent himself from falling as is documented in Dr. Miller's report." The doctor's work note continues to indicate Petitioner had been unable to work since 3/5/14, but for the first time also releases him to work with light duty restrictions of limited walking and standing. (Px9A).

On 3/4/20, Dr. Rubenstein indicates Petitioner's right shoulder was injected because he had severe symptoms and surgery was on hold pending authorization. (Px9A). Petitioner testified that as to his right knee, the doctor told him he could return to work but to avoid altercations, which was not accommodated by the state.

On 10/3/18, Petitioner appeared at the MetroSouth Medical ER because he was out of diabetes medication. He followed up to obtain insulin needles the following day. He appeared on 12/28/18 with a one week history of left knee pain and swelling. He indicated no falls or trauma and history of severe left knee arthritis with "occasional" prior episodes. Petitioner indicated he was using a cane and overcompensating due to right knee symptoms. A history of gout was noted, and he was prescribed gout medication. Petitioner returned MetroSouth on 8/17/19 again for diabetes medication refills because his primary provider wasn't calling him back. (Px17). The Arbitrator saw no reference to the right shoulder in these reports.

As to the right shoulder, Petitioner testified that he has ongoing problems with certain activities, such as putting his right arm behind his back, reaching up with the right hand/arm, lifting his grandchild while using the right arm and reaching high enough to perform exercises at the gym. As to the right knee, Petitioner indicated he has a little bit of a loss of range of motion and it sometimes "pops." He was advised by Dr. Rubenstein not to run, and he has difficulty squatting all the way down. He is able to walk and tries to do so as much as he can. He occasionally takes an over-the-counter medication as needed for the right knee, while he takes Vicodin and medications like that for the shoulder as needed, maybe a couple times a week if he is more active. This is prescribed by his primary provider. From the time of the 10/11/18 right knee revision surgery, Petitioner testified he has sustained no new injuries to the right shoulder other than the incidents he testified to. He is currently receiving Social Security Disability and is on Medicare. Petitioner has not undergone right shoulder surgery authorization via any other source outside of workers' compensation as he feels the condition is work related due because it happened during recovery following the right knee surgery. If he were offered vocational rehabilitation services, he testified he would participate. Petitioner testified the only time his medical devices would bother him was when he used crutches, which when the pressure was under the armpit, he would feel in his shoulder. He got better with the walker over time in avoiding putting all his weight on it.

On cross-examination, Petitioner testified he first felt right shoulder pain when he was at the hospital on 10/13/18 and almost fell while trying to go to the bathroom on his own. He was using the walker and couldn't flex the right knee, so he tried to brace himself with the walker and the wall, and the left knee came back up. While moving towards the bathroom, he stumbled and tried to catch himself with the left hand on the walker and the right hand on the wall, after which he immediately felt pain. He made it to the restroom and testified he then called for help to get back to bed. He said that he did report to the hospital personnel that he fell, and later that evening he told a nurse about his shoulder. He reiterated that he discussed this with Rubenstein prior to being discharged from the hospital and that he provided him with pain medication that same day. He indicated he felt more soreness when he awoke the day after than he felt at the time he stumbled. Petitioner agreed he didn't discuss his shoulder with Dr. Rubenstein on 11/5/18 but claimed he did when he saw him on 11/26/18. He did not mention shoulder pain when he saw Dr. Pontinen on 12/4/18 for a medication refill, as this was his pain doctor. Petitioner agreed he did not complain about his shoulder during therapy that began on 10/25/18 at PTSIR, noting all of the treatment there was directed to the knee, so he wasn't his shoulder or performing any overhead activities. He did use his arms to ride a stationary bike but testified the handlebars were at chest level, not above. He agreed he used a handrail as needed when performing stair activities at therapy, but testified he primarily stayed on the left side of the stairs and used his left arm. The first time therapy involved overhead activities was with work conditioning. He did not have to perform therapy with overhead activities until he started work conditioning, and his main problem, again, was the shoulder press, which he testified he discussed with the work conditioning therapist that was supervising him. On 12/31/18, he discussed the shoulder with Dr. Rubenstein and explained to him what happened, and they agreed the shoulder problem was due to the stumble with the walker. Petitioner acknowledged that Dr. Rubenstein prescribed work conditioning, which was performed to simulate work activities and included overhead activities, despite his report of shoulder problems and a pending shoulder MRI. Petitioner denied left shoulder problems. He noted that Dr. Rubenstein had

prescribed Tramadol around the time of work conditioning. Petitioner agreed he regularly traveled every couple of months from 2018 to early 2000 but not since the Covid pandemic.

On redirect exam, Petitioner agreed a physical therapist would come to his room during his October 2018 hospitalization to work with his knee. He could not recall if he mentioned right shoulder pain to the therapist but reiterated that he told Dr. Rubenstein. He noted that the therapist was there for his knee, so his shoulder didn't come up because he wasn't using it.

Orthopedic surgeon Dr. Rubenstein testified via deposition on 3/11/20. A general orthopedic surgeon, he testified that following the Commission's final decision, he performed a total right knee replacement on Petitioner on 9/14/18. He testified that he did not have a work status note in his file between 6/10/16 and February 2018, when he was held off work, and he continued him off work when seen in April 2018. Following the knee replacement, Petitioner underwent a 10/11/18 revision procedure due to infection, where the plastic parts were swapped out and antibiotic time release beads were implanted. Noting infection is a surgical risk and Petitioner was probably "seeded" at the time of surgery, it was his opinion that the infection delayed recovery but did not likely have any long term impact on the knee, though it can and likely did increase the scarring in the knee. Dr. Rubenstein testified that typically a patient gets to pre-injury function a few weeks post-surgery, but full healing takes 6 to 9 months. Noting work conditioning is not common for a knee replacement ("because the majority of people with knee replacements aren't going back to work"), the doctor indicated it helped strengthen Petitioner's knee, and while he continued to have some difficulties with stairs and strength, he mainly complained of shoulder problems holding him back. As to the conditioning discharge referencing the left shoulder, Dr. Rubenstein believed this was a clerical error and should have said right shoulder as he has no knowledge of Petitioner having left shoulder problems. He agreed the conditioning records often note only "shoulder" without specifying a side. (Px23).

On 10/23/19, Petitioner was functioning as well as could be expected following the knee replacement, with some ongoing loss of flexion, and Dr. Rubenstein opined he had reached maximum medical improvement as to the knee. He was hopeful the knee implant would be permanent for Petitioner, noting it should last at least 15 to 20 years. Asked if Petitioner's right knee restricted him from handling inmate altercations at work, Dr. Rubenstein testified "Probably not. Well, the altercations I think he should avoid", and noted his right shoulder continued to restrict him anyway. All of the knee treatment to date, including the infection treatment, would be related to the work accident, was related to the 1/10/13 work accident. (Px23).

Dr. Rubenstein was not aware of Petitioner having right shoulder pain prior to the initial 9/14/18 knee replacement. As to his 12/31/18 report stating Petitioner's shoulder was "still" giving him pain, and Dr. Miller indicating this was the first medical record he saw containing a shoulder complaint, Dr. Rubenstein testified: "Well, the shoulder's been bothering him since he was in the hospital, so at this stage it still gave me concern about his shoulder." He testified they try to get routine knee replacement patients off of walker use within a couple of days, but that the infection "tends to force him to do some upper extremity weightbearing for a period of time until it settles down." Crutches or a walker can be used to limit weightbearing, it just depends on the patient's stability and comfort level. As to whether he recalled or documented any conversation with Petitioner regarding his shoulder at the time of his 10/11/18 hospitalization, after reviewing his reports, Dr. Rubenstein testified "I don't think I did." Petitioner remained in therapy on 3/6/19 because of infection delaying recovery and Petitioner needing to work on his strength and conditioning given the nature of Petitioner's job. Dr. Rubenstein's initial impression was right shoulder tendonitis. Petitioner's right shoulder MRI was delayed because of issues with Petitioner's body mass or claustrophobia. On 3/6/19, Dr. Rubenstein prescribed work conditioning, which he transitioned into on 3/18/19 per the therapist. The 5/8/19 MRI showed a 1 to 2 cm full thickness rotator cuff tear. (Px23).

On 5/22/19, Dr. Rubenstein opined that the shoulder MRI findings related to Petitioner's activities in work conditioning while rehabbing his knee: "That's what I wrote. I will stand by it." As to his 10/7/19 report stating the rotator cuff tear occurred when he was using his arms for ambulation in the hospital and worsened when he further aggravated it while in work conditioning, he testified: "That was and still is my opinion now, but it was then too"). As indicated in his 10/23/19 note, he agreed with Dr. Miller that Petitioner needed no further knee treatment. As to the shoulder, he opined that the problem arose in the hospital when Petitioner attempted to stop himself from falling, as noted by Miller, indicating "that's where it started" and: "I think that's when he probably tore his rotator cuff when he was using the walker and stumbling. And that as initially its - - you know, since it wasn't as painful for him when he wasn't using his shoulders that much, because soon after the early parts of surgery he was walking without the crutches or a walker. But then when he started really using his shoulders, as he was using work conditioning, which involves both upper and lower extremities, that's when the shoulder pain got more severe. But I think the cause of his incident was with the walker and crutches when he was in the hospital, and he probably tore it then. There are a number of people who have rotator cuff tears that are relatively asymptomatic, and then if you increase your activity level, they can become symptomatic. I don't mean completely asymptomatic, but relatively, meaning it's something he could deal with until he started really using his shoulders in work conditioning, and then all of a sudden now its more painful, and he can't deal with it anymore. And when it got worse symptomatically, that's when he went and got an MRI." The prior diagnosis was tendonitis, and the shoulder was tolerable for Petitioner until he got into work conditioning. Symptoms of a full thickness cuff tear can range from almost nothing to not being able to move the arm. Traumatic tears are rarely completely pain-free and usually have more discomfort, versus "old lady degenerative rotator cuff tears" which are completely asymptomatic. Dr. Rubenstein did not believe that work conditioning increased the size of the tear, which "usually tear at the incident and then they're static." You cannot tell if a tear is traumatic or degenerative from MRI, but he opined the MRI did not show significant degenerative changes in the area of the rotator cuff. Petitioner has been totally disabled since work conditioning due to the shoulder and he has not reached MMI. Petitioner's shoulder was still sore when he was seen a few days prior to the deposition. The only treatment for the right shoulder to date was the MRI and home exercises, though he noted shoulder exercises were performed in work conditioning. Dr. Rubenstein testified that typically a cuff tear requires surgery versus conservative treatment if symptomatic. The doctor then testified: "I believe his shoulder pain was caused by weightbearing on his upper extremities following his knee replacement, which was a work related injury. And had he not been weightbearing on his upper extremities, he probably would not have damaged the rotator cuff. I think that's the – that's why I believe it's related to his original injury." Dr. Rubenstein testified that Petitioner's use of his arm and shoulder to stop himself from falling, or weightbearing on the walker, could have caused the rotator cuff tear. By the time Petitioner started work conditioning, he opined Petitioner likely already had the tear and work conditioning caused it to become more painful. (Px23).

Asked for more detail about the incident in the hospital on cross-exam, Dr. Rubenstein testified: "I guess I believe it's more of a stumble and catching himself with his upper extremities" rather than a fall, and his understanding is this occurred at some point during the hospitalization in October 2018 after revision surgery. He could not say whether the hospital's records indicate Petitioner reported this incident or not, as he hasn't reviewed them. He also didn't know whether he documented it at the time it was reported to him or not, but he agreed the information he had regarding this incident came directly from Petitioner himself, though "it's probably in the records somewhere if you go looking for it…" He testified that, ultimately, "If the guy tells me it happened, I believe him", noting he believed Petitioner to be "a reliable guy." Dr. Rubenstein reiterated his opinion that this incident in the hospital caused the rotator cuff tear. He had not seen Dr. Weber's 10/16/18 report from the hospital and was asked whether, if Dr. Weber had indicated Petitioner reported shoulder pain after the initial knee surgery that increased with physical therapy, this would change his opinions, Dr. Rubenstein testified the Petitioner could have had some transient shoulder pain "for a little bit", as he was doing

a little bit of upper extremity weightbearing when he first finished as well, "but that doesn't necessarily mean that it tore then." Dr. Rubenstein did not document any shoulder complaints from Petitioner between the 9/13/18 original knee replacement and October 2018. He would have initially examined all of Petitioner's extremities, but post-operatively only would have examined the impacted body part unless another body part was complained of. He agreed his 11/5/18 and 11/26/18 notes don't reflect Petitioner having shoulder complaints, and that Petitioner shouldn't have been using anything more than a cane at most by this time, which doesn't involve much shoulder force. A walker should have been discontinued within 1 to 2 weeks post-surgery. Asked if Petitioner told him at some point that he felt a tear in the shoulder in work conditioning, Dr. Rubenstein testified: "He told me that he felt that it got worse while he was doing work conditioning. I don't remember if it was a specific tear then or…You know, its always hard to tell. You know, when you start increasing activity level, that could either, if it was done improperly, create a tear or it could certainly increase symptoms from a previous tear. And I'm not sure anybody can even, unless they feel a specific incident, tell one way or the other." Dr. Rubenstein goes on to testify that he didn't believe Petitioner developed shoulder pain until after the knee replacement revision surgery: "whether it tore then or whether that just irritated it and then it tore in work conditioning, I can't tell you that." (Px23).

Dr. Rubenstein saw no problem with Petitioner being in the pool when he went to Lake Geneva shortly after knee replacement surgery, so long as the wound was closed, and noted that some knee activity in a pool would be beneficial. He agreed that if he was actually doing a crawl or backstroke swim, that would indicate his shoulders were pretty good at that time. His initial diagnosis of tendonitis didn't lead Dr. Rubenstein to discontinue therapy or conditioning, but he backed off when he worsened in work conditioning and obtained an MRI. This is why it likely was torn before conditioning, as if it had only been tendonitis, conditioning likely would have improved the condition. As to Petitioner's work status between April 2018 and October 2019, Dr. Rubenstein agreed he was restricted from his job due to the knee, "but I think there was some degree of shoulder involved in that as well." (Px23).

CONCLUSIONS OF LAW

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, and WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that the Petitioner has failed to prove by the preponderance of the evidence that he sustained an injury to his right shoulder that is causally related to the 1/10/13 accident.

It should be initially noted that Petitioner's right knee injury was previously found compensable and total right knee replacement surgery was awarded. Related to the current hearing, the Petitioner underwent the surgery and a revision surgery in 2018. With regard to causation of the knee injury, any defense to causation would have to involve the argument that the condition is no longer related to the 1/10/13 accident, as the initial causal relationship to the accident is settled based on the law of the case. As to the right shoulder, the argument is that the condition arose out of an incident or incidents related to the right knee injury. Under Illinois law, the Petitioner may claim that such an injury to a different body part would be causally related to the 1/10/13 accident as the result of it being related to his knee injury.

The Petitioner testified that his right shoulder pain began with an incident sometime during his 10/11/18 through 10/17/18 hospitalization following right knee revision surgery. He claims that he stumbled while ambulating with a walker and reaching out with his right arm on the wall to catch himself. The problem is that several different histories have been provided by Petitioner in records more contemporaneous to the alleged accident date which are inconsistent. This impacts the persuasiveness in Dr. Rubenstein's testimony in this case. Petitioner testified he first felt right shoulder pain when he was at the hospital on 10/13/18 and almost fell while trying to go to the bathroom on his own. He was using the walker and couldn't flex the right knee, so he tried to brace himself with the walker and the wall, and the left knee came back up. While moving towards the bathroom, he stumbled and tried to catch himself with the left hand on the walker and the right hand on the wall, after which he immediately felt pain. He made it to the restroom and testified he then called for help to get back to bed. He said that he did report to the hospital personnel that he fell, and later that evening he told a nurse about his shoulder. He reiterated that he discussed this with Rubenstein prior to being discharged from the hospital and that he provided him with pain medication that same day. He indicated he felt more soreness when he awoke the day after than he felt at the time he stumbled

The hospital records from 10/11/18 to 10/17/18 do not reflect any report by Petitioner of stumbling and almost falling while using a walker or any other incident which caused shoulder pain. There was a 10/16/18 report of shoulder pain that felt worse during therapy but no indication of a traumatic onset or incident involving a walker. The discharge notes "Lidoderm patches ordered for right shoulder", and that regular ice and a heating pad recommended for the "back/shoulder." Again, there is no further explanation of how the shoulder pain began, nothing about stumbling in the hall and catching himself with the right upper extremity and nothing about the walker being involved.

In reviewing his records, it was not until 12/31/18 that Dr. Rubenstein first documented a shoulder condition. The report notes the Petitioner's shoulder was "still" giving him some concern, and he "still" had some shoulder tenderness and pain "since he started hopping on his leg at the time of the infection from the walker." It is unclear to the Arbitrator how "hopping on his leg" was involved in a right shoulder injury, or what the doctor meant by "from the walker." In any case, there is nothing about the incident alleged by Petitioner. Dr. Rubenstein did indicate he felt the Petitioner's shoulder involved a muscle pull "from walker use" but makes no real description of how this would have injured the shoulder. The doctor then did not reference the shoulder at the next visit of 1/30/19. At the next 3/6/19 visit the Petitioner had complaints of right shoulder pain "which began while he was using a walker in the hospital postoperatively", which Rubenstein again diagnosed as tendonitis or a strain. Dr. Rubenstein at that time opined the shoulder discomfort was "the direct result of using the walker during the prolonged period of time he needed to keep him off his knee due to the infection."

This history of onset is inconsistent with both Petitioner's testimony and Dr. Weber's 10/16/18 report indicating increased right shoulder pain with therapy. Weber's report does not specify how therapy at that point would have increased shoulder pain. In addition to being inconsistent with Petitioner's described mechanism of injury, at no time does any physician in this case indicate how often the Petitioner was using a walker while in the hospital. The inpatient therapy records indicate several instances where the Petitioner did not even want to participate.

The initial 1/21/19 PTSIR evaluation states: "The patient had a second knee replacement surgery and *he believes* that his shoulder started to hurt when in the hospital using the walker during recovery." (emphasis added). Again, nothing is indicated regarding an incident of catching himself from falling with his right arm.

The ATI therapy records from 3/18/19 to 5/14/19 make multiple references to Petitioner indicating an inability to perform certain movements, particularly overhead, due to his shoulder. The intake form did not reference the right shoulder, and there is no reference to a cause for symptom onset.

On 5/22/19, Dr. Rubenstein states: "As you recall, his shoulder started to give him problems when he was in work conditioning and going on to the heavier weights where at one point, he felt something tear as he caught his arm lifting the weights." This is completely new history of onset, particularly given that Rubenstein is saying the shoulder "started to give him problems" in work conditioning when it is quite clear the onset was well before that time, which Dr. Rubenstein obviously was aware of. Additionally, nothing about feeling a tear was not documented in the work conditioning records and was not testified to.

The first reference to the Petitioner's claimed accident that the Arbitrator found in the records is Dr. Miller's 10/2/19 report, almost a year after the incident was alleged to have occurred. Dr. Miller stated: "(Petitioner) related the onset of pain in his right shoulder to stumbling in the hospital in 10/18 after his right knee irrigation and debridement. He states that he reached out with his right arm to avoid falling and he had the onset of pain." Dr. Miller also specified that his review of the MRI films indicated AC joint degeneration, a cyst in the greater tuberosity and "lots of degeneration in the distal rotator cuff." He also noted that the MRI radiologist ignored a finding of Goutallier grade 2 or 3 supraspinatus muscle atrophy "which would indicate chronicity' He opined the cyst and atrophy indicated the right shoulder condition had been present for at least a year maybe longer, prior to the right shoulder MRI. Dr. Miller further noted there was no mention of the right shoulder in the PTSIR records and only a single mention of the right shoulder on the last follow up in the ATI records.

It was only after reviewing Dr. Miller's examination that Dr. Rubenstein notes the specific alleged history of Petitioner stumbling in the hallway at the hospital and having to catch himself with his right arm. On 10/7/19, while awaiting Dr. Miller's report for review, Dr. Rubenstein, again stating "as you know", now indicated Petitioner's rotator cuff tear occurred during the October 2018 hospitalization when he was using his arms for ambulation, and that work conditioning caused a further aggravation. After reviewing Miller's report on 10/23/19, Dr. Rubenstein commented on the issue "(coming) down to a legal opinion whether an injury sustained in the hospital while recovering from his knee replacement would be tied to his original work injury, knowing that the knee replacement was an approved procedure related to his original injury. I am not personally aware of the legal aspects of this but would state that it is my opinion that his shoulder problem arose in the hospital when he fell and attempted to prevent himself from falling as is documented in Dr. Miller's report."

In the Arbitrator's view, Dr. Rubenstein's testimony made things even more confusing.

As to Dr. Miller stating Rubenstein's 12/31/18 report was his first reference to Petitioner's shoulder "still" giving him pain and tenderness, and it being "since he started hopping on the leg at the time of the infection from the walker", Dr. Rubenstein testified: "Well, the shoulder's been bothering him since he was in the hospital, so at this stage it still gave me concern about his shoulder." He did not explain how this stated history impacted the right shoulder. He also testified that they try to get knee replacement patients off of walker use within a couple of days, though he indicated that the infection "tends to force him to do some upper extremity weightbearing for a period of time until it settles down." At no point does anyone indicate how often the Petitioner was using a walker.

As to whether he recalled or documented any conversation with Petitioner regarding his shoulder at the time of his 10/11/18 hospitalization, after reviewing his reports, Dr. Rubenstein testified "I don't think I did." Dr. Rubenstein agreed he did not review Dr. Weber's 10/16/18 report indicating Petitioner complained of shoulder pain with physical therapy, which could have been from after the initial replacement surgery or possibly during

the revision hospital stay, Dr. Rubenstein testified Petitioner may have had some "transient" shoulder pain "for a little bit", as he was doing a little bit of upper extremity weightbearing after the initial surgery, "but that doesn't necessarily mean that it tore then."

Dr. Rubenstein testified that, as to his 5/22/19 opinion that the shoulder MRI findings related to Petitioner's activities in work conditioning, while rehabbing his knee: he testified "That's what I wrote. I will stand by it." This does not support a finding that an injury occurred in the hospital when Petitioner alleges he stumbled and had to catch himself. As to his 10/7/19 report stating the rotator cuff tear occurred when he was using his arms for ambulation in the hospital and worsened when he further aggravated it while in work conditioning, he testified: "That was and still is my opinion now, but it was then too." In his 10/23/19 note, Dr. Rubenstein opined that the problem arose in the hospital when Petitioner attempted to stop himself from falling, indicating "that's where it started" and "I think that's when he probably tore his rotator cuff when he was using the walker and stumbling. And that as initially its - - you know, since it wasn't as painful for him when he wasn't using his shoulders that much, because soon after the early parts of surgery he was walking without the crutches or a walker. But then when he started really using his shoulders, as he was using work conditioning, which involves both upper and lower extremities, that's when the shoulder pain got more severe. But I think the cause of his incident was with the walker and crutches when he was in the hospital, and he probably tore it then. There are a number of people who have rotator cuff tears that are relatively asymptomatic, and then if you increase your activity level, they can become symptomatic. I don't mean completely asymptomatic, but relatively, meaning it's something he could deal with until he started really using his shoulders in work conditioning, and then all of a sudden now it's more painful, and he can't deal with it anymore. And when it got worse symptomatically, that's when he went and got an MRI." The doctor then testified: "I believe his shoulder pain was caused by weightbearing on his upper extremities following his knee replacement, which was a work related injury. And had he not been weightbearing on his upper extremities, he probably would not have damaged the rotator cuff. I think that's the – that's why I believe it's related to his original injury." Dr. Rubenstein testified that Petitioner's use of his arm and shoulder to stop himself from falling, or weightbearing on the walker, could have caused the rotator cuff tear. By the time Petitioner started work conditioning, he opined Petitioner likely already had the tear and work conditioning caused it to become more painful.

The Arbitrator notes that Dr. Rubenstein also testified that traumatic rotator cuff tears are rarely pain-free, versus degenerative rotator cuff tears, which can be completely asymptomatic. The medical records in evidence simply do not support a traumatic rotator cuff tear given the Petitioner's lack of reporting of the stumbling incident. As to his indication that Petitioner told him he felt a tearing in the shoulder during work conditioning, Dr. Rubenstein testified: "He told me that he felt that it got worse while he was doing work conditioning. I don't remember if it was a specific tear then or…You know, it's always hard to tell. You know, when you start increasing activity level, that could either, if it was done improperly, create a tear or it could certainly increase symptoms from a previous tear. And I'm not sure anybody can even, unless they feel a specific incident, tell one way or the other."

The question becomes: which is it, doctor? Was it injured in physical therapy prior to the right knee surgical revision? Was it injured due to walker (or crutches) use in the hospital in October 2018? Was it injured in work conditioning? Or was it injured based on Petitioner's history of stumbling and catching himself with his right arm on the wall? It seems that the doctor is attempting to causally relate the right shoulder no matter what the history provided was. No evidence was provided as to whether Dr. Rubenstein even had knowledge of what the Petitioner's hospital rehab activities were or how often he used the walker.

Petitioner agreed he didn't discuss his shoulder with Dr. Rubenstein on 11/5/18 when he saw him for the knee following revision surgery but claimed he did tell complain of shoulder pain when he saw him on 11/26/18.

Nothing is documented in Dr. Rubenstein's 11/26/18 report. Petitioner testified he didn't tell Dr. Pontinen, a pain doctor, about his shoulder pain on 12/4/18 because he was there for a medication refill and he was only a pain doctor. Petitioner did not report shoulder pain during therapy that began on 10/25/18 at PTSIR, indicating he was only exercising the knee, not the shoulder. He testified that that on 12/31/18 he discussed his shoulder with Dr. Rubenstein and explained to him what happened, and they agreed the shoulder problem was due to the stumble with the walker. Nothing is documented in Dr. Rubenstein's 12/31/18 report about the stumbling incident at the hospital.

Ultimately, it is certainly possible that the Petitioner injured his right shoulder at some point during his knee rehabilitation. However, the Arbitrator believes that a claimant has the burden of proving an accidental injury that occurs during rehab for a work-related injury to a different body part just as he or she would have to do had it been the original injury. There must be a defined time and place. Here, the Petitioner has not fulfilled that burden of proof by the preponderance of the evidence. Instead, he has multiple possible bases for onset, and his treating surgeon in reliance on these histories offers multiple possible bases for causation. This results in only a speculation of possibility of a causally related right shoulder injury, rather than a probability.

Petitioner's right knee condition remains causally related to the 1/10/13 accident. He did reach MMI on 10/23/19, but the knee condition remains causally related to the accident. Dr. Rubenstein did not believe Petitioner required further knee treatment other than a normal yearly maintenance visit. Petitioner indicated he is currently receiving Social Security Disability and is on Medicare. He did not testify as to what the date of disablement was or on what date benefits began.

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:

Based on the Arbitrator's findings above, the Arbitrator awards all medical expenses contained in Px15 and Px25 to Px62 which are related to the treatment of Petitioner's right knee, and which were incurred subsequent to 6/10/16, pursuant to Sections 8(a) and 8.2 (Fee Schedule) of the Act. Expenses that were incurred prior to 6/10/16 should have been addressed in the prior 19(b) decision.

Based on the Arbitrator's findings above, all medical expenses relating to treatment of the Petitioner's right shoulder condition are denied.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

Prospective medical care for the right shoulder, pursuant to the Arbitrator's findings regarding accident, notice and causation, is denied.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, and WITH RESPECT TO ISSUE (N), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings, no further TTD is awarded. The Request for Hearing form only requests TTD "pending prospective surgery." The only prospective surgery noted would be for the right shoulder. As

noted above, the right shoulder condition has not been found to be work related. As such, no TTD is awarded relating to the right shoulder.

While the parties have stipulated to a TTD credit for Respondent totaling $208,611.47, no past due TTD is being claimed as part of this case per the Request for Hearing. This credit is obviously applicable against an agreed pre-9/14/21 period of TTD, as no pre-9/14/21 period of TTD is being claimed via this decision. Therefore, unless there was an overpayment of TTD based on the agreed pre-hearing period where Petitioner was temporarily totally disabled, this credit is not applicable against any other awards in this case or against any future permanency award or settlement.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC017507
Case Name	Jamie N Gale (Surviving Spouse of Justin Gale Deceased) v. City of Bloomington
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0356
Number of Pages of Decision	10
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Nicholas Karayannis, Craig Mielke
Respondent Attorney	R. Mark Cosimini

DATE FILED: 9/16/2022

/s/ Thomas Tyrrell, Commissioner

Signature

22IWCC0356

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jamie N. Gale as surviving spouse of
Justin Gale, deceased,

Petitioner,

vs. NO: 20 WC 17507

City of Bloomington,

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 permanent disability and Respondent's liability for the payment of permanent disability benefits following the death of the decedent, and being advised of the facts and law, modifies the Decision of the Arbitrator and corrects a scrivener's error. The Commission otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission solely seeks to correct a clerical error in the Decision. On page one (1) of the Decision, the Arbitrator mistakenly wrote that Justin Gale, the decedent, passed away on May 13, **2021**. This is a clerical error. The Commission thus modifies the above-referenced sentence to read as follows:

> Mr. Gale suffered disabling injuries in the line of duty on January 31, 2014, reached MMI on January 2, 2020, and passed away from cancer that was unrelated to his work injury on May 13, **2020**.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on December 8, 2021, is modified as stated herein.

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

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 16, 2022

o: 9/6/22
TJT/jds
51

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC017507
Case Name	GALE, JAMIE N AS SURVIVING SPOUSE OF GALE, JUSTIN DECEASED v. CITY OF BLOOMINGTON
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	Craig Mielke
Respondent Attorney	R. Mark Cosimini

DATE FILED: 12/8/2021

THE INTEREST RATE FOR THE WEEK OF DECEMBER 7, 2021 0.10%

/s/ Adam Hinrichs, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF MCLEAN)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jamie N. Gale as surviving spouse of Justin Gale, deceased
Employee/Petitioner

v.

City of Bloomington
Employer/Respondent

Case # **20** WC **17507**

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 **ADAM HINRICHS**, Arbitrator of the Commission, in the city of **Bloomington**, on **10/15/21**. 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. **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. **X** **Other: Whether PPD is owed after date of death.**

FINDINGS

On **1/31/2014**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being ***was*** causally related to the accident, but his subsequent death was not related to the accident.

In the year preceding the injury, Petitioner earned $**73,152.30**; the average weekly wage was $**1,406.77**.

On the date of accident, Petitioner was **32** 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 $**54,201.85** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**54,201.85**.

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

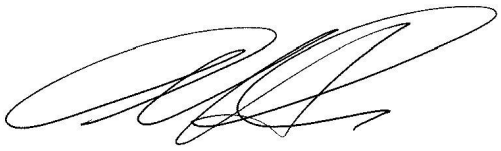
ORDER

Pursuant to Section 8(d)2, Justin Gale sustained a permanent partial disability of 40% loss of use to his person as a whole as a consequence of this work injury. The PPD benefits to which Justin Gale was entitled to but for his death on May 13, 2020, shall be payable to his surviving spouse, Jamie N. Gale.

Petitioner, Jamie N. Gale, is entitled to PPD benefits accruing after Justin Gale's MMI date of January 2, 2020, for a period of 200 weeks at the applicable maximum rate of $721.66 per week. The Respondent shall receive a credit of $12,326.03 on the PPD award for their payments of TTD benefits after the MMI date.

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 8, 2021

Petitioner, Jamie N. Gale, is the surviving spouse of Justin Gale, a former police officer for the City of Bloomington. Mr. Gale suffered disabling injuries in the line of duty on January 31, 2014, reached MMI on January 2, 2020, and passed away from cancer that was unrelated to his work injury on May 13, 2021. The parties have agreed to the relevant facts and stipulated that the narrative reports of three physicians may be admitted into evidence. (JX 2, PX 3, PX 4, and PX 5). The sole issues in dispute are the nature and extent of Officer Justin Gale's disability and whether PPD is owed to his surviving spouse, Jamie N. Gale, after his death.

Rather than amending the initial Application in this case, Jamie N. Gale's attorney filed a separate Application on her behalf, 20WC 17507, as the surviving spouse. The initial Application, 19WC 25572, has been consolidated with the second filing, 20WC 17507.

FINDINGS OF FACT

Justin Gale sustained an undisputed work accident January 31, 2014. He received treatment for his injuries and was ultimately determined to be at maximum medical improvement. Subsequent to the MMI date, Mr. Gale passed away from an unrelated cancer condition.

The parties stipulated Mr. Gale reached maximum medical improvement as of January 2, 2020. The parties also stipulated Mr. Gale passed away May 13, 2020 from cancer that was unrelated to any work injury or condition.

As it relates to Mr. Gale's work injuries and treatment, the parties stipulated to the admission of three medical reports which were utilized in a hearing before the Bloomington Police Pension Fund.

The first medical report, dated January 2, 2020, was prepared by Dr. James Boscardin. (Px 3)

Dr. Boscardin documented a history of Mr. Gale being involved in an arrest which led to some physicality causing increased low back pain. Mr. Gale continued to perform his duties as a police officer until March 2019 when he underwent spinal surgery. The surgery was performed March 7, 2019 and consisted of a two-level decompression and fusion at L4-5 and L5-S1. Following the surgery, Mr. Gale continued to experience significant back pain with occasional pain radiating to the right leg.

On exam, Dr. Boscardin noted Mr. Gale's hair was thinning as a result of the chemotherapy he was undergoing for esophageal cancer. The doctor noted spasms in the lumbar spine area and a limited lumbar range of motion.

Dr. Boscardin explained Mr. Gale had a pre-existing condition in his lumbar spine, and he did not believe Mr. Gale's condition was solely related to the 2014 accident. He did believe the work accident contributed to Mr. Gale's low back problems.

Dr. Boscardin diagnosed Mr. Gale with a failed lumbar spine surgery with a questionable non-union at L5-S1.

Dr. Boscardin concluded Mr. Gale was unable to return to work as a police officer. Additionally, he rendered an opinion Mr. Gale's condition was most likely permanent based upon his ongoing subjective complaints. Finally, Dr. Boscardin rendered an opinion Mr. Gale was capable of returning to work in a light duty capacity.

The second medical report, dated January 9, 2020, was prepared by Dr. Daniel Samo. (Px 4)

Dr. Samo rendered an opinion that Mr. Gale was not capable of returning to his full duties as a police officer. He did think Mr. Gale was capable of returning to work in a limited capacity. He also determined Mr. Gale was at maximum medical improvement, and commented that Mr. Gale's low back condition may improve over time.

The third medical report, dated January 16, 2020, was prepared by Dr. Anthony Rinella. (Px 5)

At the time of Dr. Rinella's exam, Mr. Gale rated his pain as 1/10, but noted his pain level increases with physical activity.

Dr. Rinella rendered an opinion Mr. Gale sustained a lumbar strain and lumbar radiculopathy as a result of the work accident. He noted Mr. Gale had a pre-existing L5-S1 spondylolisthesis that was aggravated by the work accident.

Dr. Rinella rendered an opinion that Mr. Gale's current level of impairment was permanent. He also commented about Mr. Gale's pre-accident condition which included mild periodic pain related to the pathology at L5-S1.

Like the other examining physicians, Dr. Rinella believed Mr. Gale was capable of returning to work in a light duty capacity. He thought Mr. Gale could lift up to 50 pounds and push or pull up to 100 pounds on an occasional basis. He did not believe Mr. Gale was capable of returning to work as a police officer. Dr. Rinella further opined Mr. Gale was at maximum medical improvement.

Mr. Gale did not receive any treatment for his low back condition after the January 16, 2020 evaluation by Dr. Rinella.

Mr. Gale passed away May 13, 2020. (Px 1)

CONCLUSIONS OF LAW

ISSUE (L): WHAT IS THE NATURE AND EXTENT OF THE INJURY?

Incorporating the above, Pursuant to Section 8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability ("PPD"), for accidental injuries occurring on or after September 1, 2011:

(i) The reported level of impairment;
(ii) The occupation of the injured employee;
(iii) The age of the employee at the time of injury;
(iv) The employee's future earning capacity; and
(v) Evidence of disability corroborated by medical records.

With regards to paragraph (i) of Section 8.1(b) of the Act: No AMA rating was offered into evidence. Therefore, the Arbitrator gives this factor no weight.

With regards to paragraph (ii) of Section 8.1(b) of the Act: Officer Gale was employed as a police officer and was not able to return to his duties as a police officer as a consequence of this work injury, the Arbitrator gives this factor significant weight.

With regards to paragraph (iii) of Section 8.1(b) of the Act: Officer Gale was 32 years old at the time of his injury. The Arbitrator gives this factor some weight.

With regards to paragraph (iv) of Section 8.1(b) of the Act: Petitioner did not offer any evidence involving the future earning capacity of Officer Gale. Therefore, the Arbitrator gives this factor no weight.

With regards to paragraph (v) of Section 8.1(b) of the Act: While the evidence submitted at trial did not include treating medical records, the parties stipulated to the admission of three medical reports utilized in the Bloomington Police Pension Fund proceedings. Pursuant to the parties' stipulation, the Arbitrator relies upon the medical evidence submitted at trial for this factor. The medical evidence established Mr. Gale was still suffering from low back pain with some radiating leg symptoms as of January 2020. Those symptoms were at least in part related to the work injuries. Additionally, a consensus was reached that Mr. Gale could not perform his duties of a police officer and would be unable to return to the line of duty. The Arbitrator assigns significant weight to this factor.

Based on the above factors, the Arbitrator finds that the Petitioner sustained permanent partial disability to the extent of 40% loss of use of a person as a whole pursuant to Section 8(d)2 of the Act.

ISSUE (O): IS PPD PAYABLE TO THE SURVIVING SPOUSE AFTER THE DATE OF THE EMPLOYEE'S DEATH, WHICH WAS UNRELATED TO THE WORK ACCIDENT?

The Arbitrator finds that Jamie Gale, the surviving spouse of Justin Gale, may recover for all PPD payments otherwise due to Justin Gale, as Justin Gale had reached MMI prior to his date of death.

Pursuant to Section 8(h) of the Act, "In case death occurs from any cause before the total compensation to which the employee would have been entitled has been paid, then in case the employee leaves any widow, widower, child, parent (or any grandchild, grandparent or other lineal heir or any collateral heir dependent at the time of the accident upon the earnings of the employee to the extent of 50% or more total dependency) such compensation shall be paid to the beneficiaries of the deceased employee and distributed as provided in paragraph (g) of Section 7." 820 ILCS 305 § 8(h).

Section 8(e)(19) provides: "In the case of specific loss and the subsequent death of such injured employee from other causes than such injury leaving a widow, widower, or dependents surviving before payment or payment in full for such injury, then the amount due for such injury is payable to the widow or widower and, if there be no widow or widower, then to such dependents, in the proportion which such dependency bears to total dependency." 820 ILCS 305/8(e)(19).

While this case does not involve a specific loss to a body part, the Appellate Court is clear that both of the above sections provide that "where an injured employee dies leaving one or more eligible dependents," those dependents may recover the deceased employee's workers' compensation benefits, "including any installment benefits that were to be paid on dates after the claimant's death." *Bell v. Illinois Workers' Comp. Comm'n*, IL App (1st) 140028WC, ¶¶ 29.

Morevoer, this case is distinguishable from a situation where the employee is not survived by any dependents; in such a case, the estate of the employee would only be permitted to recover for payments that had accrued to the date of death. *See Republic Steel Corp. v. Industrial Comm'n*, 26 Ill.2d 32, 46 (1962).

Justin Gale was at MMI as of January 2, 2020. Justin Gale passed away on May 13, 2020, from cancer that was unrelated to any work injury or condition. On the date of death, Justin Gale was married to his surviving spouse, Jamie N. Gale, who has not remarried and is alive today. Petitioner sustained a permanent partial disability of 40% loss of use of his person as a whole as a consequence of this work accident, or 200 weeks of PPD benefits.

The Arbitrator finds that PPD began to accrue on Mr. Gale's MMI date of January 2, 2020. The Arbitrator further finds that Jamie Gale, as the surviving spouse of Justin Gale, is a qualified dependent of Justin Gale.

Therefore, pursuant to the Act and controlling case law, the Arbitrator finds that Jamie N. Gale may recover all PPD benefits that were to be paid on dates after Justin Gale's death.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC010750
Case Name	Ashley O'Neal v. Walmart
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0357
Number of Pages of Decision	22
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	John Popelka
Respondent Attorney	Bret Taylor

DATE FILED: 9/19/2022

/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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Ashley O'Neal,

Petitioner,

vs. No. 21 WC 010750

Walmart,

Respondent.

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

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, benefit rates, medical expenses, temporary disability, prospective medical care, and penalties and fees, and being advised of the applicable facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision, 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).

FINDINGS OF FACT

Petitioner, a 34-year-old customer service associate, testified that on February 6, 2021, she injured her back when she fell in the store vestibule. Petitioner had gone to her car on the parking lot to retrieve her debit card, so that she could complete the purchase of items she had collected while on break. She slipped on water in the vestibule and struck her low back, left elbow and head when she fell. She briefly lost consciousness and was helped up from the floor by two co-workers. She immediately reported her accident, and the supervisor prepared an incident report. Petitioner left work, as her clothing was wet, and she was in pain. Petitioner called off work the following day, then returned to her regular job, as scheduled.

On February 10, 2021, Petitioner sought treatment with her primary care physician, Dr. Vankana, who prescribed pain medication and light duty work restrictions, which Respondent accommodated. Petitioner returned to Dr. Vankana on March 11, 2021with low back pain at 6-7 out of a possible 10. The doctor extended the light duty order and suggested that physical therapy might be helpful in the future.

Respondent referred Petitioner to Concentra Clinic on March 27, 2021, almost two months after her accident. At this appointment, x-rays of her back and elbow were performed, and Dr. Simon diagnosed Petitioner with a concussion, lumbar strain/contusion, and left elbow contusion. Concentra provided physical therapy and light duty restrictions, which Respondent again accommodated. Although no physician had provided Petitioner with an off-work status slip, she testified that she stopped working on April 6, 2021 to give her back time to heal and to attend physical therapy appointments. Respondent terminated Petitioner's therapy on April 16, 2021 and did not authorize additional therapy until May 10, 2021. Therapy was again canceled as of May 19, 2021.

Petitioner's back pain continued, and she sought treatment from Dr. Darwish at Illinois Bone & Joint Institute on July 7, 2021. Dr. Darwish took Petitioner completely off work and ordered a lumbar MRI, which was performed on July 19, 2021. The radiologist detected no significant central or foraminal narrowing, and Dr. Darwish agreed with the radiologist's findings. Petitioner returned to physical therapy on July 19, 2021 and continued through July 29, 2021.

Respondent obtained a §12 evaluation by Dr. Avi Bernstein on August 2, 2021. Petitioner complained of low back pain at 4-8/10 aggravated by sitting, standing and walking. Despite her subjective complaints, Dr. Bernstein detected no abnormalities on her MRI and found her at maximum medical improvement. He concluded that she could return to work full duty.

On September 15, 2021, Dr. Darwish reviewed Dr. Bernstein's §12 report: "I reviewed her IME and agree. I reviewed her MRI and there is nothing abnormal noted." Dr. Darwish recommended additional physical therapy, referred Petitioner to pain management for possible injections, and continued her off work status.

At arbitration on December 1, 2021, Petitioner testified that she had constant back pain but no head or elbow complaints. She sought medical expenses of $3,047.34, temporary total disability for 21-1/7 weeks from her initial visit with Dr. Darwish through the date of hearing[1], and penalties and fees for Respondent's non-payment of temporary total disability. Petitioner also sought the prospective medical care recommended by Dr. Darwish.

The Arbitrator found that Petitioner had proved she suffered an accident arising out of and in the course of her employment on February 6, 2021, that her current low back pain was causally related to that accident and that her medical treatment thus far had been reasonable and necessary.

[1] Petitioner did not claim she was entitled to TTD for April 6, 2021 through July 7, 2021, the period during which she remained off work without a doctor's off-work slip.

Respondent was ordered to pay Petitioner's outstanding medical bills and temporary total disability benefits and to authorize the treatment recommended by Dr. Darwish. Based upon the consistency of Petitioner's complaints of low back pain, the Arbitrator found Respondent's reliance on its §12 examiner's opinions that Petitioner had reached MMI and could return to work full duty objectively unreasonable and awarded penalties under both §19(l) and §19(k), as well as attorney's fees under §16.

Respondent filed a timely Petition for Review on the issues of accident, medical expenses, temporary disability, benefit rates, and penalties and fees. After reviewing the facts and law, the Commission modifies the Arbitrator's Decision by correcting the average weekly wage and by vacating the Arbitrator's awards of penalties and fees. All else is affirmed and adopted.

CONCLUSIONS OF LAW

Average Weekly Wage. Petitioner alleged an average weekly wage of $600.00 on the Request for Hearing. She testified that she earned $15.00 per hour and worked a 40-hour week, but she offered no documentary support for these representations. Respondent disputed Petitioner's calculations and claimed instead that Petitioner's average weekly wage was $350.87, based upon its spreadsheet showing Petitioner's earnings. RX3. The Arbitrator added the total number of hours Petitioner worked during the 52 weeks prior to her accident (742.69 hours) and divided by 26 (the number of pay periods during that year). She then divided Petitioner's total earnings over the year by the quotient, 28.565, and reached an AWW of $515.89.

The Commission relies instead on the methods provided by the Illinois Supreme Court in *Sylvester v. Industrial Comm'n*, 197 Ill. 2d 225, 230 (2001). Respondent's spreadsheet shows that Petitioner did not work at all during 15 of the 52 weeks preceding her date of accident, and she had never worked as many as 40 hours in any one week. It also shows the number of hours worked per week, but not the number of days. Therefore, the number of partial weeks worked during the relevant 52-week period cannot be determined.

In *Smith v. Industrial Comm'n*, 170 Ill. App. 3d 626, 631 (1988), under similar facts, the Court found that the employee had failed to prove that some of the weeks he was employed were only partial weeks. As in this case, the data in evidence included the number of hours worked per week but not the number of days. Because there was no way for the Court to determine the parts of weeks the employee had worked, it divided the employee's earnings by the number of weeks in which he had worked any hours at all. The Commission applies the same calculation method in this case.

Here Petitioner worked some hours in 37 of the 52 weeks preceding Petitioner's accident. As in *Smith*, where there is no evidence presented to allow calculation of the partial weeks, the calculations must be made as if every week in which the Petitioner worked at all is a full week. The second calculation method described in *Sylvester* yields an AWW of $398.28 and a statutory minimum TTD rate of $337.33. The Commission modifies the Arbitrator's decision to correct the benefit rates, as stated.

Penalties and Fees. The Arbitrator awarded Petitioner §19(k) and §19(l) penalties and §16 attorney's fees on the unpaid amount of temporary total disability which she found to be 21-1/7 weeks at Petitioner's TTD rate.

The standard for granting penalties pursuant to section 19(l) differs from the standard for granting penalties and attorney fees under sections 19(k) and 16. Section 19(l) provides in pertinent part, as follows:

> "*If the employee has made written demand for payment of benefits* under Section 8(a) [820 ILCS 305/8] or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. In the case of demand for payment of medical benefits under Section 8(a), the time for the employer to respond shall not commence until the expiration of the allotted 30 days specified under Section 8.2(d) [820 ILCS 305/8.2]. In case the employer or his or her insurance carrier shall *without good and just cause* fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission *shall* allow to the employee additional compensation in the sum of $30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed $10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay." (Emphases added.) 820 ILCS 305/19(l) (West 2014).

Penalties under §19(l) are in the nature of a late fee. *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 763 (2003). In addition, the assessment of a penalty under §19(l) is mandatory "[i]f the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay." *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515 (1998). The standard for determining whether an employer has good and just cause for a delay in payment is defined in terms of reasonableness. *Mechanical Devices*, 344 Ill. App. 3d at 763. The employer has the burden of justifying the delay, and the employer's justification for the delay is sufficient only if a reasonable person in the employer's position would have believed that the delay was justified. *Board of Education of the City of Chicago v. Industrial Comm'n*, 93 Ill. 2d 1, 9-10 (1982).

The standard for awarding penalties under §19(k) is higher than the standard under §19(l). Section 19(k) of the Act provides, in pertinent part, as follows:

> "In case where there has been any *unreasonable* or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award. Failure to

> pay compensation in accordance with the provisions of Section 8, paragraph (b) of this Act shall be considered unreasonable delay." (Emphasis added.) 820 ILCS 305/19(k) (West 2014).

Section 16 of the Act provides for an award of attorney fees when an award of additional compensation under §19(k) is appropriate. 820 ILCS 305/16 (West 2014). Section 16 provides, in pertinent part, as follows:

> "Whenever the Commission shall find that the employer, his or her agent, service company or insurance carrier *** has been guilty of unreasonable or vexatious delay, intentional underpayment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier." *Id*.

Sections 19(k) and 16 require more than an "unreasonable delay" in payment of an award. *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 514-15 (1998). 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. *Id*. at 515. Instead, §19(k) penalties and section 16 fees are "intended to address situations where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose." *Id*. In addition, while §19(l) penalties are mandatory, the imposition of penalties and attorney fees under §19(k) and §16 is discretionary. *Id*.

Petitioner alleged Respondent's delay in paying her TTD from July 7, 2021 through the date of hearing was without good cause and unreasonable and justified the Arbitrator's assessment of §19(l) late penalties. However, the Commission views the evidence differently and finds that Respondent's delay in paying TTD was not objectively unreasonable. Petitioner admitted that she took herself off work on April 6, 2021 and did not receive an off-work slip from her treating physician until she saw Dr. Darwish for the first time on July 7, 2021. Respondent obtained its own expert's opinion on August 2, 2021, less than a month later after Petitioner presented an off-work status slip and relied upon Dr. Bernstein's opinion that Petitioner had already reached maximum medical improvement at that time and could return to work full duty. Dr. Darwish reviewed Dr. Bernstein's §12 report and agreed with his opinion that the MRI showed no abnormalities. Additionally, Respondent disputed its liability based upon whether Petitioner's accident arose out of and in the course of her employment. Under these circumstances, the Commission concludes that Respondent's conduct was not objectively unreasonable and vacates the Arbitrator's award of §19(l) penalties.

As the Commission has found Respondent's delay in paying benefits was not objectively unreasonable, it follows that Respondent's conduct did not rise to the level of bad faith or improper

purpose required for the imposition of §19(k) penalties and §16 fees. The Arbitrator's award of section §19(k) penalties and §16 fees is vacated.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed March 3, 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 reasonable and necessary medical expenses documented in Petitioner's Exhibit 4, as provided in §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's calculation of Petitioner's average weekly wage is modified. Petitioner's average weekly wage is $398.28.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of temporary total disability benefits is modified. Respondent shall pay Petitioner temporary total disability benefits of $337.33 per week (the statutory minimum) for 21-1/7 weeks, for the period of July 7, 2021 through December 1, 2021, as provided in §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's awards of penalties under §19(k) and §19(l) and of attorney's fees under §16 are vacated, for the reasons stated above.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent 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 $7,200.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 19, 2022

MP/dk
o-8/18/2022
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/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	21WC010750
Case Name	O'NEAL, ASHLEY v. WALMART
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	John Popelka
Respondent Attorney	Michelle LaFayette

DATE FILED: 3/3/2022

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

/s/ Raychel Wesley, Arbitrator

Signature

STATE OF ILLINOIS)SS.	☐ Injured Workers' Benefit Fund (§4(d))
COUNTY OF Cook)	☐ Rate Adjustment Fund (§8(g))
	☐ Second Injury Fund (§8(e)18)
	☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

19(b)

Ashley O'Neal Case # **21** WC **10750**

Employee/Petitioner

v. Consolidated cases: _____

Walmart

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Raychel A. Wesley**, Arbitrator of the Commission, in the city of **Chicago**, on **December 1, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

B. ☐ Was there an employee-employer relationship?

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

D. ☐ What was the date of the accident?

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

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

G. ☒ What were Petitioner's earnings?

H. ☐ What was Petitioner's age at the time of the accident?

I. ☐ What was Petitioner's marital status at the time of the accident?

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

K. ☐ Is Petitioner entitled to any prospective medical care?

L. ☒ What temporary benefits are in dispute?

☐ TPD ☐ Maintenance ☒ TTD

M. ☒ Should penalties or fees be imposed upon Respondent?

N. ☐ Is Respondent due any credit?

O. ☒ Other **Prospective medical.**

FINDINGS

On the date of accident, **2/6/21**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$14,736.42**; the average weekly wage was **$515.89**.

On the date of accident, Petitioner was **34** years of age, ***single*** with **1** dependent children.

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

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

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

ORDER

Respondent shall pay reasonable and necessary medical services of **$3,047.34**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of **$343.93**/week for **21-1/7** weeks, commencing **7/7/21** through **12/1/21**, as provided in Section 8(b) of the Act.

Respondent shall pay to Petitioner penalties of **$2,181.50**, as provided in Section 16 of the Act; **$3,635.83**, as provided in Section 19(k) of the Act; and p**$4,440.00**, as provided in Section 19(l) of the Act.

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

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

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

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

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

Signature of Arbitrator

ICArbDec19(b)

Ashley N. O'Neal v. Walmart

Case No.: 21WC010750

FINDINGS OF FACT

Petitioner was employed by Respondent as a customer service associate for approximately 1-1/2 years prior to the accident. She was paid $15.00 per hour and scheduled to work nine hours per day, eight of which were paid and one for lunch. She testified that she worked five days per week, and in the full performance of her job worked 32 to 40 hours per week.

Her job duties consisted of working at the customer service desk in the front of the store. Approximately 85% of her work was processing returns, which included taking carts of merchandise to the back of the store approximately five times per day. She also cashes checks, sends money grams and processes utility bills for customers. The job requires her to stand her entire shift, and included walking and bending to take the merchandise to the back of the store. On average, she lifts approximately 30 pounds at most.

On February 6, 2021, Petitioner slipped and fell in the front vestibule of the entrance while on her last break of the day at approximately 6:00 PM. She went out to her car to get her debit card to pay for items she intended to purchase. Petitioner testified this was a normal and regular practice in her employment by Respondent. Petitioner testified that it was snowing that day and there was water on the concrete floor near the entrance. She attempted to walk around the puddle of water, but slipped and fell backwards onto her head, back, buttocks and left elbow. She briefly lost consciousness. Petitioner testified there were no rugs or mats at the front of the store by the entrance where the water was. She testified that the protocol was for the employer to watch the weather and if rain or snow was predicted, mats or rugs needed to be placed ahead of time. That was not done on this occasion.

Petitioner testified that once she came to, two cart pushers who worked with her helped her up. She sat down for a few minutes to rest, and then went to management to report the accident. She testified that her back and her left elbow were painful at that time.

Prior to this, Petitioner had never injured her low back, left elbow or lost consciousness or suffered a blow to her head. She also had not received any medical care for her low back or left elbow prior to this.

Petitioner testified that her manager prepared an accident report, but she did not review it. She was not sent by Respondent to seek medical care at that time. She testified that she went home after the fall because her clothes were wet, her head hurt and she was in pain. She advised Respondent that she was going home. She testified that once she got home, the aching started in her back, elbow and head. By the end of the day, she had not been provided any work comp information or direction on how to proceed by Respondent. She testified that she eventually received that information approximately one month later. Petitioner called off work the next day, but then returned back to her regular job. She testified that her back started getting worse, and she had headaches that came and went.

Petitioner sought medical care on her own with her primary care physician, Dr. Vankana, on February 10, 2021. Dr. Vankana examined Petitioner, prescribed her medication and imposed light-duty work restrictions. Petitioner testified that her employer accommodated those restrictions. She returned to Dr. Vankana, on March 11, 2021, complaining of low back pain, worse when working for long periods. The report indicates that her pain was a 6 to 7 out of 10 on some days. Dr. Vankana recommended continued light-duty and possible therapy in the future.

On March 27, 2021, Petitioner was seen at Concentra Clinic, where she was sent by her employer. The Arbitrator notes that this is almost two months post accident. She underwent an examination, x-rays of her elbow and spine, and was diagnosed with a concussion, lumbar strain and contusion and a left elbow contusion. She was ordered to undergo physical therapy and given light-duty restrictions of no lifting over ten pounds. Petitioner testified that her employer accommodated those restrictions. Petitioner began physical therapy at Concentra on April 2, 2021. She initially received therapy from April 2 through April 16, and again from May 10 through May 19, 2021. She testified that initially the therapy was not helping her. Petitioner testified that the gap in physical therapy between April 16 and May 10, 2021, was due to the fact that the Respondent had not authorized the treatment. Petitioner testified that on April 6, 2021, she stopped working. She explained that she wanted to give her body a chance to heal and the pain was unbearable with standing. Petitioner returned to Concentra on April 9, 2021, for an office visit. Those notes indicate that Petitioner was having significant difficulties with the physical

aspects of her job and was experiencing throbbing pain in her back. Petitioner returned to the Concentra Clinic on April 16, 2021, and noted that she was feeling better and her back was improving with therapy. Petitioner testified that on April 16 her physical therapy stopped and was not authorized again until May 10. She was seen again at the Concentra clinic on May 10, 2021, and was complaining of bilateral low back pain and constant throbbing. She underwent a few more sessions of physical therapy, before this therapy was no longer authorized by Respondent.

Petitioner testified that once she realized her medical care had stopped through Concentra, she consulted with her lawyer and got the names of a few doctors. She chose to see Dr. Darwish, who she first saw on July 7, 2021. Dr. Darwish examined her, recommended an MRI and physical therapy and authorized her off work. The MRI took place on July 19, 2021, at Hinsdale Orthopaedics. Petitioner also started therapy that day at Illinois Bone and Joint. She underwent therapy there from July 22 through July 29, 2021. She said the therapy there was more intense and more hands-on, and helped her.

On August 2, 2021, Petitioner was seen by Dr. Avi Bernstein at the request of Respondent. Petitioner confirmed that she was complaining of low back pain to Dr. Bernstein, that she told him her pain levels were 4 to 8 out of 10 and her symptoms were aggravated by prolonged standing or sitting and walking. Dr. Bernstein released Petitioner to return to full duty work and found that she was at MMI. Petitioner was scheduled for therapy on August 4, 2021, but canceled it based on Dr. Bernstein's opinion. She explained she did not want to get stuck with the bills from therapy.

Petitioner saw Dr. Darwish for the last time on September 15, 2021. Dr. Darwish examined her, recommended physical therapy and an injection, and authorized her off work. Petitioner testified that neither the therapy or injection have been authorized and she has not been paid TTD benefits since July 7, 2021, when Dr. Darwish took her off work. Petitioner identified three medical bills that remain outstanding from Dr. Vankana, Concentra and Hinsdale Orthopaedics. Petitioner acknowledged that she has not been paid any advances or past due benefits by Respondent and was not authorized to seek further medical care. She states that currently she has pain in her back, especially with walking and standing, which is constant throughout the day. She has no further problems with her head or her elbow.

On cross-examination, Petitioner testified that the work at the service desk ebbs and flows, and at the time of the accident she was on her second break. She explained that she had already selected the items to purchase but realized she didn't have her debit card, so she ran out to the car to get it. She testified she had nothing in her hands when she returned to the store, and the debit card was in her pocket. Petitioner testified that she last saw her physician at Concentra on May 28, 2021, and he continued her light-duty restrictions. She did not return after that date because Concentra had not been paid. Petitioner also testified that as she continued doing her job after the accident, she was leaving early and took days off due to pain. She clarified that it was her decision to stop working, and that the Respondent was accommodating her restrictions. Petitioner testified that Respondent would not accommodate her physical therapy schedule, which led to her decision to stop working.

On re-direct examination, Petitioner testified that she was always standing at the customer service desk, and standing brought on more pain than any lifting she may have done. She testified that she was permitted by Respondent to shop on breaks, and there were no rules against going out to the car during a break.

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. *820 ILCS 305/1(b)3(d)*. To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim *O'Dette v. Industrial Commission, 79 Ill.2d 249, 253 (1980)* including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Commission, 129 Ill.2d 52, 63 (1989).* It is well established that the Act is a humane law of remedial nature and is to be liberally construed to effect the purpose of the Act – that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Commission, 2 Ill.2d 590, 603 (1954).*

Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The Arbitrator, as the trier of fact in this case, has

the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority, 2015 IL App (1st) 133788, ¶ 47.*

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).*

Petitioner's testimony is found to be credible. The Arbitrator finds Petitioner's testimony to be straightforward, truthful, and consistent. Respondent produced no witnesses, and its exhibits, for reasons stated below, did not persuade the Arbitrator.

Issue C, whether an accident occurred that arose out of and in the course of Petitioner's by employment, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner has met her burden in proving that she sustained an accidental injury arising out of and in the course of her employment on February 6, 2021.

Petitioner testified that during her last break of the day she was shopping for items in the store when she realized she forgot her debit card to pay for them. She walked out to her car to retrieve her debit card and was returning to the store when she slipped and fell in the front vestibule of the entrance. She testified it was snowing that day, there was water on the concrete floor and she was attempting to walk around a puddle of water when her feet went out from under her and she fell. She testified it was a normal and regular practice in her employment to shop for items during breaks and there were no company rules against going out to one's car during a break. This testimony was unrebutted by Respondent. Petitioner further stated that the protocol on days when it snows or rains is for mats and rugs to be brought out before the weather begins and laid down in the presence of an employee

whose job it is to stand at the vestibule and wait until the rugs and mats are placed. Petitioner testified she observed this practice on many occasions and that it did not occur on the date she fell.

The Illinois Supreme Court has adopted the doctrine of "personal comfort" whereby injuries received while engaged in those things necessary to the employee's health and comfort, even though they are personal to herself, are considered incidental to the employment. *Hunter Packing Company v. Industrial Commission, 1 Ill.2d 99, 115 N.E.2d 236, 239 (1953); Chicago Extruded Metals v. Industrial Commission, 77 Ill.2d 81, 395 N.E.2d 569, 570 (1979).* Injuries sustained by an employee while in the performance of reasonably necessary acts of personal comfort may be found to have occurred "in the course of" her employment, as they are incidental to the employment. *Eagle Discount Supermarket v. Industrial Commission, 82 Ill.2d 331, 412 N.E.2d 492, 496–497 (1980).*

Here, the Arbitrator concludes that Petitioner was injured while engaged in an act necessary to her health and comfort, even though it was personal to her. The acts of shopping for items during her break and going out to her car are incidental to her employment and are activities that are expressly permitted by the Respondent. Petitioner testified that she temporarily lost consciousness, then was helped up by two co-employees, who helped her up and led her to sit down. The accident occurred in the front vestibule of the store. Respondent did not present either of the co-employees or any video evidence to rebut Petitioner's testimony.

Based on the above, the Arbitrator finds that Petitioner has met her burden in proving that she sustained accidental injuries arising out of and in the course of her employment at work on February 6, 2021.

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 her burden in proving that her current condition of ill-being is causally related to her work injury of February 6, 2021.

Petitioner eventually came under the care of Dr. Darwish on July 7, 2021. He ordered an MRI which revealed mild to moderate right and mild left foraminal narrowing at L3-4 due to disc bulging and mild bilateral foraminal narrowing due to mild disc bulging at L4-5. Dr. Darwish ordered physical therapy which Petitioner

underwent at Illinois Bone and Joint from July 19 through July 29. She testified that the therapy was more intense than the therapy she experienced at Concentra, and that the therapy was helping her.

A few days later, on August 2, 2021, Petitioner was examined by Dr. Bernstein. Dr. Bernstein's report notes that Petitioner was complaining of low back pain on a scale of 4 to 8 out of 10, and that her symptoms were aggravated by prolonged sitting or standing and walking. This is consistent with the therapy records and Dr. Darwish's notes. Dr. Bernstein documented a completely normal exam, noted the radiologist findings from the MRI, and found Petitioner could return to work full duty and was at MMI. Dr. Bernstein's exam documents Petitioner's impressions of the recommendations of Dr. Darwish and her progress in therapy, but there is no evidence that he actually reviewed those records. On November 1, 2021, he issued a supplemental report indicating he reviewed the MRI and observed no evidence of any pathology. The Arbitrator accords Dr. Bernstein's opinions little weight. His characterization of the MRI results in the second report is at odds with both the radiologist and Dr. Darwish's interpretation. Furthermore, Petitioner's difficulties arising from the condition of her low back are well documented in Dr. Darwish's records and in the physical therapy records the week before she saw Dr. Bernstein. His findings are at complete odds with those records, and Petitioner's complaints of pain to him.

Petitioner saw Dr. Darwish again on September 15, 2021. He noted at that visit that she continued to complain of low back pain localized to the right lumbar spine and left lumbar spine, which he described as stabbing pain/achiness. Her pain level was a five on a ten point scale and she was experiencing minimal relief to her pain with ibuprofen. Dr. Darwish recommended six more weeks of physical therapy and pain management for a trigger point injection, and continued to authorize her off work.

The Arbitrator relies on Petitioner's testimony as well as the medical records and medical histories of the treating physicians. The medical histories from Dr. Vankana (PX#1), Concentra (PX#2) and Dr. Darwish (PX#3), demonstrate a consistent history as to the onset of Petitioner's low back work injury on February 6, 2021, and document her ongoing complaints of pain that correlates with Petitioner's testimony.

Based on the above, the Arbitrator finds that Petitioner has met her burden in proving that her condition of ill-being is causally related to her work injury of February 6, 2021.

Issue G, what were Petitioner's earnings, the Arbitrator finds as follows:

Petitioner alleges that her average weekly wage at the time of the accident was $600.00 per week. Respondent disputes this finding and contends that her average weekly wage was $350.87 per week. Petitioner testified that her hourly rate was $15.00 per hour, she was scheduled for nine hours per day and paid for eight, and worked five days per week. She testified that in the full performance of her job as a customer service associate for Respondent she worked 32 to 40 hours per week.

Based on RX#3, the Arbitrator finds that Petitioner's total earnings were $14,736.42, based in part on Respondent's calculations contained in the Exhibit. During that time Petitioner worked a total of 742.69 hours. In order to calculate the number of weeks and "parts thereof" that Petitioner worked, the Arbitrator adds the total hours and divides them by 26, the number of pay periods Petitioner worked. That yields 28.565 weeks. Dividing that figure by the total earnings yields an average weekly wage of $515.89 ($14,736.42 ÷ 28.565 = $515.89).

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:

Overall, the Arbitrator finds Petitioner's medical treatment to be reasonable and necessary and finds that Respondent has not paid for all said treatment. As such, this Arbitrator awards payment of her outstanding bills.

Petitioner presented outstanding bills from Dr. Vankana totaling $170.00, Concentra totaling $2,592.34 and from Hinsdale Orthopaedics totaling $285.00. The Arbitrator finds these medical services to be reasonable and necessary and awards these three bills in their entirety.

The Arbitrator notes that the parties agreed on the record to a credit for bill payments made for the above-mentioned outstanding bills if Respondent provides evidence of the same. The Arbitrator awards and acknowledges a credit if Respondent provides Petitioner evidence of payment.

Issue L, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

Petitioner claims to be entitled to temporary total disability benefits from July 7, 2021, the date Dr. Darwish took her off work, through December 1, 2021, the date of arbitration, representing 21-1/7 weeks. But Respondent disputes that Petitioner is entitled to any lost time benefits and has not paid any benefits on this claim.

Dr. Darwish took Petitioner off work on July 7, 2021, and ordered six weeks of physical therapy. He saw her again on September 15, 2021, and ordered her off work and recommended physical therapy and a trigger point injection from a pain management physician. The Arbitrator finds Petitioner's testimony that she has not worked during this time credible, and adopts Dr. Darwish's opinions that she was incapable of returning to gainful work during this time. The Arbitrator specifically accords no weight to the opinion of Dr. Bernstein.

The Arbitrator awards temporary total disability benefits of $343.93 per week from July 7, 2021 through December 1, 2021, representing 21-1/7 weeks. The Respondent is not entitled to any credit for this time period.

Issue M, whether penalties or fees should be imposed upon Respondent, the Arbitrator finds as follows:

Petitioner requests penalties and attorneys' fees under Section 16, 19 (k) and 19 (l) based upon Respondent's nonpayment of temporary total disability benefits from July 7, 2021 through December 1, 2021.

The Supreme Court has established a test of "objective reasonableness" to determine whether section 19 (k) penalty should be awarded. *Board of Education of the City of Chicago v. Industrial Commission, 93 Ill.2d 1 (1982)* The "objective reasonableness" of the Respondent's conduct is a factual question for the Commission to resolve it. *Id. at 20*.

The Arbitrator finds that Respondent was unreasonable in relying upon the opinion of Dr. Bernstein to deny compensation or treatment. Petitioner's complaints of low back pain were consistent throughout the records from Concentra, where Respondent sent Petitioner for treatment. The medical records and the physical therapy records both document Petitioner's ongoing complaints, made worse with prolonged standing and walking. Her complaints are consistent throughout the records from Concentra, Dr. Darwish and her therapy facility at Illinois Bone and

Joint. She also voiced identical complaints to Dr. Bernstein at her appointment with him. The physical therapy records from just a few days before that appointment document Petitioner's ongoing limitations and pain complaints. Dr. Bernstein's finding of maximum medical improvement while Petitioner was still in physical therapy and making progress is inconsistent with the opinions of all of Petitioner's treating physicians including those she was sent to by Respondent at Concentra. The Arbitrator finds that it was not objectively reasonable for Respondent to rely on Dr. Bernstein's opinion in the face of the overwhelming medical evidence that Petitioner had not reached maximum medical improvement.

The Arbitrator calculates the temporary total disability benefit award as follows: 21-1/7 weeks X $343.93 = $7,271.66. The Arbitrator imposes penalties under section 19(k) of the Act and Section 16 of the Act on this award. The Arbitrator declines to include medical expenses in the award of penalties, based on the parties' agreement that Respondent would be entitled to a credit if it can demonstrate that any of the bills presented by Petitioner remain outstanding.

The Arbitrator finds that Respondent failed, neglected, refused or unreasonably delayed the payment of benefits under Section 8(b) without good cause, and awards Petitioner $4,440.00 in penalties under Section 19(l) of the Act, representing $30.00 per day for 148 days.

The Arbitrator finds that Respondent unreasonably or vexatiously delayed payment of temporary total disability benefits, and awards Petitioner $3,635.83 in penalties under Section 19(k) of the Act.

The Arbitrator awards Petitioner attorney's fees on the unpaid temporary total disability benefits and Section 19(k) penalties ($10,907.49) in the amount of $2,181.50.

Issue O, whether Petitioner is entitled to prospective medical care, the Arbitrator finds as follows:

Dr. Darwish ordered six weeks of physical therapy and a pain management evaluation for a trigger point injection. Based on the Arbitrator's findings above, the Arbitrator finds this treatment is reasonable and necessary

and orders Respondent to authorize and pay for the physical therapy, the pain management evaluation and any treatment recommended as a result of that evaluation.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC026278
Case Name	Ilaben Kasudia v. Rush University Medical Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0358
Number of Pages of Decision	12
Decision Issued By	Christopher Harris, Commissioner, Marc Parker, Commissioner

Petitioner Attorney	David Menchetti
Respondent Attorney	James Egan

DATE FILED: 9/19/2022

/s/Christopher Harris, Commissioner
Signature

DISSENT: /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

ILABEN KASUDIA,

Petitioner,

vs. NO: 15 WC 26278

RUSH UNIVERSITY MEDICAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical benefits, temporary total disability (TTD) benefits and permanent partial disability (PPD) benefits, and being advised of the facts and law, clarifies but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

In this case, the Commission clarifies that Petitioner's condition of ill-being in her left lower extremity was causally related to the work accident of July 10, 2013 through December 10, 2013, but not thereafter. Petitioner was discharged from care at MMI for her left knee on September 23, 2013 by her treating physician Dr. Verma. Petitioner was subsequently discharged by Dr. Lin for her left ankle on December 10, 2013 after completing physical therapy. She had also reached MMI for her left ankle by this time. Petitioner confirmed that she has not returned to Dr. Lin since her discharge.

With respect to the left knee, Petitioner was noted to be markedly improved at the time of discharge. She reported having occasional discomfort with stair climbing, but she was fairly happy with her knee performance. Dr. Verma and Petitioner discussed using the bus rather than the train to minimize stair use, but Dr. Verma stated in the office visit note that he did not believe Petitioner would have a problem. Dr. Verma's clinical examination demonstrated that Petitioner had a normal gait, no effusion, full range of motion and a normal distal neurovascular exam. Dr. Verma noted that Petitioner had some mild discomfort over the plica, but she exhibited no specific

posteromedial or posterolateral joint line tenderness. Dr. Verma allowed Petitioner to return to work full duty. Petitioner in fact returned to her regular job duties for Respondent until she retired in July 2015.

Petitioner sought no additional treatment for her left knee after September 2013 through her return to Dr. Verma for left knee complaints on July 15, 2015 – a gap of nearly two years. The Commission finds this gap in treatment coupled with the discharge at MMI for her left knee significantly affects Petitioner's credibility on the issue of causal connection. Further, the record does not support that Petitioner had a chronic condition in her left knee that may necessitate further treatment after her discharge from care in 2013. There were no further treatment recommendations. Thus, the Commission affirms the Arbitrator's finding of causation and award of medical bills through December 10, 2013 but not thereafter.

The Commission further affirms the remainder of the Arbitrator's Decision, but additionally writes to clarify and correct pages 2 and 7 of the Arbitrator's Decision to state that Respondent shall pay Petitioner PPD benefits of $721.66 per week for 8.35 weeks (5% loss of use of the left foot) and 16.125 weeks (7.5% loss of use of the left leg), as provided in Section 8(e) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 20, 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 the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $14,800.00. 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 the Circuit Court.

September 19, 2022

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

CAH/pm
O: 9/8/22
052

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

DISSENT

I respectfully dissent from the Decision of the Majority and would find that Petitioner's 2015 and 2016 medical treatment was causally related to her work accident. Under the Act,

Petitioner is entitled to treatment "reasonably required to cure or relieve from the effects of the accidental injury." *820 ILCS 305/8(a)*. An MMI determination does not preclude a finding that subsequent medical expenses are due and owing. *Second Judicial Dist. Elmhurst Mem'l Hosp. v. Indus. Comm'n*, 323 Ill. App. 3d 758 (2001).

In this case, Petitioner had reached MMI in September of 2013. At that time, Dr. Verma, her treating knee orthopedic surgeon, noted Petitioner was still having issues with her knee when climbing stairs. He suggested she consider using Pace buses to avoid subway stairs. When Petitioner returned to him in 2015, Dr. Verma noted that her symptoms had continued, and based on their duration, he would recommend an arthroscopy. Dr. Verma clearly related Petitioner's symptoms to the 2013 work accident.

The Majority places great weight on the approximate 22-month gap between Petitioner's treatment for the left knee and states that said gap affects her credibility. I disagree. The medical evidence supports Petitioner's contention that her subsequent condition was related to the original injury. She had no prior knee injury or treatment. She worked as a medical technician for over 30 years. She explained that she put off her care because she was required to provide for her husband who was wheelchair-bound. The record contains multiple notes showing Petitioner took off work for family medical leave. I find her testimony credible and her 2015 and 2016 treatment to be reasonable, necessary and causally related to her July 10, 2013 work accident. Therefore, I dissent.

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC026278
Case Name	KASUDIA, ILABEN v. RUSH UNIVERSITY MEDICAL CENTER
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	David Menchetti
Respondent Attorney	James Egan

DATE FILED: 12/20/2021

/s/Elaine Llerena, Arbitrator

Signature

INTEREST RATE WEEK OF DECEMBER 14, 2021 0.13%

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

Ilaben Kasudia
Employee/Petitioner

v.

Rush University Medical Center
Employer/Respondent

Case # **15** WC **026278**

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 **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **June 21, 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 **July 10, 2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**62,910.12**; the average weekly wage was $**1,209.81**.

On the date of accident, Petitioner was **63** 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 $**6,913.20** for TTD, $**0** for TPD, $**0** for maintenance, and $**6,893.15** for medical bills paid, for a total credit of $**13,806.35**.

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 $806.54 per week for 8 weeks, commencing July 30, 2013 through September 23, 2013, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $6,913.20 for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services related to the treatment of Petitioner's left foot and left leg through December 10, 2013 as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit of $6,893.15 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 $721.66 per week for 8.35 weeks, because the injuries sustained caused the 5% loss of the foot, as provided in Section 8(e)(11) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $721.6 per week for 16.125 weeks, because the injuries sustained caused the 7.5% loss of the leg, as provided in Section 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.

/s/ Elaine Llerena

Signature of Arbitrator

December 20, 2021

STATEMENT OF FACTS

Petitioner testified she worked as a medical technologist for Respondent, handling instruments and specimens for testing. (T. 8) Her job required her to handle instruments and specimens, stand, push and pull racks and carry specimens from one place to another. (T. 8-10) Prior to July 10, 2013, Petitioner was in good health, was working full-time and was not under any medical treatment for her left foot or left leg. (T. 10-11)

On July 10, 2013, Petitioner was performing her job duties when she fell while reaching for specimen containers, striking her left knee and ankle. (T. 14) Petitioner explained that a cart moved and she fell to the ground. (T. 13) Petitioner noticed immediate pain and swelling in her left foot and left knee. *Id.* She reported the incident to her supervisor and was sent to Employee Health. (T. 14) Petitioner testified that she did not believe she was seen at Employee Health on the date of loss, however; she did ultimately treat with Employee Health. (T. 13-14)

Petitioner sought treatment from Dr. Johnny Linn on July 30, 2013 at the request of Respondent's Employee Health Department. (PX1, pgs. 2 & 9)[1] Dr. Linn noted that Petitioner was experiencing sharp pain in her left ankle and took x-rays of her left foot that showed no obvious fractures or dislocations. (PX1, pgs. 3-4) Dr. Linn diagnosed Petitioner as having deltoid ligament sprain and released Petitioner to return to sedentary duty work. (PX1, pg. 3) Dr. Linn indicated that Petitioner should refrain from any work activities that required her to be on her feet or walk for prolonged periods. *Id.* Dr. Linn prescribed six weeks of physical therapy, a brace and follow up with a knee specialist for the left knee pain. *Id.*

Petitioner saw Dr. Nikhil Verma for her left knee on August 5, 2013. (PX2, pg. 2)[2] Dr. Verma noted that Petitioner was experiencing left knee pain after a fall at work. *Id.* Dr. Verma recommended continuing physical therapy and injected Petitioner's left knee. *Id.* Dr. Verma diagnosed Petitioner as having left patellar contusion and noted that Petitioner was off work. *Id.*

Petitioner returned to Dr. Linn on August 13, 2013. (PX1, pg. 20) Dr. Linn diagnosed Petitioner as having left ankle deltoid ligament sprain, compensatory left ankle pain and plantar fasciitis. *Id.* Dr. Linn continued physical therapy and kept Petitioner on sedentary duty. *Id.*

Petitioner followed up with Dr. Verma on August 21, 2013, who noted Petitioner had persistent effusion in the left knee and recommended a left knee MRI. (PX2, pg. 6) The left knee MRI, performed on August 26, 2013, revealed abnormality along the slight lateral trochlea, moderate articular thinning with subchondral cyst formation, bony edema, associated tiny osteophyte, tiny popliteal bursitis, an old injury involving the proximal fibular collateral ligament, and parameniscal cyst in the lateral compartment of the knee. (PX2, pg. 12) Dr. Verma read these findings as evidence of contusion with bone bruising and possible small meniscal tear. (PX2, pg. 10)

On September 10, 2013, Dr. Linn placed Petitioner at maximum medical improvement (MMI) as to the left ankle and placed Petitioner on restricted duty with limited driving, no squatting, kneeling or climbing, avoid overhead lifting or lifting/pushing more than 10 lbs and standing limited to 1 hour and 50 minutes. (PX1, pg. 28) Petitioner reported improvement in her symptoms but continued to complain of weakness whenever she was on her feet for a prolonged period. *Id.*

[1] Also entered into evidence as Respondent's Exhibit 1 (RX1).
[2] Also entered into evidence as Respondent's Exhibit 2 (RX2).

Petitioner returned to Dr. Verma on September 23, 2013, complaining of discomfort with stair climbing, but reporting improvement in her condition. (PX2, pg. 18) Dr. Verma released Petitioner to return to work and declared Petitioner to be at MMI regarding the left knee. *Id.*

Petitioner was on family medical leave from July 26, 2013 through September 23, 2013. (PX4, pg. 3) Petitioner was approved for intermittent family medical leave after December 4, 2013. (PX4, pg. 4)

On December 10, 2013, Dr. Linn noted that Petitioner continued to have some tenderness on palpation over the left ankle, but it had decreased and Petitioner was able to perform the activities of daily living and work full time. (PX1, pg. 34) Dr. Linn released Petitioner from care. *Id.*

Petitioner retired from her employment with Respondent on July 20, 2015. (T. 19-20) Petitioner testified that in February or March of 2015 she was called in by Respondent and told that if she could not lift more than 5 lbs she would have to find another place to go. (T. 20) Petitioner testified that she was forced to retire. *Id.* However, Petitioner also acknowledged that she had planned on retiring in July 2015 when she could start her medical insurance under Medicare. *Id.* On cross examination, Petitioner testified she did not bring any employment actions against Respondent and had worked her regular job until she retired. (T. 31)

Petitioner returned to Dr. Verma on July 15, 2015, complaining of anterior medial left knee pain. (PX2, pg. 25) Dr. Verma performed a left knee injection and recommended a left knee arthroscopy. *Id.* Petitioner returned on August 17, 2015, complaining of continued symptoms in the left knee. (PX2, pg. 28) Dr. Verma again recommended left knee arthroscopy. *Id.*

Petitioner returned to Dr. Verma on January 25, 2016. (RX2, Pg. 373) Dr. Verma noted that Petitioner continued to have left knee pain and had been scheduled for surgery in the past. *Id.* Dr. Verma further noted that Petitioner reported undergoing Hyalgan treatments in India which failed to provide any relief and had some shoe inserts which also failed to provide relief. *Id.* Petitioner also reported falling awkwardly and landing on her left shoulder and complained of ongoing shoulder pain. *Id.* Dr. Verma ordered an updated left knee MRI. *Id.*

Petitioner underwent the left knee MRI on January 27, 2016, the results of which showed stable near full-thickness cartilage loss in the medical aspect of the femoral trochlear trough and suspected intrameniscal degeneration of the posterior horn of the medial meniscus. (RX2, pg. 367) There was no evidence of discrete meniscal tear. *Id.*

Dr. Verma reviewed the MRI on February 1, 2016 and found no obvious knee deformities with no effusion present. (RX2, pg. 363) Dr. Verma diagnosed Petitioner as having left medial meniscus degeneration and medial compartment degeneration. *Id.*

Unrelated to the knee or any work accident, the records reveal Petitioner had a left rotator cuff tear which was repaired arthroscopically by Dr. Verma. (RX2)

On August 1, 2016, Dr. Verma noted Petitioner was recovering from the unrelated left rotator cuff surgery and complained of continued left knee pain and discomfort. (RX2, pg. 256) Regarding the knee, Dr. Verma felt the knee would respond to conservative care, but if not, she was a possible candidate for surgical intervention. *Id.* This was the last medical record presented as it pertains to the knee.

Petitioner testified that she notices left knee and ankle pain when she carries heavy things, walks, climbs stairs and pulls her husband's wheelchair. (T.21)

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes Petitioner testified, without rebuttal, that she advised her supervisor about the work accidental on the date of the accident and was sent by the supervisor to Respondent's employee health department for treatment. The initial report from Dr. Linn on July 30, 2013 reports a work-related injury. The Arbitrator concludes that Respondent was given timely notice of the accident as required under the Act.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The dispositive test when determining when an injury has reached permanency is when the condition has stabilized. *Anders v. Indus. Comm'n*, 332 Ill. App. 3d 501, 507, 773 N.E.2d 746, 751-52 (2002). For example, in *Walker v. Industrial Commission*, the Illinois Appellate Court upheld the Commission's decision finding Petitioner's condition to have reached a state of permanency where Petitioner did not seek medical treatment or surgery for a year-and-a-half following the work injury. *Walker v. Industrial Commission* 345 Ill. App. 3d 1084, 1088, 804 N.E.2d 135, 139 (2004).

As stipulated by the parties, Petitioner sustained a work accident on July 10, 2013 when she fell to the ground and noticed immediate pain in her left foot and left knee. Dr. Linn, and later Dr. Verma, diagnosed her conditions of ill-being, both reporting a history of work-related injury, which resulted in disability requiring Petitioner to miss time from work and to receive medical treatment. After conservative treatment by Drs. Linn and Verma, Petitioner was found to have reached MMI in September of 2013 regarding her left ankle and left knee conditions.

The Arbitrator notes that Petitioner then sought treatment again from Dr. Verma regarding her left knee on July 15, 2015, almost two years after she had been found to have reached MMI for her left knee condition. Additionally, the Arbitrator notes that Petitioner continued to work full duty until her retirement on July 20, 2015.

Based on the above, the Arbitrator finds that Petitioner suffered work-related injuries to her left ankle and left knee on July 10, 2013 that reached a state of permanency on September 10, 2013 and September 23, 2013, respectively.

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:

Based on finding above regarding causal connection, the Arbitrator finds that the treatment rendered to Petitioner regarding her left foot and left knee through December 10, 2013, when Dr. Linn released Petitioner from care, was reasonable, necessary and related to the accidental injuries sustained on July 10, 2013. Therefore, Respondent shall pay reasonable and necessary medical services related to the treatment of Petitioner's left foot and left leg through December 10, 2013, as provided in Sections 8(a) and 8.2 of the Act. The Arbitrator notes that the parties stipulated that Respondent shall receive credit for all such medical expenses it has already paid.

WITH RESPECT TO ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Petitioner was seen by Dr. Linn on July 30, 2013 and that on that day Dr. Linn released Petitioner to return to work with sedentary duty restrictions. The Arbitrator also notes that Dr. Linn found that Petitioner reached MMI regarding her left ankle on September 10, 2013. The Arbitrator further notes that Dr. Verma released Petitioner to return to work and found her to be at MMI regarding the left knee on September 23, 2013.

Based on the above, the Arbitrator finds that Petitioner was temporarily and totally disabled from July 30, 2013 until September 23, 2013. Respondent shall receive a credit of $6,913.20 for temporary total disability benefits paid.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Pursuant to Section 8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors;

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

With regard to subsection (i) of Section 8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator gives this factor no weight.

With regard to subsection (ii) of Section 8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a medical technologist at the time of the accident and that she was able to return to work in her prior capacity as a result of said injury. The Arbitrator gives this factor substantial weight.

With regard to subsection (iii) of Section 8.1b(b), the Arbitrator notes that Petitioner was 63 years old at the time of the accident. The Arbitrator gives this factor considerable weight.

With regard to subsection (iv) of Section 8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner testified that she had planned to retire July 20, 2015 and that Petitioner had worked her regular job until her retirement. The evidence does not indicate that Petitioner's future earnings capacity was affected by the injury. The Arbitrator gives this factor great weight.

With regard to subsection (v) of Section 8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that she was found to have reached MMI in September 2013 regarding her left ankle and left knee. Further, while Petitioner had some continued complaints, she returned to work full duty and did not treat consistently following September 2013. The Arbitrator gives this factor substantial weight.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 5% loss of use of the left foot pursuant to Section 8(e)(11) of the Act and 7.5% loss of use of the right leg pursuant to Section 8(e)(12) of the Act.

WITH RESPECT TO ISSUE (N), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that Respondent is entitled to a credit of $6,913.20 for temporary total disability benefits paid and a credit of $6,893.15 for medical expenses paid.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC023154
Case Name	Brandon Little v. Burke Beverage Inc
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0359
Number of Pages of Decision	14
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Matthew Heinlen
Respondent Attorney	Brad Antonacci

DATE FILED: 9/20/2022

/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

BRANDON LITTLE,

Petitioner,

vs. NO: 18 WC 23154

BURKE BEVERAGE, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

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

We affirm the Arbitrator's finding that Petitioner failed to prove a causal relationship between his work accident and his alleged symptoms and complaints related to the L3 spinal level and nerve distribution. We also affirm the denial of prospective medical treatment in the form of an L4 to S1 spinal fusion as recommended by Dr. Rebecca Kuo. However, we clarify that: 1) Petitioner has not reached maximum medical improvement from his work injury; 2) his current condition of ill-being remains, in part, causally related to the work injury; and 3) he may be entitled to other forms of prospective medical treatment.

We note that the Utilization Review performed on June 29, 2020 (Px6; Rx12) found a fusion to be *not* medically necessary because "[h]is most recent MRI showed only mild disk bulges and foraminal stenosis at L3-4, L4-5 and L5-S1. There is no spondylolisthesis or instability reported at

any level." However, that same report indicated that a spinal cord stimulator *is* medically necessary because, post-laminectomy, Petitioner "continues to complain of persistent low back and lower extremity pain with numbness, left greater than right. He has failed to adequately respond to appropriate conservative treatment" and, according to Official Disability Guidelines (ODG), a spinal cord stimulator "is considered medically necessary at this time." *Id*.

Therefore, we clarify that the Arbitrator's decision should not be considered a termination of causation entirely.

Dr. Kuo has been focused on getting the fusion surgery approved but had previously discussed with Petitioner the option of an SCS. It is possible that she might recommend the SCS again once the fusion is no longer an option (i.e., not being paid for through Petitioner's workers' compensation claim). In any event, we delete the last sentence in the Arbitrator's decision which states, "Prospective medical care is hereby denied" and the last sentence in paragraph one of the Conclusions of Law section which states, "The Arbitrator therefore denies prospective medical care." We do not intend for this decision to suggest that *all* prospective medical care is denied but, rather, that the currently proposed fusion surgery is denied at this time. Similarly, we do not want our decision to be interpreted as ordering an SCS. The causal connection, reasonableness and necessity of any future treatment would be issues for a future hearing.

Based on the above clarifications, we change the Findings section and strike the sentence, "Petitioner's current condition of ill-being is *not* causally related to the accident" and replace it with "Petitioner's current condition of ill-being is, in part, causally related to the accident."

Next, we clarify that the surveillance videos depict nothing that indicate Petitioner was exaggerating, malingering or untruthful about his pain complaints. In fact, we believe the final video reflects pain behavior when he is seen bending over as if to stretch his low back after standing for about eight minutes. Therefore, we clarify that the surveillance videos played no part in our decision to deny the fusion, and we disagree with the Arbitrator's characterization that Petitioner was "active." *Dec. 4, 6*.

We also clarify that we disagree with the Arbitrator's focus on Petitioner's testimony that his pain was "not horrible." *Dec. 4, 6*. Instead, we point out that Petitioner also testified that his pain was about 7½ out of 10 at the time of the hearing but ranges from 6 to 10/10 and "[i]t could be so bad where you want to go to the emergency room, and there's other times where it's manageable if you sit down and elevate your feet." *T.24.* We find that, even though Petitioner's current left thigh complaints are not causally related and a fusion is not reasonable or necessary at this time, Petitioner's continued low back complaints are credible.

Finally, we strike the sentence, "The Arbitrator also questions Petitioner's desire to undergo the surgery, considering he had health insurance coverage to pay for the surgery yet never attempted to have that health insurance cover the surgery." *Dec. 6-7*. Petitioner testified that he did not know he had that option and never tried to have the fusion covered under his group insurance. *T.29-30*. However, even if Petitioner had this option, it is irrelevant. If Petitioner's fusion surgery was causally related to his work injury, it should be covered by Respondent's workers' compensation insurance;

not group insurance. Petitioner should not have to "attempt" to get his group insurance to cover the fusion in order to be found credible about his desire to undergo the surgery.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 26, 2021 is hereby affirmed and adopted with the clarifications noted above.

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

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

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

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.

September 20, 2022

/s/ *Maria E. Portela*

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

SE/
O: 7/26/22
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ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC023154
Case Name	LITTLE, BRANDON v. BURKE BEVERAGE, INC
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Daniel Capron
Respondent Attorney	Brad Antonacci

DATE FILED: 7/26/2021

THE INTEREST RATE FOR THE WEEK OF JULY 20, 2021 0.05%

/s/ Kurt Carlson, Arbitrator
Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

BRANDON LITTLE
Employee/Petitioner

v.

BURKE BEVERAGE, INC.
Employer/Respondent

Case # **18** WC **23154**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Chicago**, on **06/16/2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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, **04/17/2018**, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**111,650.24**; the average weekly wage was $**2,147.12**.

On the date of accident, Petitioner was **41** years of age, ***married*** with **4** dependent children.

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

Respondent shall be given a credit of $**50,703.74** for TTD, $**80,905.52** for TPD, $**0.00** for maintenance, and $**5,725.92** for a PPD advance, for a total credit of $**137,335.18**.

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

ORDER

Denial of Prospective Medical Care
Because Petitioner failed to prove the spinal fusion as recommended by Dr. Kuo is reasonable, necessary, or causally connected the 04/17/2018 accident, prospective medical care 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.

KURT CARLSON **JULY 26, 2021**
Signature of Arbitrator

ICArbDec19(b)

ARBITRATION DECISION

ATTACHMENT

Brandon Little v. Burke Beverage, Inc.

18 WC 23154

FINDINGS OF FACT

Petitioner has been employed by Respondent since 1998, starting as an assistant driver and eventually becoming a driver for beer sales (T. 8-9). He drives a truck, merchandises beer after a sale is complete, picks up out-of-date beer and sometimes delivers barrels of beer (T. 9). He mostly delivers cases of beer. Typically, he delivers 1000 to 1500 cases of beer per day, loading approximately seven to ten cases on a dolly (T. 10).

Prior to April 17, 2018, Petitioner had aches, pains, and stiffness in his low back (T. 11, 28). He testified to a prior work accident in 2008 while working for Respondent (T. 26-27). He injured his right knee and underwent an ACL repair surgery. Petitioner was also struck by a car in 2012 while walking as a pedestrian, injuring his left shoulder and eventually undergoing shoulder surgery for a torn rotator cuff, torn labrum and dislocated collarbone (T. 27-28). He testified he did not seek medical attention for his low back until after April 17, 2018 (T. 11).

On April 17, 2018, Petitioner was delivering beer to the basement of a restaurant (T. 11-12). He slipped down some of the steps, ducked and twisted, but did not fall (T. 12, 25). Pet. Ex. No. 1, p. 000014. He noticed a problem with his lower back (T. 12-13). He continued to work for approximately one week (T. 13).

Petitioner did not seek medical treatment until he appeared at Concentra on April 28, 2018, 11 days after the accident (T. 25). Pet Ex. No. 1, p. 000013. He noted a low back injury as a result of a slip without falling. Petitioner was complaining of back pain without numbness, tingling or weakness and no radiating pain. Dr. Kalra assessed Petitioner with a lumbar strain and referred him to physical therapy. The doctor also provided work restrictions of lifting up to 10 pounds occasionally, pushing/pulling up to 10 pounds occasionally, bending, standing, walking, squatting, and kneeling occasionally. Pet Ex. No. 1, p. 000013. Respondent accommodated Petitioner's light duty restrictions (T. 14). Petitioner began physical therapy at Concentra on April 30, 2018, complaining of left lower back pain and right superior buttock pain. Pet. Ex. No. 1, p. 000033.

During continued treatment with the physicians at Concentra, Petitioner began complaining of pain that was radiating to his right buttock. Pet. Ex. No. 1, p. 000010. Dr. Husain referred Petitioner for an MRI of the lumbar spine and continued Petitioner's work restrictions. The lumbar spine MRI was performed on May 7, 2018. Pet. Ex. No. 1, p. 000008. The radiologist's impression was L3-L4

and L4-L5 mild bilateral foraminal narrowing, and L5-S1 mild to moderate bilateral foraminal stenosis, greater on left with mild central spinal stenosis. Petitioner continued to receive treatment at Concentra, including physical therapy through May of 2018. He noted some improvement in his symptoms.

Petitioner then began receiving medical treatment with Dr. Kuo at Illinois Orthopedic Institute on May 24, 2018. Pet. Ex. No. 2a, p. 000003. He was now complaining of symptoms radiating down to his great right toe. Dr. Kuo assessed Petitioner with right sacroiliitis, right leg radiculopathy and acute on chronic injury to L5-S1. She maintained Petitioner's light duty work restrictions and recommended continued physical therapy. Petitioner then began physical therapy at Illinois Orthopedic Institute. Pet. Ex. No. 2a, p. 000007.

Petitioner reported to Dr. Kuo on June 19, 2018 that physical therapy was helping but he was still having pain *Id*. At 000019. Dr. Kuo then recommended a right sacroiliac joint injection and referred Petitioner to Dr. Malhotra. Pet. Ex. No. 2a, p. 000021. Physical therapy continued at Illinois Orthopedic Institute.

On July 31, 2018, Dr. Kuo noted Petitioner was still feeling about the same, now experiencing tingling and pain down both legs. Pet. Ex. No. 2a, p. 000044. She continued to recommend the sacroiliac joint injection and noted he may need a L5-S1 injection as well. Dr. Kuo recommended continued physical therapy and continued light duty work. Pet. Ex. No. 2a, p. 000045.

Dr. Goldberg examined Petitioner on August 20, 2018 at the Respondent's request. Resp. Ex. No. 1. Dr. Goldberg diagnosed Petitioner with an aggravation of an asymptomatic spinal stenosis at L4-5 and L5-S1. He noted that this was a competent cause of Petitioner's lower back and bilateral radicular symptoms. He recommended a series of 2 to 3 epidural steroid injections, and if Petitioner did not respond positively to them, he then recommended a possible laminectomy at the L4-L5 level. He did not recommend the sacroiliac joint injections. In a supplemental report dated September 6, 2018, Dr. Goldberg confirmed that Petitioner could continue to work with a 10 pound lifting restriction while undergoing the injections. Resp. Ex. No. 2. He also noted that the possible surgery could involve a laminectomy at the L5-S1 level.

Petitioner then presented to Dr. Hussein at Riverside Medical Center on September 7, 2018. Pet. Ex. No. 3, p.0001. Dr. Hussein performed a lumbar epidural steroid injection on that date. Petitioner advised Dr. Kuo on September 11, 2018 that he experienced one day of relief from the injection. Pet. Ex. 2b, p. 000006-7. She continued to restrict Petitioner to light duty work. Dr. Hussein performed a 2nd lumbar epidural steroid injection on October 19, 2018. Pet. Ex. No. 3, p. 0003. Dr. Hussein performed the 3rd injection on December 21, 2018. Pet. Ex. No. 3, p.0005.

Based on Petitioner's alleged lack of response to the injections, on January 4, 2019, Dr. Hussein referred Petitioner back to Dr. Kuo for an evaluation and possible surgical intervention if deemed necessary. Pet. Ex. No. 5, p. 0001. When Petitioner returned to Dr. Kuo on January 11, 2019, he noted 50% of his pain disappeared for 4 to 6 days following the injection. Pet. Ex. No. 2b, p.

000011. Dr. Kuo recommended an L4-5 and L5-S1 laminectomy. She expected Petitioner to return to full duty work in 3 months. *Id* at 000012.

Dr. Kuo performed the L4-S1 laminectomy on February 20, 2019. Pet. Ex. No. 2b, p. 000013. Petitioner advised Dr. Hussein on March 1, 2019 that his right leg pain had improved since the surgery. He was still noting back pain at the surgical site. Pet. Ex. No. 5, p. 0003. Petitioner also testified he felt he was getting better, after the first few days after surgery (T. 18, 26). He testified his left leg then started going numb from the groin area to his knee (T. 18). He noted excellent resolution of the pain down his right leg (T.26). Petitioner also advised Dr. Kuo on March 1, 2019 that the numbness and tingling down his leg was now gone. Pet. Ex. No. 2b, p. 000017. He was still experiencing pain from his right buttock to his knee. Dr. Kuo restricted Petitioner from work and recommended physical therapy.

Physical therapy occurred at Illinois Orthopedic Institute following surgery. Pet. Ex. No. 2b. Petitioner was reporting gradually improving tolerance to activity and movement but continued back pain. Pet. Ex. No. 2b.

On April 5, 2019, Dr. Kuo ordered a new MRI of the lumbar spine. Petitioner noted his back was doing better but his right leg started getting numb again. She continued to restrict Petitioner from work. Pet. Ex. No. 2b, p. 000035-36. The May 20, 2019 MRI of the lumbar spine revealed a laminectomy defect at L4 and L5. At L5-S1 there was mild disc degeneration. *Id*. At 000044-46. According to Dr. Goldberg, there was no stenosis centrally or in the neuroforamen. Resp. Ex. No. 3. Dr. Kuo interpreted the MRI on May 31, 2019 to only demonstrate minimal neuroforaminal stenosis, if any, at L4-L5 and L5-S1 on the left side, certainly not enough to quite cause the symptoms he has, although certainly possible. Pet. Ex. No. 2b, p. 000048. Dr. Kuo continued to restrict Petitioner from work and recommended an EMG of the left lower extremity. *Id*.

Physical therapy continued at Illinois Orthopedic Institute. Pet. Ex. No. 2b. Petitioner also continued to follow up with Dr. Hussein at Illinois Pain Institute in 2019. Pet. Ex. No. 5. The EMG performed on July 17, 2019 revealed acute on chronic lumbar radiculopathy involving left L5 and S1 nerve root. Pet. Ex. No. 2b, p. 000058. Following the review of the EMG on July 26, 2019, Dr. Kuo considered performing a left L4-L5 and L5-S1 transforaminal interbody lumbar fusion at L4 through S1, or attempting a spinal cord stimulator. *Id*. At 000064. Dr. Kuo continued to restrict Petitioner from work. Physical therapy continued at Illinois Orthopedic Institute. *Id*.

Dr. Goldberg again evaluated Petitioner on September 6, 2019. Resp. Ex. No. 3. He also reviewed Petitioner's updated medical records, including the updated MRI and EMG. While Dr. Goldberg noted Petitioner was not at MMI, he explained that Petitioner does not have a L5 radiculopathy type of clinical picture. Petitioner was experiencing alleged numbness in the left anterior thigh, and this correlates with the L3 nerve root and not the L5 nerve root. The MRI further showed no evidence of any compression on the left side at the L3 nerve root. Dr. Goldberg recommended an FCE. If the FCE was valid, Dr. Goldberg recommended Petitioner return to work within the parameters of the FCE. If the FCE was invalid, Dr. Goldberg felt Petitioner could return to full duty

work because the MRI following surgery showed very good decompression. In the meantime, Dr. Goldberg noted Petitioner could return to work with a 20 pound lifting restriction and he confirmed this opinion in his September 20, 2019 report. Resp. Ex. No. 4. Furthermore, Dr. Goldberg was of the opinion that Petitioner does not require a spinal cord stimulator or any additional fusion surgery based on the history he obtained from Petitioner, his review of the records and his examination. Resp. Ex. No. 3.

In follow up with Dr. Kuo on October 4, 2019, Dr. Kuo prescribed an FCE with validity testing. Pet. Ex. No. 2b, p. 000077. An FCE took place at Illinois Orthopedic Center on October 23, 2019. Pet. Ex. No. 4. The McGill Pain Questionnaire suggested poor psychodynamics and a potential for unreliable pain reports during functional testing. *Id*. At 0005. The Fear Avoidance Beliefs Questionnaire suggested Petitioner is a high fear avoider and suggested the potential for unreliable pain reports during functional testing. *Id*. The Oswestery Low Back Disability Questionnaire suggested the potential for unreliable pain reports during the functional testing. *Id*. At 0006. Consistency of effort results indicated Petitioner put forth full effort. *Id*. At 0003. Petitioner demonstrated the ability to perform 49.6% of the physical demands of the job of a driver and demonstrated the ability to perform within the medium physical demand category. Pet. Ex. No.4.

Following review of the FCE, Dr. Kuo allowed Petitioner to return to light duty work with a 20 pound lifting restriction on November 1, 2019. Pet. Ex. No. 2c, p. 0019. Petitioner later noted to Dr. Hussein that he was doing reasonable well working with restrictions on November 22, 2019. Pet Ex. No. 5, p. 0010.

Through the end of 2019 and throughout 2020, Petitioner continued to followed-up with Dr. Kuo (Pet. Ex. No. 2c) and Dr. Hussein (Pet. Ex. No. 5). Dr. Kuo continued to recommend the lumbar fusion and Petitioner would note his symptoms in his legs and back. Dr. Kuo noted that Petitioner's obesity was an issue on January 5, 2021. Pet. Ex. No. 2c, p. 0040. Dr. Kuo's records indicate she last treated Petitioner on March 2, 2021, noting his symptoms remained unchanged. *Id*. At 0042. She allowed Petitioner to continue to work light duty and Dr. Kuo was awaiting surgical approval.

Petitioner testified he is currently taking Norco (T. 21). He testified Respondent has been great about accommodating his restrictions, allowing him to use a floor scrubber that he drives, make wine boxes for wine routes, and fix damaged beer (T. 22-23). He testified his pain is "not horrible," sometimes worse than other times (T. 24). Petitioner would like to proceed with the spinal fusion surgery. He testified he has health insurance through Respondent and has had that insurance since April 2018. He has never attempted to have his health insurance cover the costs of the spinal fusion surgery (T. 29-30).

Respondent placed into evidence a surveillance report and video from August 15, 2019, August 16, 2019 and August 17, 2019. Resp. Ex. Nos. 9 and 10. The Petitioner is active during the surveillance. He is seen driving a vehicle, pushing a grocery cart while shopping and putting bags

away. Petitioner is noted to be pumping gas at a gas station and watching a high school football practice.

The Respondent placed into evidence numerous Utilization Review reports. A June 15, 2018 Utilization Review noted that the Orthocor System using pulsed electromagnetic field technology was not medically necessary because this is not recommended for treatment for lower back pain due to a lack of sufficient evidence. Resp. Ex. No. 5. A July 6, 2020 Utilization Review determined that the right sacroiliac joint injection was not medically necessary. Resp. Ex. No. 6. This type of injection is recommended for inflammatory spondyloarthropathy, and there was no evidence Petitioner was suffering from this. A July 11, 2018 Utilization Review again determined that the Orthocor system using pulse electromagnetic field technology was not medically necessary for the same reasons as the June 15, 2018 Utilization Review. Resp. Ex. No. 7. A July 31, 2018 Utilization Review found additional physical therapy to not be medically necessary. Resp. Ex. No. 8. The Official Disability Guidelines suggest physical therapy for 10 visits over 8 weeks for intervertebral disc disorders and also spinal stenosis. At that point, Petitioner could have continued with a self-directed program. Petitioner had 24 sessions of physical therapy and his pain remained essentially unchanged, so the additional physical therapy was unreasonable and unnecessary. Resp. Ex. No. 8. Finally, a June 29, 2020 Utilization Review found that the fusion surgery recommended by Dr. Kuo was not reasonable or necessary but that a spinal cord stimulator was reasonable and necessary. Resp. Ex. No. 12. According to the Official Disability Guidelines, a fusion is not recommended for workers' compensation cases with degenerative disc disease or spinal stenosis without degeneration spondylolithesis or instability. The fusion is not recommended due to a lack of evidence of benefit, or risk exceeding benefit. The MRI did not reveal degenerative spondylolithesis or instability at any level.

Respondent placed into evidence a payment ledger. This ledger documented $50,703.74 in paid TTD benefits, $80,905.52 in paid in TPD benefits as well as a $5,725.92 PPD advance. Resp. Ex. No. 11.

CONCLUSIONS OF LAW

In support of the Arbitrator's decision relating to (F), whether Petitioner's current condition of ill-being is causally related to the injury, and (K), whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

Based on the following, the Arbitrator finds that the Petitioner failed to prove the spinal fusion as recommended by Dr. Kuo is reasonable, necessary, or casually connected to the April 17, 2018 accident. The Arbitrator therefore denies prospective medical care.

First, Petitioner is complaining of symptoms that are causally unrelated to the April 17, 2018 accident. As Petitioner advised Dr. Goldberg, he is experiencing numbness in his left anterior thigh. Dr. Goldberg noted this correlates with the L3 nerve root and not the L5 nerve root.

Throughout Petitioner's initial medical treatment, he never made any complaints of symptoms in the distribution of the L3 nerve root. When Petitioner initially began making complaints of radicular symptoms to the physical therapist at Concentra on April 30, 2018, he noted his pain was radiating to the right buttock. He never mentioned symptoms in the left anterior thigh. When Petitioner presented to Dr. Husain on May 5, 2018, He again was making complaints of radicular pain to the right buttock but did not make any complaints of symptoms in the left anterior thigh.

Second, Petitioner's diagnoses never involved the L3 level. Following his initial treatment with Dr. Kuo on May 24, 2018, Dr. Kuo assessed right sacroiliitis, right leg radiculopathy and acute on chronic injury to L5-S1. There is not mention of any diagnoses or injury to the L3 level. Once again on July 31, 2018, Dr. Kuo's diagnosis is in no way related to the L3 level in the spine.

Third, Petitioner's treatment was never directed to the L3 nerve root or L3 level. Dr. Kuo recommended injections at the L5-S1 level, as did Dr. Hussein. The treatment Petitioner underwent was directed to these two levels of the spine, and unrelated to the L3 level. Dr. Hussein performed injections at the L4-L5 and L5-S1 level. Dr. Kuo eventually performed surgery in the form of a L4-S1 laminectomy that did not involve the L3 level.

Fourth, the objective findings do not support Petitioner's subjective complaints. Again, Petitioner advised Dr. Goldberg at the time of the September 6, 2019 examination that his symptoms involved numbness in the left anterior thigh. Dr. Goldberg noted this correlates with the L3 nerve root and not the L5 nerve root. As Dr. Goldberg noted, the MRI from May 20, 2019, performed after surgery, showed no evidence of any compression on the left side at the L3 nerve root. There are no objective findings to support Petitioner's subjective complaints at the L3 level.

Fifth, the May 20, 2019 MRI further revealed no findings to support a L5-S1 foraminal interbody fusion. As Dr. Goldberg noted, that MRI revealed laminectomy defect at L4 and L5 with mild disc degeneration at L5-S1. There was no stenosis centrally or in the neuroforamen. Furthermore, Petitioner did not have radiculopathy in an L5 pattern, as noted by Dr. Goldberg. The lack of L5 radiculopathy would not support performing the recommended fusion. As Dr. Goldberg found, the MRI performed postoperatively shows very good decompression.

Sixth, the lack of objective support for the fusion was also confirmed with the June 29, 2020 Utilization Review. The Utilization review found a lumbar fusion is not recommended in cases like Petitioner's, with degenerative disc disease or spinal stenosis without degenerative spondylolisthesis or instability. There were no findings of degenerative spondylolisthesis or instability on objective examination.

Seventh, the Petitioner testified that his pain is "not horrible." This testimony is supported by the video surveillance from August 2019 which showed Petitioner to be active. The Arbitrator also questions Petitioner's desire to undergo the surgery, considering he had health insurance

coverage to pay for the surgery yet never attempted to have that health insurance cover the surgery.

Based on the above, the Petitioner is complaining of symptoms that are unrelated to the work accident at a level of the spine that was not injured in the accident. His initial symptoms, treatment recommendations and treatment were all directed to different levels of the spine that are unrelated to Petitioner's current symptoms. Petitioner's MRI findings following surgery do not illustrate findings to support surgery at the levels injured in the accident. Petitioner's current symptomatology is at a level of the spine unrelated to the prior surgery and which is objectively normal. There are no objective findings to support surgery, as confirmed by both Respondent's Section 12 examiner and the Utilization Review.

Based on the foregoing, Petitioner failed to prove the spinal fusion as recommended by Dr. Kuo is reasonable, necessary or causally connected to the April 17, 2018 accident. Prospective medical care is hereby denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC011905
Case Name	Debra Pedigo v. Southern Illinois Healthcare
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0360
Number of Pages of Decision	23
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Eric Kirkpatrick
Respondent Attorney	D. Brian Smith

DATE FILED: 9/21/2022

/s/ Deborah Baker, Commissioner

Signature

22IWCC0360

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DEBRA PEDIGO,

Petitioner,

vs. NO: 19 WC 11905

SOUTHERN ILLINOIS HEALTHCARE,

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, whether Petitioner's current condition is causally related to her alleged repetitive trauma accident, Petitioner's entitlement to medical expenses, benefit rates, Petitioner's entitlement to temporary total disability benefits, and Petitioner's entitlement to permanent partial disability benefits and being advised of the facts and law, changes 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 date of accident, the Petitioner herein alleged a repetitive trauma accident that manifested on October 15, 2018. Initial medical records also indicate a manifestation date of the same date. Nevertheless, the Commission finds that a more appropriate accident date is October 16, 2018. An employee who alleges repetitive trauma injuries is held to the same standard of proof as the employee alleging injury from specific trauma. *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill. 2d 524, 530 (1987). The employee must still prove a date of injury. In a repetitive trauma claim, the date of injury is the date on which the injury manifests. The "manifestation date" is "the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable

person." See *White v. Illinois Workers' Compensation Commission*, 374 Ill. App. 3d 907, 910 (4th Dist. 2007), citing *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill. 2d 524, 531 (1987).

Professor Larson's workers' compensation treatise provides more instruction on this issue:

> The practical problem of fixing a specific date for the accident has generally been handled by saying simply that the date of accident is the date on which disability manifests itself. Thus, in [*Ptak v. General Electric Co.*, 13 N.J. Super. 294, 80 A.2d 337 (1951)], the date of a gradually acquired [back] strain was deemed to be the first moment the pain made it impossible to continue work, and in [*Di Maria v. Curtiss-Wright Corp.*, 23 N.J. Misc. 374, 44 A.2d 688 (1945)], the date of accident for gradual loss of use of the hands was held to be the date on which this development finally prevented claimant from performing his work. However, for certain purposes the date of accident may be identified with the onset of pain occasioning medical attention, although the effect of the pain may have been merely to cause difficulty in working and not complete inability to work.

Durand v. Industrial Comm'n, 224 Ill. 2d 53, 72 (2006), citing 3 L. Larson, Larson's Workers' Compensation Law § 50.05, at 50-11-50-12 (2005).

In short, courts considering various factors have typically set the manifestation date on either the date on which the employee requires medical treatment or the date on which the employee can no longer perform work activities. *Durand v. Industrial Comm'n,* 224 Ill. 2d 53, 72 (2006).

Here, Petitioner initially sought, required, and received medical treatment for her left hand/wrist on October 16, 2018 at Work Care, Respondent's in-house occupational medicine provider. She was diagnosed with deQuervain's tendonitis (and eventually left carpal tunnel syndrome as well) and was restricted from using her left hand/thumb. While Petitioner testified she was referred to Work Care after reporting her condition to Respondent's workers' compensation coordinator, the only evidence showing when Petitioner reasonably became aware of both the fact of the injury and the causal relationship of the injury to her employment occurred on October 16, 2018, when Nurse Practitioner Kara Flatt noted Petitioner's pain began while sorting paper at work. During this visit, Ms. Flatt diagnosed deQuervain's tendonitis, placed Petitioner on restricted duty with no use of her left hand, and recommended a velcro splint. There is insufficient evidence in the record to indicate that Petitioner was aware of the relationship between her injury and her employment prior to this date. Accordingly, the Commission finds that the most appropriate manifestation date in the instant case is October 16, 2018. The Commission changes the Decision of the Arbitrator as such.

Pertaining to the issue of permanent disability, the Commission also corrects the Decision of the Arbitrator. In the Decision of the Arbitrator, Petitioner was awarded permanent partial disability benefits of $532.08/week for 24.6 weeks, as Petitioner's repetitive trauma accident caused a 12% loss of use of her left hand pursuant to *Section 8(e)(3) of the Act*. The Commission notes the error in citing to Section 8(e)(3) of the Act for a repetitive trauma hand disability award

instead of Section 8(e)(9) of the Act.

Section 8(e)(9) of the Act, regarding scheduled injuries to the hand, states in relevant part:

"190 weeks if the accidental injury occurs on or after June 28, 2011…and if the accidental injury involves carpal tunnel syndrome due to repetitive or cumulative trauma, in which case the permanent partial disability shall not exceed 15% loss of use of the hand, except for cause…" 820 ILCS 305/8(e)(9).

The Commission notes that the disability in the instant case was to Petitioner's left hand, thus disability should be awarded in accordance with Section 8(e)(9) of the Act. Additionally, the disability involves carpal tunnel syndrome due to repetitive trauma and occurred after June 28, 2011, thus the above-cited portion of Section 8(e)(9) of the Act applies, dictating that the disability award be granted applying the 190 week value.

Based on the above, the Commission changes the Decision of the Arbitrator so that the permanent disability award is granted pursuant to Section 8(e)(9) of the Act. Based on this section, Petitioner's 12% loss of use of the left hand equates to permanent disability benefits of $532.08/week for 22.8 weeks.

All else is affirmed.

IT IS THEREFORE FOUND BY THE COMMISSION that the Decision of the Arbitrator filed September 20, 2021, as corrected above, is hereby affirmed and adopted.

IT IS FURTHER FOUND BY THE COMMISSION that the date of accident for Petitioner's repetitive trauma injury is October 16, 2018.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay for the medical bills listed in Petitioner's Exhibit 6, as provided in Section 8(a) of the Act and in accordance with medical fee schedules. 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.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $591.20 per week for a period of 1 week, 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 pay to Petitioner the sum of $532.08 per week for a period of 22.8 weeks, as provided in Section 8(e)(9) of the Act, for the reason that the injuries sustained caused a 12% loss of use of the left hand.

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 $13,900.00. 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.

September 21, 2022
O: 7/27/22
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	19WC011905
Case Name	PEDIGO, DEBRA v. SOUTHERN ILLINOIS HEALTHCARE
Consolidated Cases	No Consolidated Cases
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Eric Kirkpatrick
Respondent Attorney	D. Brian Smith

DATE FILED: 9/20/2021

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 14, 2021 0.05%

/s/ Jeanne AuBuchon, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DEBRA PEDIGO
Employee/Petitioner

v.

SOUTHERN ILLINOIS HEALTHCARE
Employer/Respondent

Case # **19** WC **11905**

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 **June 14, 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 **10-15-18**, 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 $**46,113.60**; the average weekly wage was $**886.80**.

On the date of accident, Petitioner was **63** years of age, ***married*** 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 $**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 $**any and all paid** under Section 8(j) of the Act.

ORDER

The Respondent shall pay for the medical bills listed in in Petitioner's Exhibit 6**,** as provided in 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. The Respondent shall indemnify and hold the Petitioner harmless from any claims arising out of the expenses for which it claims credit.

Respondent shall pay Petitioner temporary total disability benefits of **$591.20**/week for **1** week.

Respondent shall pay Petitioner permanent partial disability benefits of **$532.08/week for 24.6 weeks** pursuant to Section 8(e)(3) of the Act because the injuries sustained caused **12% loss of use of the left 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

SEPTEMBER 20, 2021

PROCEDURAL HISTORY

This matter proceeded to trial on June 14, 2021. 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 left hand and wrist conditions; 3) liability for medical bills; 4) entitlement to TTD benefits for one week; and 5) the nature and extent of the Petitioner's injury.

FINDINGS OF FACT

At the time of the accident, the Petitioner, who was 63 years old, was employed by the Respondent, as accounting specialist. (T. 11) She retired in December 2019. (T. 28) Prior to the time of the accident/manifestation of injury on October 15, 2018, the Petitioner processed invoices, check requests, mileage requests, employee expense reimbursements, accounts payable refunds – anything that required payment. (T. 11-12) She also reviewed statements, such as monthly key card statements for employees with purchasing cards. (T. 12) Her duties included data entry and running reports. (T. 12-13) She printed and sorted 750 to 1,000 patient refund checks one day per week, which included flipping pages with both hands that involved twisting by the Petitioner's wrists. (T. 13-14) On another day each week, she printed 500 to 700 accounts payable checks that involved the same sorting routine as patient refund checks. (T. 15-16) With the accounts payable, the Petitioner folded up to five pages at a time and stuffed envelopes. (T. 17-18) She also described other typing duties that occurred throughout the week. (T. 11-16) Once a week, she would take 25 to 40-pound bags of mail to the mail room, pick up mail bags, take them back to the corporate office and sort the mail, resulting in sorting thousands of pages every week. (T. 19-21) The Petitioner, who is right-hand dominant, began the sorting duties in 2017. (T. 17, 22)

The Petitioner testified that she generally worked 40 hours per week from 7:00 am to 3:30 pm and occasionally worked 60 to 70 hours in a week. (T. 35-36) She said she rarely took breaks. (T. 36-37) On cross-examination, she stated that she did not perform one job duty continuously for a period of eight hours per day, and that her data entry work comprised 80 percent of her work time, with printing and sorting checks, stuffing envelopes and moving mail comprising the other 20 percent. (T. 39)

A job analysis report of the Petitioner's duties was prepared on March 15, 2020, by Karen Kane-Thaler, a vocational consultant with CompAlliance Managed Care, who was engaged by the Respondent. (RX5) The report stated that in a 9-minute, 38-second observation, the subject performed 140 keystrokes with both hands, 29 keystrokes with the right hand only and seven keystrokes with the left hand only. Ms. Kane-Thaler reported that the account specialist will complete 90 invoices in batches of 10, typically taking 1½ hours a day. (Id.) The "P-Card" checking and approval procedure included filling in names and information on preformatted emails, but the report did not state how often that occurs. (Id.) The descriptions of check sorting, folding, sealing and mailing and matching checks and explanations were consistent with the Petitioner's descriptions. (Id.) The report stated that matching checks and descriptions and putting them in envelopes took 18-32 seconds per envelope, and about 3,000 were processed per month. (Id.)

Ms. Kane-Thaler also prepared a 16½-minute video that showed a man at a computer primarily using a roller ball with his right hand and occasional typing with both hands. (RX6) The typing occurred continuously for about 10-20 seconds in about a 5-minute span. (Id.) The subject sorted checks and accompanying documents for approximately 3½ minutes – completing approximately 13 sets and stuffing them into envelopes. (Id.) In another portion of the video, the

subject flipped approximately 16 sets of checks (approximately 70 checks in all) in about 1½ minutes. (Id.)

The Petitioner testified that Ms. Kane-Thaler never watched her perform her duties, and that she never met Ms. Kane-Thaler. (T. 43) The Petitioner also stated that the video does not accurately depict her job duties in that it showed very few keystrokes, moving the mouse "a little bit," performing a task that had little data entry, and handling and folding documents with fewer pages than what she handled. (T. 31-33)

The Respondent also submitted a job description that included a description of physical demands prepared on November 30, 2018, and signed by the Petitioner's supervisor that stated the Petitioner's job entailed one to two hours per day of repetitive use of hands, no simple or light grasping and one to two hours per day of fine dexterity work with both hands. (RX7)

In an Orthopaedic Institute Workers' Compensation Information and Communication release, the Petitioner wrote that her symptoms of pain began in June 2018 and that her injury occurred from increased repetitive use of her hand to sort, flip and stack paper, stapling them and stuffing them in envelopes. (RX8) For job duties, the Petitioner wrote 80 percent of her duties was data entry, 20 percent was sorting documentation to attach to checks, stapling them together, folding them and stuffing them in envelopes and taking 20-30-pound bags to the corporate office to mail. (Id.)

The Petitioner testified that after "a while" of performing her duties, her hands started hurting – the left more than the right. (T. 22-23) She reported it to her supervisor three or four times and requested help with these duties, but was refused, and on the last instance was told to report the injury to workers' compensation. (T. 23)

The Respondent sent the Petitioner to Work Care, an in-house occupational medicine provider, where she saw Nurse Practitioner Kara Flatt on October 16, 2018. (PX3) The Petitioner testified that she initially reported pain in her left thumb joint at the base of her thumb an in her wrist to the point that she was losing her grip and had difficulty picking up things. (T. 24-25) NP Flatt diagnosed the Petitioner with de Quervain's tendonitis (sic), gave the Petitioner a splint and instructed her to use ice and elevation and follow up the following week. (Id.) The Petitioner was given a restriction of not using her left hand/thumb. (Id.) The Petitioner returned to Work Care on October 23, 2018, reporting her pain improved slightly. (Id.) At that time, she was diagnosed with radial styloid tenosynovitis (a.k.a de Quervain's tenosynovitis), was referred to occupational therapy and was given work restrictions of limited use of her left hand and thumb and no sorting of paper or checks. (Id.)

The Petitioner underwent occupational therapy at Southern Illinois Healthcare Murphysboro Rehab for six visits from October 25, 2018, through November 13, 2018. (PX5) She testified that her condition did not improve with therapy. (T. 25)

The Petitioner returned to Work Care on November 8, 2018, and reported no improvement. (Id.) Nurse Practitioner Mindy Dudenbostel diagnosed strain of the flexor muscle, fascia and tendon of the left thumb at forearm level. (Id.) She continued work restrictions and occupational therapy. (Id.) On November 21, 2018, the Petitioner saw NP Dudenbostel again, at which time an MRI was ordered. (Id.) NP Dudenbostel added a diagnosis of strain of the long flexor muscle, fascia and tendon of the left thumb at wrist and hand level, and work restrictions were continued. (Id.)

The Petitioner testified that her condition worsened into early 2019, as she continued to work. (T. 26) She experienced shooting pain at the base of her left thumb and to her wrist. (T. 26-27)

Dr. Daniel Phillips, a neurologist at Neurological & Electrodiagnostic Institute, performed EMG and nerve conduction studies on January 2, 2019. (PX4) He found mild to moderate, predominantly demyelinative, sensorimotor median neuropathy across the left carpal tunnel. (Id.)

Also on January 2, 2019, the Petitioner underwent a Section 12 evaluation with Dr. R. Evan Crandall, a hand surgeon at Aesthetic & Reconstructive Surgery Associates. (RX1) The Petitioner gave a job description as follows: "I do data entry, print checks, sort checks and attach documentation. I also print patient refund checks each week. I sort these checks. Separate patient refunds from insurance company refunds. I then sort all bills up for refunds to insurance companies and attach it to check. Then I fold all of these and stuff in envelopes to be mailed." (Id.)

Upon physical examination, Dr. Crandall conducted the following tests on the Petitioner's left upper extremity with negative results: grind test, ulnar Tinel's sign, median Tinel's sign, Phalen's test and Finkelstein test. (Id.) The Petitioner experienced numbness in her thumb on the arm raise test and had a positive provocative test. (Id.) Dr. Crandall found no evidence of ganglions, trigger fingering or thenar muscle atrophy. (Id.) Testing also showed decreased radial sensation and range of motion in the Petitioner's left thumb, as well as decreased grip and pinch strength. (Id.) X-rays showed substantial osteoarthritis of the left and right thumb carpometacarpal (CMC) joints and at the distal interphalangeal (DIP) joints of all fingers. (Id.) Dr. Crandall reviewed the EMG and nerve conduction studies. (Id.)

Dr. Crandall diagnosed the Petitioner with left CMC osteoarthritis and mild left carpal tunnel syndrome. (Id.) He stated that based on the Petitioner's job description, he did not believe her work was a contributory factor in the cause of her conditions in that the work would not be considered hand intensive. (Id.) For the Petitioner's thumb, Dr. Crandall listed treatment recommendations of anti-inflammatory medications, cortisone injection or surgery, which would include DMD arthroplasty, fusion or implant. (Id.) He stated that the need for surgery or treatment for her carpal tunnel syndrome was not related to the Petitioner's work. (Id.) He found that she had reached maximum medical improvement and could work with no restrictions. (Id.) He recommended further treatment with anti-inflammatory medications. (Id.)

The Petitioner's primary care physician referred the Petitioner to Dr. Steven Young, an orthopedic surgeon specializing in hands and wrists at the Orthopaedic Institute of Southern Illinois, whom the Petitioner saw on February 7, 2019. (PX1) The Petitioner's description of her job duties was consistent with her testimony. (Id.) Dr. Young noted that an outside X-ray showed left thumb degenerative arthritis and questionable schaphotrapezio-trapezoid (STT) arthritis. (Id.) He reviewed the studies performed by Dr. Phillips. (PX2) The physical examination of the left hand showed positive median nerve flexion compression, no atrophy, positive Tinel's elbow, negative Tinel's wrist, positive ulnar nerve flexion compression, slight pain in the first compartment, positive trapeziometcarpal stress/shoulder sign/thumb compression grind and no pain at the scapholunate interval. (Id.) Dr. Young diagnosed the Petitioner with arthritis of the CMC joint of the left thumb and carpal tunnel syndrome of the left wrist. (PX1)

On March 7, 2019, after noting a positive Finkelstein test during an examination, Dr. Young added a diagnosis of left de Quervain tenosynovitis and reported that the Petitioner's work contributed to and exacerbated her symptoms. (Id.) On April 5, 2019, Dr. Young performed

ligament reconstruction and tendon interposition arthroplasty to the Petitioner's left thumb, left flexor carpi radialis transfer to the first metacarpal, left schaphotrapezoitrapezoidal resection arthroplasty, left carpal tunnel release and left deQuervain's release. (Id.) He imposed a work restriction of right upper extremity work only beginning April 15, 2019. (Id.)

The Petitioner had follow-up visits with Dr. Young on April 19, 2019, May 3, 2019 and May 16, 2019, at the last of which, Dr. Young ordered occupational therapy. (Id.) At a visit with Dr. Young on July 18, 2019, the Petitioner reported that she was doing well, going to therapy and making progress. (Id.) She reported some stiffness and was unable to fully adduct her thumb was had no pain. (Id.) Dr. Young discharged her from care on August 15, 2019. (Id.)

On November 22, 2019, Dr. Crandell issued a second report after reviewing Dr. Young's records. (RX2) He wrote that the records did not change his opinions. (Id.) He reiterated that the Petitioner did not have a hand-intensive position, explaining that Petitioner's typing was unlikely to produce enough keystrokes to be considered hand intensive under OSHA and NIOSH guidelines. (Id.) He referred to the Petitioner having significant arthritis in 2004 and being scheduled for a right index finger DIP fusion that was cancelled by the Petitioner. (Id.) Records of this treatment were not produced at arbitration. (Id.) He added that the Petitioner did not have de Quervain's syndrome when he examined her. (Id.) On April 16, 2020, Dr. Crandell issued a third report after reviewing the video of the Petitioner's job duties, the Workers' Compensation Claim form the Petitioner completed and a work analysis report. (RX3) He wrote that the materials did not change his opinions, explaining that the Petitioner's physical activity would have to be at least 100 times greater than what was shown on the video. (Id.)

Dr. Young testified consistently with his reports at a deposition on April 14, 2020. (PX2) He stated that pre-existing arthritis in the CMC joint can be worsened or aggravated by repetitive

use or trauma and that carpal tunnel syndrome can be caused by a repetitive stress injury. (Id.) When given a more detailed description of the Petitioner's job duties than what was written on the intake form (sorting a thousand-plus pages, folding pages and stuffing hundreds of envelopes per week), Dr. Young said those activities can cause, contribute to or aggravate the Petitioner's conditions. (Id.) He disagreed with Dr. Crandall's opinions that the Petitioner's condition was not related to work, that the Petitioner reached maximum medical improvement on January 2, 2019, and that the Petitioner did not require surgery. (Id.)

On cross-examination, Dr. Young explained that his diagnosis of de Quervain's tenosynovitis resulted from the positive Finkelstein test on March 7, 2019, and that although he did not make that diagnosis on February 7, 2019, the Petitioner had slight pain over the first dorsal compartment, which would be consistent with de Quervain's tenosynovitis. (Id.) He further stated that the negative Finkelstein's test with Dr. Crandall did not change his opinions, noting that the sign resulting from the test can go away and that the test is open to different interpretations by different doctors. (Id.) He testified that he thought de Quervain's disease is strongly correlated with increased or repetitive activity. (Id.) He admitted that women over 40 years old are more likely to develop de Quervain's tenosynovitis, especially if they have arthritis. (Id.) Regarding carpal tunnel syndrome, Dr. Young admitted that it can occur idiopathically and that obesity is a risk factor for the condition, noting that the Petitioner was 5'4" tall and weighed 220 pounds. (Id.) He also said it was possible that normal activity of daily living, such as driving and lifting, could have aggravated the Petitioner's arthritis to the point of needing treatment. (Id.)

Regarding treatment options other than surgery for carpel tunnel syndrome, Dr. Young testified that use of a splint is the mainstay of nonoperative treatment. (Id.) He said that the

success rate of a steroid injection is very poor, and anti-inflammatories are not thought to help because there is no real inflammatory component to carpal tunnel syndrome. (Id.)

Dr. Crandall, now a solo practitioner, testified consistently with his reports at a deposition on April 21, 2020. (RX4) Regarding the Finkelstein's test, he stated that the test results can vary, but it is very rare. (Id.) He reiterated his opinion that the Petitioner did not have de Quervain's tenosynovitis. (Id.) Regarding arthritis, he stated that activity does not aggravate it – if patients have arthritis, they have pain all the time and what they do during the day is irrelevant. (Id.) He said: "There is no causal relationship between hand activity and arthritis. Ever."

His characterized the activities shown in the job video as occasional typing and taking papers and putting them into an envelope at a slow pace with a low number of papers. (Id.) He said he couldn't believe that anybody could think that this could hurt them – especially after doing the work for 21 years. (Id.) Dr. Crandall stated that the video did not show a volume and activity level that would be responsible for aggravating the Petitioner's carpal tunnel syndrome or her arthritis. (Id.) He said the sorting, flipping, stacking, stapling and folding of documents and stuffing envelopes would have to be done continuously for four hours to cause or aggravate the Petitioner's conditions. (Id.)

On cross-examination, Dr. Crandall did not know that the Petitioner's workload of sorting checks increased approximately a year prior to her symptoms – rather than 21 years, as he previously testified. (Id.) He also did not believe he saw the MRI performed on the Petitioner's thumb because he did not mention it in his report. (Id.) Regarding finding the Petitioner to be at maximum medical improvement on January 2, 2019, he explained that was for work-related issues only. (Id.) Regarding the work pace, Dr. Crandall stated: "I think if you show this to a person

adjudicating this case, they will scratch their head and wonder what in the hell are we doing here; look how slow this is; this is crazy. That was the feeling I had when I saw the video." (Id.)

The Petitioner testified that her health insurance paid 80 percent of her medical bills, and she paid the remaining 20%, which amounted to about $6,000. (T. 34) She said she still experiences tingling along her surgical scar from her wrist to the middle of her thumb, and her thumb knuckle locks up, causing her to have to "pop it." (T. 29) She has problems gripping – opening jars and bags. (T. 29-30) She stated she does have full mobility of her thumb. (T. 30)

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?

The claimant in a worker's compensation proceeding has the burden of proving by a preponderance of the credible evidence that the injury arose out of and in the course of employment, and that involves as an element a causal connection between the accident and the condition of claimant. *Cassens Transp. Co. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 330, 633 N.E.2d 1344, 199 Ill. Dec. 353 (2nd Dist. 1994) An injury is considered "accidental" even though it develops gradually over a period of time as a result of repetitive trauma, without requiring complete dysfunction, if it is caused by the performance of claimant's job. *Id.* Compensation may be allowed where a workman's existing physical structure, whatever it may be, gives way under the stress of his usual labor. *Laclede Steel Co. v. Indus. Comm'n.*, 6 Ill.2d 296 at 300, 128 N.E.2d 718, 720 (Ill. 1955)

Further, a Petitioner's job duties need not be repetitive in the sense that the same task is done over and over again as on an assembly line to result in a compensable injury. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 388 Ill.App.3d 297, 901 N.E.2d 1066, 327 Ill.Dec. 333 (4th Dist., 2009). Intensive use of hands and arms can result in cumulative injuries that are compensable. *Id*.

The Petitioner was a credible witness, and the Arbitrator gives greater weight to her testimony regarding the work she did than to a third party hired by one side to prepare reports and videos for litigation. The Petitioner demonstrated her hand movements at arbitration, and her demonstration bore little resemblance to what was depicted in the video, which showed the tasks being performed at a leisurely pace for a limited period of time. Upon viewing the video, the Arbitrator had the reaction Dr. Crandall predicted, but did not come to the same conclusion. The video and report prepared by Ms. Kane-Thaler did not accurately depict what the Petitioner described and demonstrated as her work duties. Based on this finding, the Arbitrator gives very little weight to Dr. Crandall's characterizations of the Petitioner's job duties and the opinions he formed based on the video.

In addition, Dr. Crandall stated that he found it striking that it would ever occur to a person that the activities shown would be responsible for causing his or her problem, especially after having performed the work for 21 years. The Petitioner only performed these activities for about a year before her complaints.

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).

Although the Petitioner suffered from preexisting arthritis, that condition apparently was not causing severe pain prior to mid-2018, when she had been performing increasingly intensive hand functions for a year. The Arbitrator gives greater weight to the opinions of Dr. Young, who examined the Petitioner several times and was more familiar with the Petitioner and her conditions. He found that the Petitioner's carpal tunnel syndrome and de Quervain's tenosynovitis were causally related to her work.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that her injuries arose out of and in the course of her employment.

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

Based on the causation findings above regarding whether the Petitioner's injuries arose out of and in the course of her employment, the Arbitrator finds that the Petitioner's condition were causally related to the repetitive trauma that manifested itself on October 15, 2018.

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

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).

Just as the Arbitrator gave greater weight to the opinions of Dr. Young regarding the Petitioner's diagnoses and causation of her conditions, so too does the Arbitrator give greater weight to his opinions regarding treatment. Dr. Crandall only looked at the reasonableness and

necessity of treatment as it related to whether the Petitioner's conditions were caused by her work. He also did not find that the Petitioner had de Quervain's tenosynovitis, so he did not recommend treatment for that condition. Considering that hindsight is 20-20, the reasonableness and necessity of the treatment the Petitioner received is supported by the fact that the surgical procedures Dr. Young performed improved the Petitioner's condition greatly.

For those reasons, The Arbitrator finds that the treatment 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 6 pursuant to Section 8(a) of the Act and in accordance with medical fee schedules. The Respondent shall reimburse the Petitioner for any out-of-pocket expenses related to the treatment. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

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

According to the Request for Hearing (AX1), the parties dispute temporary total disability benefits for the week following the Petitioner's surgery on April 5, 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).

Following the surgery, Dr. Young allowed the Petitioner to return to work at light duty beginning April 15, 2019, causing her to miss a full week of work. Therefore, the Petitioner is entitled to one week of TTD benefits.

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 impairment rating was submitted. Therefore, the Arbitrator gives no weight to this factor.

(ii) **Occupation.** The Petitioner retired and is no longer working. Therefore, the Arbitrator places little weight on this factor.

(iii) **Age.** The Petitioner was 63 years old at the time of the injury. She had few work years left before retiring. The Arbitrator places little 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 continues to experience tingling in her hand and "locking" of her thumb. She has and has problems gripping. The Arbitrator puts some weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 12 percent of the left hand.

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	21WC023212
Case Name	Dianna Dillon v. City of Chicago
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0361
Number of Pages of Decision	31
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Taylor Matichak
Respondent Attorney	Matthew Novak

DATE FILED: 9/21/2022

/s/ Kathryn Doerries, Commissioner

Signature

22IWCC0361

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DIANNA DILLON,

Petitioner,

vs. NO: 21 WC 23212

CITY OF CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission, herein, corrects a scrivener's error in the Arbitrator's decision, page 6, line three, to strike the second "(2)", to replace with "(3)".

The Commission, herein, corrects a scrivener's error in the Arbitrator's decision, page 13, under "Expert Testimony" second paragraph, lines seven and eight, to strike "budge", to replace with "bulge".

The Commission, herein, corrects a scrivener's error in the Arbitrator's decision, page 16, first full paragraph, last sentence, to strike "heave", to replace with "heal".

The Commission, herein, corrects a scrivener's error in the Arbitrator's decision, page 18, second paragraph, beginning with "Dr. Singh clarified…", to strike "indicted" to replace with "indicated", and, to strike "note", to replace with "not".

The Commission, herein, corrects a scrivener's error in the Arbitrator's decision, page 22, third paragraph, second sentence, to strike "and back", and strike "2021" to replace with "2020".

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 24, 2022, is, otherwise, hereby, affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $920.09 per week for a period of 54 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act. ($49,684.86 total TTD)

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $41,336.69 for medical expenses under §8(a) of the Act. Respondent shall pay for reasonable and necessary medical care, including cervical surgery and related care as recommended by Dr. Koutsky.

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

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

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 21, 2022

o- 8/16/22
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	21WC023212
Case Name	DILLON, DIANNA v. CITY OF CHICAGO
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	28
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Taylor Matichak
Respondent Attorney	Matthew Novak

DATE FILED: 1/24/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 19, 2022 0.37%

/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)

DIANNA DILLON
Employee/Petitioner

v.

CITY OF CHICAGO
Employer/Respondent

Case # **21** WC **23212**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Arbitrator Joseph Amarilio**, Arbitrator of the Commission, in the city of **Chicago**, on **12/20/21**. 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, **12/07/2020**, 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 $**71,767.28**; the average weekly wage was $**1,380.14**.

On the date of accident, Petitioner was **51** 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 $**33,123.24** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**33,123.24**.

ORDER

Respondent shall pay reasonable and necessary medical services of **$41,336.69** pursuant to the medical fee schedule as follows: $11,989.14 to DuPage Spine and Orthopaedics, $9,838.00 to Oak Brook Surgical Centre, Inc., $5,719.55 to Modern Pain Consultants, $12,340.00 to Premier Physical Therapy, and $1,450.00 to EMG Centers of Chicagoland, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay for reasonable and necessary prospective medical care including cervical surgery and related care as recommended by Dr. Koutsky.

Respondent shall pay Petitioner the temporary total disability benefits of $920.09 per week that have accrued from 12/08/2020 through 12/20/2021 representing 54 weeks of TTD benefits.

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*

JANUARY 24, 2022

Signature of Arbitrator Joseph D. Amarilio

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

THE ILLINOIS WORKERS' COMPENSATION COMMISSION
ADDENDUM TO ARBITRATON DECISION

DIANNA DILLON,	)	
	)	
Petitioner,	)	
v.	)	
	)	Case No. **21 WC 023212**
	)	
CITY OF CHICAGO,	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROCEDURAL HISTORY

Ms. Dianna Dillon (Petitioner), by and through her attorney, filed an Application for Adjustment of Claim for benefits under the Illinois Workers' Compensation Act. Petitioner alleged that she sustained an accidental injury on December 7, 2020 while working in her capacity as a motor truck driver for the City of Chicago. (Respondent).

This matter was heard on December 20, 2021 before the Arbitrator in the City of Chicago and County of Cook pursuant to Section 19(b) and Section 8(a) of the Act. Petitioner testified in support of her claim for benefits. Additionally, Petitioner's treating orthopedic surgeon and Respondent's Section 12 examiner testified by evidence deposition. The submitted exhibits and the trial transcript of the hearing were examined by the Arbitrator.

The parties proceeded to hearing on four (4) disputed issues: (1) whether Petitioner's current claimed condition of ill-being to her neck is causally connected to the work accident; (2) whether Respondent is liable for medical treatment and medical bills incurred; (3) whether Petitioner is entitled to temporary disability benefits, and if so for what time period; and, (4) whether Petitioner is entitled to prospective medical care; (Arb. Ex. 1)

II. FINDINGS OF FACT

Petitioner's Testimony

Petitioner testified that she has been employed by the City of Chicago since December. 2004. In November of 2020 she became a motor truck driver for the Chicago Public Library. (Tr, p. 8). Petitioner's job duties included fueling her vehicle, driving, and loading and unloading deliveries. (Tr, p. 8; PX2, p. 34-5). When making deliveries, Petitioner was required to push and pull carts weighing over 100-pounds. (Tr, p. 9). The carts contained bins filled with books, each bin weighing up to 35-pounds. (Tr, p. 9; PX2, p. 35). Petitioner had to manually lift and carry each bin back and forth from the cart when unloading deliveries. (Tr, p. 9; PX2, p. 35).

Due to her claimed work-related injuries of December 7, 2020, Petitioner testified that she is currently unable to physically perform her job duties. (Tr, p. 36; PX1, p. 21-24). She has difficulties performing household chores or daily tasks the way she used to. (Tr, p. 27). For example, she is unable to lift gallon of milk or laundry detergent and often drops things. (Tr, p. 28). She has limited range of motion and struggles turning her head to the right, which is a cause for concern while driving. (Tr, p. 28). Petitioner applied for reasonable accommodations. Respondent approved her request but has not yet implemented it. (Tr, p. 28-9).

In 2017, Petitioner experienced neck pain and tingling and numbness down her right arm. (Tr, p. 10). She underwent an EMG and was advised her symptoms may resolve without treatment. (Tr, p. 34-5). Petitioner obtained no medical treatment whatsoever following the EMG – not even a follow-up appointment. (Tr, p. 34-5). Between 2017 and December 7, 2020, Petitioner did not undergo any medical treatment for neck pain at any time nor did she miss time from work. (Tr, p. 11-12).

Petitioner testified on December 7, 2020, she reported for work in her usual health. (Tr, p. 9-10). Her neck and upper extremities were pain-free. (Tr, p. 9-10). Before that day, Petitioner had not missed a day of work due to neck, arm, or wrist pain. (Tr, p. 10).

On December 7, 2020, Petitioner while in the process of loading her truck, went to use the restroom the library when she tripped on uneven pavement on Chicago Public Library property. She lost her balance and fell forward onto both knees, outstretched arms, and wrists bent back to avoid face-planting into the cement. (Tr, p. 31). She needed help to get back up. Her supervisor, John Rizzo, was called to the scene. He called an ambulance for medical assistance. (Tr, p. 14-5). Petitioner was assessed by paramedics but declined hospitalization. (Tr, p. 15). Later that day, Respondent sent Petitioner to MercyWorks for evaluation. (Tr, p. 17; RX2, p. 1).

The Petitioner testified that she began medical treatment at Mercy Works and complained of symptoms including knee pain and right shoulder pain radiating down her right arm. (Tr. Pp16.) She continued treatment with Mercy Works and was taken off of work through January 11, 2021. (Tr. pp.16-19. She was then referred to Dr. Troy for further medical treatment.

The Petitioner saw Dr. Troy for the first time on January 22, 2021. T19-20. The Petitioner noted that she underwent physical therapy and epidural steroid injections at the instructions of Dr. Troy. (Tr.20) Dr. Troy continued to keep her off work. (Tr p. 21)

The Petitioner testified that she saw Dr. Kern Singh on July 19, 2021. (Tr. pp. 22.-23) The Petitioner testified that Dr. Singh talked to her for "literally two seconds" and then let her go. She did qualify that Dr. Singh time with her was unexpectedly short. Briefer than any other doctor visit.

The Petitioner then came under the care of Dr. Kevin Koutsky, an orthopedic surgeon, on September 2, 2021. (Tr. p. 23) Dr. Koutsky ordered an EMG and physical therapy. (Tr., p. 24) On September 15, 2021 The Petitioner then saw Dr. Farooq A. Kahn at Modern Pain Consultants, upon

referral by Dr. Koutsky, and reported her neck pain continuing since her work accident. T24. The Petitioner testified that Dr. Koutsky was recommending a third epidural steroid injection and possibly surgery and that no treatment was being authorized. (Tr. pp. 26-27) She currently was having problems turning her head to the right compared to the left. (Tr. p. 28) The Petitioner requested that the Respondent provide her with a reasonable accommodation, but she had not been offered a job as of the date of trial. (Tr. p. 28) She has remained off of work since the date of accident and was she last paid TTD benefits as of August 20, 2021. (Tr. p. 29)

On cross-examination, Petitioner testified that her job duties required her to lift up to thirty-five pounds of books and that she was required to push or pull carts weighing more than thirty-five pounds., in the area of 100 lbs. (Tr. pp. 31-32) She did not recall the physician that had recommended the 2017 EMG study, but thought it was her primary care doctor. She could not recall the name of the primary care physician at the time because she had changed physicians around then, but it could have been Dr. Julia Philip-Kuli. (Tr. p. 33) She stated that she did not follow up with any physician following the EMG study to go over the results and said that the EMG physician told her the results at the time. (Tr. pp. 33-34) She again denied receiving any medical treatment related to her cervical spine following the 2017 EMG study. She reported that her cervical spine and right arm pain resolved following the EMG study. (Tr. pp. 34-35) She was not certain if her medical treatment was being submitted to group health insurance. (Tr. p. 35) She did not have access to disability benefits. (Tr. p, 36)

With respect to further treatment, the Petitioner testified that she was awaiting a third epidural steroid injection. She stated that she would prefer to exhaust conservative care, stated that if a third epidural steroid injection worked and provided permanent relief then she would not undergo surgery. (Tr. pp. 37-38) With respect to being accommodated, the Petitioner testified that the Respondent has agreed to

accommodate her restriction, but there is a ninety-day period that has to be exhausted before there will be a determination. (Tr. p. 38)

MEDICAL EVIDENCE

The Petitioner presented to Mercy Works on Pulaski on December 7, 2020 complaining of a fall and contusions to her bilateral knees and hands. She reported tripping on an uneven pavement on a cement ramp causing her to lose her balance and fall. At the visit she complained of pain in her left knee at 7/10, pain in the right knee at 5/10, and right wrist and shoulder pain at 4/10. Diagnosis at this visit was status post fall, contusions of bilateral knees and hands, abrasion of the left knee and strain of the right wrist. Conservative treatment measures were recommended. (RX 2)

When the Petitioner followed up on December 10, 2020, she states she developed neck discomfort and some numbness and tingling. She noted a history of cervical radiculopathy with right carpal tunnel syndrome by EMG study in 2017, as well as a post L5-S1 fusion done in 2009 with Dr. Troy. She reported that her neck pain was 4/10 radiating to her right shoulder. Cervical strain was added to the diagnoses of bilateral knee contusions and strain of the right wrist. (RX 2.) The Petitioner continued with medical care at Mercy Works on Pulaski through January 21, 2021. At this visit she was complaining of episodes of significant pain in the right side of her neck and down her right arm with weakness and trembling of the right hand. Her right wrist pain was mild intermittent. Her left knee was okay, and then she would have pain in her right knee with stairs, but she had a history of arthritis in the right knee.

On December 10, 2020, Petitioner returned, reporting neck pain, numbness, and tingling down the right arm. (Tr, p. 17; RX2, p. 2). She was prescribed x-rays and a course of physical therapy. (Tr, p. 18). She was also provided an off-work status. (Tr, p. 18).

On December 17, 2020, Petitioner complained of daily headaches since the date of loss. (Tr, p. 18). Recommendations for treatment remained unchanged. (Tr, pp. 18-9). She followed up on January 7,

2021 with no change of her symptoms. (Tr, p. 19). On January 10, 2021, she underwent X-rays and an MRI of the cervical spine which revealed (1) degenerative changes; (2) central to right paracentral disc/spur complex at C5-6 contributing to central and foraminal stenosis, and (2) diffuse disc protrusions at multiple levels. (PX2, pp. 4-6, 64). On January 21, 2021, the radiologist's impression was chronic degenerative changes, diffuse posterior disc bulges and other chronic findings seen from C2-C3, C3-C4, C4-C5, and C6-C7. At C5-C6 there was a three millimeter broad based posterior disc protrusion with paradiscal posterior osteophytes and facet hypertrophy resulting in moderate indentation of the thecal sac, moderate right mild left neural foraminal stenosis with effacement of the exiting C6 nerve root (more on the right side), chronic or indeterminate in origin. (PX.3, p.16) Petitioner was referred to a spine specialist. (Tr, p. 19).

The Petitioner was seen by Dr. Daniel Troy on January 22, 2021. (PX.3) She reported that she was being evaluated secondary to posterior neck pain following her work accident in December. Physical examination revealed full strength with questionable Spurling's and sensory changes in the C6-7 distribution in the right upper extremity, nothing on the left. The Petitioner reported that ninety percent of her pain was in the neck on the right side of her cervical spine. She reported no difficulties in her shoulder and elbows, and just had only slight pain with forceful supination in the right wrist. Dr. Troy's assessment was cervicalgia and radiculopathy of the cervical region. He recommended a C5-6 epidural steroid injection be performed. He also recommended undergoing an EMG/NCV study. (PX.3\)

On March 18, 2021, Dr. Troy administered a C5-6 epidural steroid injection. (Tr, p. 21; PX3, pp. 12-3). Petitioner reported 50 to 70 percent temporary relief of her symptoms on March 30, 2021. (Tr, p. 21). Per Dr. Troy, Petitioner's course of physical therapy and off-work status continued. (Tr, p. 21; PX3, p. 19).

When the Petitioner followed up with Dr. Troy on March 30, 2021, Petitioner reported that the injection of the cervical spine did not help, and she still had complaints of cervical spine pain. She was also complaining of pain to the dorsal aspect of her right wrist and was requesting consultation. The Petitioner was to re-start physical therapy with respect to the right wrist and continue with anti-inflammatory medication as well as muscle relaxers on an intermittent basis. (PX.3, pp.7-8.) When the Petitioner was reevaluated by Dr. Troy on June 16, 2021, she reported having right sided neck pain going into the right trapezius area. While she was having symptoms going into the right upper extremity those had markedly improved. The assessment remained right sided neck pain secondary to facet arthropathy greatest at C4-5, C5-6, and C6-7. She also had foraminal stenosis though it was moderate to severe at the C5-6 level with secondary upper extremity radiculopathy that was currently markedly improved. Dr. Troy recommended a trigger point injection to the right cervical paraspinal muscles, and he continued physical therapy and medications. (PX.3, pp.4-5)

On September 2, 2021, The Petitioner was then evaluated by Dr. Kevin Koutsky, a spine specialist. (PX.2, p.13) She reported consistent symptoms of neck pain with radiculopathy, worse on the right side since her December 7, 2020 work accident. (Tr. p. 24; PX2, p. 66). Dr. Koutsky ordered physical therapy and provided referrals for an EMG and a pain specialist, recommending a second steroid injection of the cervical spine. (T, pp. 24-6; PX2, pp. 64, 66). Dr. Koutsky's assessment was C5-6 radiculopathy and he recommended continued physical therapy and a second cervical epidural steroid injection. (PX.2, p.14)

On September 15, 2021, Petitioner saw pain specialist Dr. Farooq Khan upon referral from Dr. Koutsky. (PX4, pp. 2-3). She reported consistent complaints of symptoms onset by a work-related fall on the date of loss (Tr, p. 24; PX4, pp. 2-3).

Dr. Kahn took a detailed history. He reported that Petitioner was 52-year-old female who was referred to Modern Pain Consultants by Dr. Koutsky for evaluation and treatment of the cervical spine since the December 7, 2020 work-related injury (PX 4, p. 1)

Petitioner reported that she was in her usual state of health working as a truck driver for the Chicago Public Library. She was injured while walking on a ramp of the Harold Washington Chicago Public Library. Her foot got caught on a broken piece of ramp causing her to fall on her hands and knees. She was unable to get up for a while after the incident. (PX 4, p. 1)

She reported the accident to her employer and was referred to Dr. Anderson at MercyWorks where she was treated conservatively for knee and neck pain, including completing 3 months of physical therapy, messages and exercises and TENS unit with minimal relief. (PX 4, p. 1)

Due to the minimal relief from three months of conservative care, Dr. Anderson referred Petitioner to Dr. Troy for further evaluation in March 2021. Petitioner recalled undergoing an MRI and receiving an epidural steroid injection and trigger point injections from Dr. Troy again with temporary relief. (PX 4, p. 1)

Subsequently, she underwent an IME in July 2021. The evaluator reported that she was cleared to return to work even though she continued to complain of neck pain with limited range of motion. (PX 4, p. 1)

Due to continuous pain, Petitioner elected to seek advise from orthopedic surgeon, Dr Koutsky, on September 2, 2021 who ordered a second set of physical therapy, muscle relaxants, pain medication and an EMG. (PX 4, p. 1)

Dr. Kahn noted that Petitioner reported returning to work on September 14, 2021 but was unable to perform proper work-related activities including driving, lifting, carrying or pushing due to severe cervical spine and right upper extremity pain. She also reported that her pain was initially radiating on

the right upper extremity but after attempting to push a cart full of books at work, she felt pain in her left side of the neck, a symptom that was not previously present. (PX 4, p. 1)

At the time of the examination of September 15, 2021, Petitioner reported that her pain is localized at the cervical spine with variable radiation in the right greater than the left upper extremity. (PX 4, p. 1) She described the pain as constant irritation, ache and discomfort with intermittent sharp and shooting pain. The pain is associated with interment weakness of the right hand while holding things and with repetitive or prolonged activity. More recently she experienced tremors while holding objects with her right hand. The pain is rated at 4/10 on VAS at rest and increases to 7/10 with activity. The pain is improved with NSAIDs and rest. The pain is aggravated with cervical spine rotation, flection and extension. Petitioner is limited with multiple activities of daily living including sleep, driving, engaging in social activities as well as work related activities. (PX 4, p. 1)

Dr. Kahn noted that the MRI of the cervical spine completed in January 9. 2021 identifies a C5-6 disc with right greater than the left foraminal stenosis. He opined that the MRI finds were consistent with Petitioner's complaints. (PX 4, pp. 1, 3)

He noted that due to her pain issues, she remains off work. She wanted treatment plan options in order to expediate her return to work. (PX 4, p. 1)

Upon examination, Dr. Kahn found mild to moderate loss of lordosis. Moderate facet joint tenderness bilateral C5-6, C6-7. Moderate diffuse paraspinous muscle and parascapular without trigger points. Range of motion was mild limited flexion, moderately limited extension. Sensations were decreased to light touch right greater than left at C5 and C6 and slight decrease at C7. Motor strength was decreased at C5 and C6, right greater than left. Dr. Kahn, like Dr. Koutsky and unlike Dr. Singh, found positive Spurling's test, right worse than left. (PX 4, p. 2)

Dr. Kahn noted that January 9, 2021 MRI revealed at C5-6 a 3MM broad based posterior disc protrusion with paradiscal posterior osteophytes and facet hypertrophy in moderate indentation of the thecal sac moderate right and moderate left neural foraminal stenosis with effacement of the existing C6 nerve roots, more on the right side. (PX 4, p. 3)

He rendered a diagnosis of 1. Cervicalgia, 2. Cervical radiculopathy involving the C5-6 level. 3. Cervical disc displacement at the C5-6 level; and, 4. Cervical foraminal stenosis at C5-6 level. Dr Kahn opined that her cervical condition of ill-being is work related. (PX 4, p. 3)

After taking a detailed history, reviewing the diagnostic studies and a detailed physical examination, Dr. Kahn agreed with Dr. Koutsky's recommendations scheduled the second steroid injection to the cervical spine on October 15, 2021. (Tr, p. 27; PX4, p 6-7).

The Petitioner returned to Dr. Koutsky on October 5, 2021. It was noted that she had undergone the EMG study was negative for cervical radiculopathy. Dr. Koutsky's assessment remained C5-6 radiculopathy and neck pain. Continued physical therapy was recommended along with a second cervical injection. PX.2, pp.62-63.

On October 15, 2021, Dr. Kahn's examination findings were similar to those recorded before including a positive bilateral Spurling's test. Dr Kahn noted that the EMG order by Dr. Koutsky did not show obvious nerve damage. Therefore, like Dr. Koutsky, Dr. Kahn opined that Petitioner's symptoms are likely due to nerve irritation, that is cervical radiculitis and should improve with administration of anti-inflammatory medication in the region. After taking a detailed history, reviewing the diagnostic studies and a detailed physical examination, Dr. Kahn administered the second steroid injection to the cervical spine on October 15, 2021. (Tr, p. 27; PX4, p 6-7). He too provided sedentary work restrictions. (Tr, p. 27; PX4, p. 6-9).

When the Petitioner returned to Dr. Koutsky on November 2, 2021 Dr. Koutsky reviewed Dr. Singh's Section 12 report of July 19, 2021. Dr. Koutsky's assessment remained C5-6 radiculopathy and neck pain. Dr. Koutsky disagreed with Dr. Singh's opinion that the Petitioner suffered a resolved cervical muscular strain. The Petitioner had pain in her neck radiating down both upper extremities including numbness and tingling, which was consistent with cervical radiculopathy as opposed to a strain. Dr. Koutsky opined that Petitioner's preexisting condition in her cervical spine was aggravated by her work accident causing her symptoms. Dr. Koutsky was recommending further medical treatment including physical therapy, pain clinic management and a cervical decompression and fusion. Petitioner was not at maximum medical improvement and will require work restrictions at the present time. PX.2, pp.65-66. Dr. Koutsky opined that to a reasonable degree of medical and surgical certainty that the recommended surgery, an anterior cervical discectomy and fusion ("ACDF") at C5-6, would relieve Petitioner's ongoing symptoms of neck pain. (Tr, p. 25; PX1, p. 21:19-24). Without surgery, Dr. Koutsky stated Petitioner's sedentary work restrictions are permanent. (PX1, p. 21:19-24). Petitioner testified she wishes to proceed but has not yet undergone the recommended surgery because Respondent has not authorized it. (Tr, p. 26-7).

On December 10, 2021, Petitioner was seen by Dr. Kahn for follow-up post C5-6 cervical injection of October 15, 2021. She reported 80% initial relief of pain, however by the date of examination, she had 25% improvement. Her pain remains localized at the cervical spine that variably radiated into the bilateral, right greater than left, upper extremities. Her pain continues to limit her activities of daily living and work activities. She remains off work. The examination findings were the same as the two prior visits, including bilateral positive Spurling's test, right greater than left. Dr. Kahn noted that Petitioner was reevaluated by Dr. Koutsky who continues to recommend surgery. Petitioner stated that she would prefer

to have at least one more injection before submitting to surgery Dr. Kahn agreed and that if the next injection failed to be long lasting, alternative treatment options should be evaluated. (PX 4, pp. .10-12)

Section 12 Examination Report of Dr. Kern Singh

On July 19, 2021, Petitioner was examined by Dr. Kern Singh pursuant to Section 12 at Respondent's request. (RX.1) The Petitioner related in her intake form that she tripped and fell on an uneven sidewalk and pavement and developed low back and neck pain. Dr. Singh's recording of her history is generally consistent with the intake form with two significant exceptions. First, he reported that she complained of entire spine pain. She did not. She did not indicate this in the intake diagram nor in the medical records. Second, Dr. Singh noted Petitioner complained of mid-back pain rated at 4-6/10, This finding is inconsistent with the intake diagram which did not indicate any midback pain. Moreover, no medical provider recorded midback pain nor did the Petitioner testify to having midback pain. She reported bilateral posterior thigh dysesthesias into the knees. Her pain was getting worse, and she had moderate discomfort that was constant throughout the day. She was currently not working. Monofilament testing was symmetric and equal without sensory loss in both the upper and lower extremities. She had 5/5 strength in all categories of measurement. Dr. Singh reviewed the MRI study from January 2021 which showed a C5-6 central disc protrusion without stenosis. His conclusion was the Petitioner suffered a cervical muscular strain, but she also had a C5-6-disc protrusion without stenosis. Dr. Singh believed that the Petitioner suffered a strain of the cervical spine as a result of a work accident. The disc protrusion of the C5-6 level was an incidental finding which did not correlate with the Petitioner's symptomology. She was able to return to work full duty and did not require further medical treatment as she reached maximum medical improvement. (RX.1)

Petitioner testified Dr. Singh was in the examining room with her for seconds and never performed an examination. (Tr, p. 23). Based on the report of Dr. Singh, Respondent terminated Petitioner's workers' compensation benefits on August 20, 2021. (Tr, p. 23). At that time, she was still authorized off work by Dr. Troy and actively treating. (Tr, p. 23). Petitioner has not received a paycheck for wages or temporary total disability since August 20, 2021. (Tr, p. 29).

EXPERT TESTIMONY

The evidence deposition of Dr. Koutsky was taken on November 15, 2021 on behalf of the Petitioner. PX.1. Dr. Koutsky testified that he practices at DuPage Spine and Orthopedics. He is an orthopaedic surgeon specializing in conservative and surgical treatment of musculoskeletal injuries and the spine. In his regular practice, he diagnoses and treats patients with degenerative disc disease (DDD). DDD being the wear and tear of the spinal discs. He explained that can be anything from mechanical pain in a certain area or if they start irritating nerves, then one can have symptoms down on of the extremities, which can include pain and/or numbness and/or weakness. (PX 1, pp. 6-7)

During his initial evaluation of the Petitioner, Dr. Koutsky noted that Petitioner's chief complaint was neck pain with radiation down both upper extremities, including numbness and tingling which began after her December 7, 2020 injury. She worked as a truck driver for the City of Chicago. She tripped on an uneven sidewalk and fell forward onto both hands and knees. She felt a jarring of her neck, and then developed pain in her neck radiating down both arms, including some numbness and tingling. Dr. Koutsky opined that mechanism of the injury reported by Petitioner was competent to cause her underlying asymptomatic disc budge of her cervical spine to become symptomatic. The mechanism of the injury is competent to cause her disc budge. Dr. Koutsky explained the when Petitioner fell on her hands and knees, she experienced a load of compression on the neck area when she jarred her neck. The discs are

like shock absorbers. So, the compression across the spinal segment can cause the disc to bulge out much like squeezing a balloon. The disc would budge out in all directions. (PX 1, pp. 9-11)

Dr. Koutsky reviewed her January 2021 cervical MRI scan. He opined that the MRI scan revealed some age-related wear and tear changes. She had a central to right paracentral disc spur complex at C5-6 contributing to some narrowing of the central spinal canal and the foramen through which the nerve roots going into her arm exists. The narrowing is foraminal stenosis. Dr. Koutsky explained the foramen are little holes on each side of the spinal segment through which the nerve roots exit the spinal cord and go to the extremities. The stenosis can cause some compression of the nerves in that it creates a narrowing of the tunnel through which the nerves exit the spinal cord and go through the extremities. It increases the susceptibility of those nerves going through the stenotic areas to become irritated or inflamed. (PX 1, pp. 11-13)

Upon examination, Dr Koutsky found good strength but found numbness in the distribution of the lateral forearm extending to her thumbs. She had some cervical muscle tenderness and spasm which limited her range of motion. He performed a Spurling's test which was positive on right hand side. A Spurling's test is a provocative test with the neck and extension and lateral bending and rotation towards the side of the symptoms. If the test recreates or exacerbates a patient's symptoms, then it is considered a positive test. (PX 1. p. 13)

Dr. Koutsky recounted his treatment of the Petitioner, which is detailed in his medical notes. She gave a consistent history at each visit. Petitioner consistently stated that she wanted to exhaust conservative treatment before submitting to surgery. Petitioner's complaints and objective findings remained the same. She consistently had numbness in the lateral side of her forearm, positive right sided Spurling's test, cervical muscle tenderness and spasm to palpitation with limited range of motion. (PX 1,

p. 17) He recounted that his diagnosis was that the Petitioner was suffering from cervical radiculopathy and neck pain stemming from the work accident on December 7, 2.020. (PX.1, p.14) He stated he did disagree with Dr. Singh's diagnosis of a cervical strain, as the Petitioner was complaining of neck pain with bilateral radiating arm pain, which was consistent with radiculopathy. Dr. Koutsky noted that she had stenosis at C5-6 which was consistent with her physical examination findings. (PX 1, p. 19) He opined that her stenosis was likely preexisting but was made symptomatic with the work-related injury. Dr. Koutsky stated that, though he often orders EMG studies for patients, they are not always reliable but when positive the sometimes help identify the specific area of pathology. (PX.1, p.16) Dr. Koutsky did not agree with Dr. Singh's diagnosis or opinion that Petitioner had reached maximum medical improvement. Dr. Koutsky stated that the standard of care with a patient with a condition of cervical radiculopathy would be to have injections after exhausting physical therapy. If the injections fail, then it would for the patient to be a candidate for anterior cervical decompression and fusion with instrumentation. (PX 1, p. 19)

The Arbitrator notes that Dr. Troy and Dr. Kahn both opined and agreed with Dr. Koutsky that Petitioner had cervical radiculopathy. The Arbitrator further notes that unlike Dr. Singh, Dr. Troy found a questionable Spurling's test. Dr Kahn found a positive Spurling's test at every visit as did Dr. Koutsky. However, Dr. Singh stands alone in that he did not. Dr. Singh was the only physician who did not find a positive Spurling's test.

Dr. Koutsky noted that Petitioner obtained short-term relief from the injections but unfortunately not long- term relief. And yet the injections did provide a diagnostic benefit by identifying and confirming the area of pathology is at C-5-6. Dr. Koutsky recommended an anterior cervical decompression and fusion (ACDF) at the C5-6 level for the Petitioner. (PX 1, p. 20) He identified the ACDF as the classic

procedure to be performed for Petitioner's C5-6 pathology. Dr. Koutsky did not think the Petitioner could return to work full duty given her symptoms and her condition. (PX.1, pp.22-23)

Dr. Koutsky opined that to a reasonable degree of medical and surgical certainty, Petitioner's neck pain and the radiating pain, including the numbness and tingling are causally and directly related to the work injury. The work injury by aggravated her preexisting asymptomatic condition of spinal stenosis at C5-6. And, Dr. Koutsky further opined that, to a reasonable degree of medical and surgical certainty, an ACDF is reasonable and necessary to relieve Petitioner's symptoms of neck pain. By taking the bulging or protruding disc out, the surgery removes any potential cause of nerve root irritation away and then those nerve roots go on to heave over time after the procedure. (PX1, p. 21-22)

Dr. Koutsky did not agree with Dr. Singh opinion that Petitioner can return to work full duty. Dr. Koutsky noted that she works as a truck driver. He opined that someone with neck pain radiating down their arms, including numbness and tingling cannot return to that line of work. (PX 1, pp. 22-23) Dr. Koutsky opined that for the most part, Petitioner has exhausted all universally accepted conservative management. He opined that due to the passage of time, it is unlikely that her symptoms would just resolve on their own. In the meantime, he would give her light duty five-pound lifting return to work restriction.

On cross-examination Dr. Koutsky did not recall having the records of Dr. Daniel Troy or MercyWorks to review as part of his treatment. (PX.1, p.25) He reported that the Petitioner had bilateral sensory changes of her upper extremities, otherwise normal strength. Dr. Koutsky agreed that the Petitioner's findings at the C5-6 level were preexisting likely due to wear and tear consistent with her age. (PX.1, p.27) Dr. Koutsky explained that a traumatic accident could cause a dynamic impingement of the nerve roots in the cervical spine. Dr. Koutsky stated that impingement means something would be directly

touching a nerve root in the spine. (PX.1, pp.30-31) Dr. Koutsky stated that it was his understanding that the Petitioner was asymptomatic in her cervical spine prior to the work accident and became symptomatic after the work accident. (PX.1, p.32)

The evidence deposition of Dr. Kern Singh was taken on December 7, 2021 on behalf of the Respondent. (RX 1) Dr. Singh testified that he was an orthopaedic spine surgeon along with being a full professor at the Department of Orthopaedic Surgery at Rush University Medical Center and Director of the Minimally Invasive Spine Institute at Rush. (RX.1, pp.5-6) He sees approximately 8,000 to 10,000 patients per year and performs approximately five to six hundred spine surgeries each year. (RX 1, pp.7-8) Additionally, Dr. Singh performs multiple Section 12 examinations each week and testifies in evidence for a minimum of two hours charge. Dr. Singh testified that at the time of his evaluation of each claimant, he goes over the records with the patient and overall treatment to make sure there are no missing treatment records or providers. Then he conducts the examination of the patient. After the examination he reviews the imaging studies if available and then dictates his report. He testified that there is a physician's assistant present that only takes notes throughout the encounter. (RX.1, p.10)

After reviewing the medical records and physical examination findings, Dr. Singh stated that the Petitioner suffered a cervical muscular strain. He noted that the imaging study of her cervical spine showed a C5-6 central disc protrusion, but this was incidental and did not correlate with her complaints. Specifically, the disc herniation was radiographically present, but there was no clinical correlation in terms of her nerve findings, strength, reflex, and sensation. He felt that the C5-6-disc findings would have preexisted her date of accident, and the MRI suggested that the findings were chronic and not acute in nature. (RX.1, pp.18-19)

Dr. Singh also noted that the petitioner's symptoms did not correlate with her objective imaging, particularly her complaints of radiating arm pain. This did not correlate with specific C5 nerve root. Dr.

Singh also did not see anything on the imaging study that would support her complaining of bilateral radiating arm pain. (RX.1, pp.19-20) Dr. Singh did not think the Petitioner aggravated her C5-6 preexisting condition. He stated that her pain complaints did not correlate with nerve root compression or compromise, as he did not notice any deficits in the C6 nerve root pattern and the MRI did not show any C6 nerve root compression. (RX.1, pp.20-21) Dr. Singh reiterated his opinions that the Petitioner had already undergone reasonable medical treatment, and that she was at maximum medical improvement. He did not think that radiofrequency ablation would be appropriate for the Petitioner. (RX.1, p.22) He also did not think that the Petitioner was a candidate for a C5/6 anterior cervical discectomy and fusion. (RX.1, p.23) The Petitioner was capable of returning to full duty work. He also testified to her AMA impairment rating as zero percent. (RX.1, pp.24-25)

On cross-examination Dr. Singh stated that some patients with degenerative disease of the cervical spine can present with certain symptoms such as neck pain to radicular pain to myelopathy and spinal cord compression. (RX.1, p.27) Dr. Singh stated that he would recommend spinal injections in the context of nerve root compression and correlating examination findings. (RX.1, p.28) Dr. Singh clarified that Petitioner's pain complaints as indicted in the pain diagram did note correlate with a C5-6 nerve root compression. Insofar as the Petitioner circled off her entire arm, that would involve pain in the entire spine and would not correlate with a simple C5-6 compression. (RX.1, pp.33-34) Dr. Singh also testified that he had never performed a cervical fusion to relieve neck pain only because the results statistically were very poor for the outcome. Instead, they would operate the patient at neurological deficits. (Rx.1, pp.36-37) Dr. Singh also reiterated that he was unable to objectively explain the Petitioner's pain complaints and her symptoms. (RX.1, pp.37-38)

On re-direct examination, Dr. Singh noted that he did not previously have the December 10, 2020 report of Dr. Steven Anderson which the Petitioner reported having a prior history of cervical pain and

radiculopathy on EMG in 2017. Dr. Singh stated this was inconsistent with the history the Petitioner provided to him. (RX.1, pp.42-43)

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)

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

Credibility Findings

The Arbitrator finds the testimony of Petitioner to be credible, defers to the testimony of Petitioner's treating orthopedic surgeon, Dr. Koutsky, and gives great weight to the medical records, which corroborate Petitioner's testimony. Dr. Singh did not find C5-6 pathology being the cause of her pain, whereas Dr. Troy, Dr. Kahn and Dr. Koutsky did. Dr. Singh noted that Petitioner had non-anatomic pain complaints but failed to persuasively explain why they were non-anatomic unless he was referring to his recording mid-back pain when no such complaints were ever made. He did not recommend surgery because the MRI findings did not correlate with the pain complaints; however, he did not specify why they did not correlate even though he found that Petitioner's was not malingering nor did he find positive Waddell's. He opined that she did not need surgery or further treatment because he found a negative Spurling's test. Dr. Singh enjoyed a monopoly on this finding. Dr. Troy (questionable Spurling's test), Dr. Koutsky found a positive Spurling's test and so did Dr. Kahn. The Arbitrator finds the opinions of Petitioner's treating physicians to be more persuasive than those of Dr. Kern Singh. Dr. Singh failed to persuasively explain why Petitioner still suffered from disabling pain. Whereas, Dr. Kahn and Dr. Koutsky did.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

In determining this issue, the Arbitrator adopts the opinions and findings of Dr. Kevin Koutsky, Dr Kahn, Dr. Daniel Troy and the radiologists over those of Dr. Kern Singh. The Arbitrator finds Petitioner's current condition of ill-being is causally related to the injury as corroborated by all the

evidence submitted in this claim. The is no evidence to show Petitioner's symptoms of neck and arm pain existed during the three years before the accident, nor is there proof of any intervening cause. Accordingly, the evidence weighs heavily in favor of Petitioner, and the Arbitrator finds her current condition of ill-being stems from the work-related fall on December 7, 2020.

It is well settled under the law 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. *International Harvester v Illinois Worker's Compensation Commission* 93 Ill. 2d 59 (1982). 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 Commission*, 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, that Petitioner's current condition of ill-being to her neck is causally related to the work accident of December 7, 2020 based on chain of events and based on the opinions findings and opinions of Dr. Troy, Dr. Dr. Kahn and Dr. Koutsky. Unlike Dr. Singh, Drs, Troy, Kahn and Koutsky did not believe that Petitioner merely sustained a cervical muscular neck strain.

Petitioner testified that, for three years prior to the accident, she was not having problem her neck with radicular pain. After her accident, she noticed neck pain. Her complaints were documented by Petitioner's treating physicians.

Respondent's Section 12 examiner acknowledged that she sustained injuries to her neck but claimed she merely sustained a soft tissue cervical strain. Respondent' s examiner failed to persuasively explain why her credible neck pain persists. The Arbitrator finds no credible evidence of an intervening event that would break the chain of events.

The Arbitrator has had the opportunity to review the medical evidence and the credible testimony of the Petitioner. The Arbitrator finds a causal connection between Petitioner's present condition of ill-being to his neck and back and the work accident of December 7, 2021.

Petitioner testified that prior to her fall on December 7, 2020, her neck and right arm were pain-free. In 2017, Petitioner had an EMG for neck and arm pain; however, her symptoms resolved, and she never sought any follow up care. At no time between 2017 and December 7, 2020 did Petitioner seek medical treatment for symptoms of neck pain with radiculopathy. Before the date of loss, Petitioner testified she never missed a day of work because of neck or arm pain. Thus, the evidence is clear that prior to December 7, 2020, Petitioner's neck, right arm, and right wrist were pain-free, or asymptomatic. It was only after the incident when Petitioner felt neck, arm, and wrist pain.

The fact Petitioner had an underlying, pre-existing degenerative condition has no bearing on the compensability of her claim. The evidence clearly establishes her work-related fall aggravated, exacerbated and accelerated that degenerative condition, causing it to become symptomatic. No evidence suggests Petitioner had lasting symptoms of neck pain or arm pain prior to December 7, 2020. Here, the evidence coupled with the supporting case law establish causation by a preponderance of the evidence.

Therefore, the Arbitrator finds Petitioner's current condition of ill-being is causally related to her work-injuries.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONERREASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds Petitioner's medical treatment to date has been reasonable and necessary and causally related based on the credibility of testimony submitted at trial and the corroborating medical records. Respondent shall pay reasonable and necessary medical services, including $11,989.14 to DuPage Spine and Orthopaedics; $9,838.00 to Oak Brook Surgical Centre, Inc.; $5,719.55 to Modern Pain Consultants; $12,340.00 to Premier Physical Therapy; and, $1,450.00 to EMG Centers of Chicagoland. Respondent is entitled to credit for medical bills previously paid and shall hold the Petitioner harmless for any medical bills for which it claims 8(j) credit. Dr. Singh did not offer a persuasive medical opinion contradicting the reasonableness or necessity of any of the treatment Petitioner received. The Arbitrator therefore finds all the medical treatment administered to be reasonable and necessary.

WITH RESPECT TO ISSUE (K), IS PETITIONERENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

Given the Arbitrator's findings that Petitioner's current condition of ill-being to her neck is causally related her work accident, the Arbitrator finds that Petitioner is entitled to the C5-6 anterior cervical discectomy and fusion as prescribed by Dr. Koutsky.

The Arbitrator finds that Petitioner's cervical condition of ill-being has not improved with conservative care nor with the passage of time. The two injections provided temporary relief and were

diagnostic. The injections established that Petitioner does suffer from nerves being irritated and inflamed. Since the incident, Petitioner has difficulties performing routine tasks and daily chores. (Tr, p. 27). For example, she struggles blow drying her own hair or with other repetitive tasks involving lifting or reaching for extended periods of time. (Tr, p. 27). She often drops things and is unable to lift a gallon of milk or laundry detergent. (Tr, p. 27). Dr. Singh testified that he found no evidence of malingering and no Waddell signs. Petitioner's testimony is corroborated by the medical records.

The Arbitrator is not persuaded that a third injection will provide anything more than temporary relief and, thus, does not find a third injection to be reasonable or necessary. The Arbitrator further finds insufficient evidence that a radiofrequency ablation is reasonable and necessary and, thus, does not award the procedure. The evidence supports that surgery is the best option to provide long term relief and allow her to return to work. The Arbitrator is mindful that Petitioner wants to exhaust all conservative treatment before surgery. The Arbitrator finds that she did. One year of conservative treatment and rest is enough.

Dr. Koutsky testified that without the recommended ACDF surgery, Petitioner's symptoms of pain and current work restrictions are permanent. (PX1, p. 23:19-24, 24:1-4). For Petitioner to return to work in her prior capacity, surgery is reasonable and necessary. (PX1, p. 23:19-24, 24: 1-4). Both Dr. Koutsky and Dr. Singh agreed Petitioner's mechanism of injury was competent to cause her present condition and ongoing symptoms of neck pain with radiculopathy. (PX1, p. 10:23-24, 11:1-18; PX2, p. 69; RX2, p. 32:5-9). But, although it could be a competent cause of her current condition, Dr. Singh opined Petitioner merely suffered a cervical muscular strain. (PX1, p. 18:12-24, 19:1-7; RX2, p. 18:13-21, 32:4-9). Dr. Singh's diagnosis is seriously undermined by Dr. Koutsky's testimony and corresponding medical records that cervical strains do not cause lasting numbness and tingling, or radiculopathy. (PX1, p. 18:12-24, 19:1-7; PX2, p. 69). The treatment most likely to permanently alleviate Petitioner's current symptoms of neck and arm pain is surgery – specifically, an ACDF at C5-6. (PX1, p. 19:22-4, 20; PX2, p. 69).

The pivotal issue is whether surgery will cure or relive Petitioner of the effects of her injury. The Arbitrator is persuaded by Dr. Koutsky that it will. Petitioner deserves that chance to obtain relief from the effects of her injury. Accordingly, Respondent is hereby ordered to authorize and pay for the cervical surgery recommended by Dr. Koutsky as well as the related treatment pursuant to and as provided in Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

In light of the above findings of fact and conclusions of the Arbitrator awards TTD benefits from December 8, 2020 through December 20, 2021, the date of hearing. Petitioner reported returning to work on September 14, 2021 but was unable to perform proper work-related activities, but it is unclear for how long. The parties stipulated that Respondent is entitled to a credit of $33,123.24 for TTD paid.

Petitioner has proven by a preponderance of the evidence that she was temporarily and totally disabled from December 8, 2020 through December 20, 2021. During this period, all the treating physicians recognized that Petitioner required work restrictions, or they restricted her from work entirely. It is undisputed that as of the date of the this 19b hearing, Respondent failed to provide Petitioner restricted duty work. Only Dr. Singh opined that Petitioner should have been able to return to full unrestricted duties. Dr. Troy, Dr. Kahn and Dr. Koutsky did not agree with Dr. Singh. The Arbitrator does not find the findings and opinions of Dr. Singh to be persuasive

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC022830
Case Name	Brittany Bird v. HCR Manor Care of Oak Lawn
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0362
Number of Pages of Decision	35
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Michael Casey
Respondent Attorney	Rich Lenkov

DATE FILED: 9/21/2022

/s/Maria Portela, Commissioner

Signature

22IWCC0362

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

BRITTANY BIRD,

Petitioner,

vs. NO: 15 WC 22830

HCR MANORCARE OF OAK LAWN,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission affirms the Arbitrator's Decision as to accident, causal connection, temporary total disability benefits, medical expenses and the two-doctor rule. Further, the Commission notes that the parties stipulated to an average weekly wage of $335.51, rather than the $649.09 on which the Arbitrator based the award, so the Commission modifies the calculation of the Arbitrator's award accordingly.

The Commission reduces the permanency award for the cervical spine from 25% loss of a person as a whole, to 20% loss of a person as a whole. Although the Petitioner likely sustained a double crush injury per Dr. Rhode, she has made a significant recovery and there is no evidence of loss of trade, decreased earnings or significant impaired motion. However, she underwent 2.5 years of treatment, complained of having significant pain during this time and testified she is unable to perform heavy jobs involving significant repetitive motion or heavy lifting.

The Commission also reduces the permanency award for the left arm from 17.5% loss of use of the left arm, to 12.5% loss of use of the left arm. Petitioner underwent a cubital tunnel release and although initially, she complained of some residual problems prior to undergoing cervical surgery, she did not return to Dr. Rhode following said surgery. Dr. Rhode believed the continued complaints as of October 30, 2017 were likely secondary to the C7 root which likely would have been addressed by the cervical spine surgery. Petitioner only testified to ongoing issues with her neck and not her left arm at the time of trial.

The Commission modifies the Section 8.1b(b) analysis in the Arbitrator's Decision as follows:

The Commission strikes the last sentence of factor (ii) and replaces with "The Commission assigns no weight to this factor because the Petitioner voluntarily chose to change her occupation."

The Commission modifies the weight assigned under factor (iv) and assigns this factor "no weight".

The Commission strikes the sentence beginning with "When she returned to work…" through the end of the first paragraph of the analysis under factor (v). The Commission replaces the remainder of the paragraph with "Petitioner was released to return to work full duty by Dr. Sokolowski without restrictions. She has residual cervical pain and stiffness. The Commission assigns this factor significant weight."

Additionally, the Commission corrects the following scrivener's errors:

Under the Statement of Facts, in the paragraph beginning with "The records of Palos Immediate Care…" the Commission corrects the date in the second sentence to be "9/21/15" instead of "9/21/17".

Under the Statement of Facts, in the paragraph beginning with "On 11/24/15, Dr. Kalina noted…" the Commission replaces the word "is" with the word "disc" in the 2nd sentence.

Under the Statement of Facts, in the paragraph beginning with "The IME report of Dr. Carroll…", the Commission replaces the word "transportation" with the word "transposition" in the second sentence.

Under the Statement of Facts, in the paragraph beginning with "The evidence deposition of Dr. Blair Rhode…" in the 6th sentence, the Commission replaces the word "for" with the word "four".

Under the Conclusions of Law, Section (F), in the 5th sentence of the 4th paragraph beginning with "The medical records of Palos Immediate Care…", the Commission corrects the date from "9/21/17" to "9/21/15".

Finally, under the Conclusions of Law, Section (F), in the 6th sentence of the 6th

paragraph beginning with “Respondent’s section 12 examining physician…”, the Commission replaces the word “carpal” with the word “cubital”.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $223.67 per week for a period of 151 weeks, from June 10, 2015 through May 1, 2018, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $220.00 per week for a period of 100 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 20% loss of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $220.00 per week for a period of 31.625 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 12.5% loss of use of the left arm.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the reasonable and necessary medical services identified in Px21 and Px22 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.

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.

September 21, 2022

/s/ *Maria E. Portela*

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

MEP/dmm
O: 072622
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ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

22IWCC0362

BIRD, BRITTANY
Employee/Petitioner

Case# **15WC022830**

HCR MANORCARE
Employer/Respondent

On 4/30/2020, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.15% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

2221 VRDOLYAK LAW GOUP LLC
MICHAEL P CASEY
100 N RIVERSIDE PLZ 24TH FL
CHICAGO, IL 60606

2542 BRYCE DOWNEY & LENKOV LLC
JESSE LANSHE
200 N LASALLE ST SUITE 2700
CHICAGO, IL 60601

HIM 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

Brittany Bird
Employee/Petitioner

v.

HCR ManorCare
Employer/Respondent

Case # **15** WC **22830**

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 **Charles Watts**, Arbitrator of the Commission, in the city of **Chicago**, on **6/17/19**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. [ ] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [ ] Was there an employee-employer relationship?
C. [x] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [x] What was the date of the accident?
E. [ ] Was timely notice of the accident given to Respondent?
F. [x] Is Petitioner's current condition of ill-being causally related to the injury?
G. [ ] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [x] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [x] What temporary benefits are in dispute?
   [x] 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. [x] Other **Two Doctor Rule**

FINDINGS

On **6/9/15**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**33,752.68**; the average weekly wage was $**649.09**.

On the date of accident, Petitioner was **23** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**3260.76** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**3260.76**.

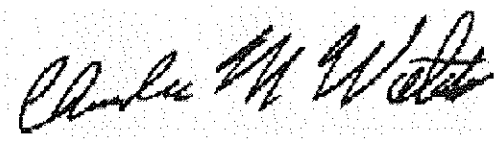
Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER SEE ATTACHED ADDENDUM ORDER

- Respondent shall pay reasonable and necessary medical services of PX 21 and PX 22 as provided in Sections 8(a) and 8.2 of the Act.
- Respondent shall pay Petitioner temporary total disability benefits of $432.72/week for 151 weeks, commencing 6/10/15 through 5/1/18, as provided in Section 8(b) of the Act.
- Respondent shall be given a credit of $3260.76 for temporary total disability benefits that have been paid.
- Respondent shall pay Petitioner permanent partial disability benefits of $389.45/week for 125 weeks, because the injuries sustained caused the 25% loss of the person as a whole, as provided in Section 8(d)2 of the Act
- Respondent shall pay Petitioner permanent partial disability benefits of $389.45/week for 44.28 weeks, because the injuries sustained caused the 17.5 % loss of the left arm, as provided in Section 8(e) of the Act.

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

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



Signature of Arbitrator

April 29, 2020
Date

APR 30 2020

Brittany Bird v HCR ManorCare 15 WC 22830

STATEMENT OF FACTS

Petitioner testified in open hearing before the arbitrator who had opportunity to view her demeanor under direct examination and under cross-examination.

Petitioner at hearing was 5'6" tall and weighed 200 pounds. On the accident date of June 9, 2015 she weighed 150 pounds. Prior to the accident date she had no problems with her neck, shoulder, left arm or left elbow that required her to seek medical treatment. T6-7. Petitioner started working for respondent January 7, 2015 and worked as a Certified Nursing Assistant on the date of the accident. Her job duties included transporting patients to a from the rooms and to rehab rooms; showering, bathing, feeding, dressing the patients; taking care of their bathroom needs. The patients that she worked with were surgery or elderly or had some type of illness where their families could not care for them. Ages of the patients varied from young to old. Some of the patients weighed more than 300 pounds. In dealing with patients in the capacity as a Certified Nursing Assistant she sometimes would have to work with a coworker. Prior to working for Respondent she had gone to school to become a CNA. The job with respondent was the first job that she got. Petitioner testified that on June 9, 2015, it was early in the morning and a patient had just woke up. Petitioner was getting the patient out of bed to go from her bed to her wheelchair. Petitioner put the patient's hands on petitioner's shoulders; this was a one person assist with the gait belt. Petitioner put the gait belt on the patient and had her hands under the gait belt holding the gait belt. Petitioner got the patient up. Patient was standing up and they were trying to transition from the bed to the chair. The patient started to wobble and once petitioner got the patient over the chair, the patient went down fast and pulled petitioner's neck forward with all of her weight down into the chair. T 11. Petitioner felt a lot of pain in her neck and thought she had pulled something. It was very painful. Petitioner continued the best she could to get the patient ready for her breakfast. Petitioner continued trying to do her job the rest of the day but around 2 o'clock could not take the pain anymore. She told her supervisor. They were understaffed at the time so petitioner did her job the best she could. It was her neck and left shoulder which were in pain. Petitioner made a report that date to management. Petitioner identified Petitioner Exhibit 1 as a copy of the HCR ManorCare incident report dated 6/9/15 that she completed. The document contains petitioner's statement of the accident: "I was transferring E.. O… In room 48-2 with a gait belt from her bed to her wheelchair this morning at 7:30 AM; during transfer she was wobbly so I steadied her and continued to transfer to the chair and felt the pain in my neck; neck feels like a pulled muscle." PX 1.

After petitioner reported the accident to management she was told to either go to Little Company of Mary Care Station that day or the next morning. When she left work she went home to see if it would get better. The next morning it was not better, so she went to the Care Station. T 12-14.

The medical records of Little Company of Mary Hospital Urgent Care, dated 6/10/15 through 7/3/15, were admitted in evidence as Petitioner Exhibit 2. On 6/10/15 Little Company of Mary Oak Lawn Care Station record indicates "patient states yesterday at work she was lifting a patient and felt a pull in her left side of her neck: patient states pain has worsened and has gone

down her left shoulder to other side of neck." PX 2, p 9. Petitioner testified she was examined and was told to be off a couple of days and then return. T 14.

On 6/12/15, Petitioner went to a follow-up visit at Little Company of Mary Oak Lawn Care Station. PX2, p 28. This record reports: "reevaluation; patient here for follow-up after work injury; patient was moving a patient and had neck pain; patient started ibuprofen and Flexeril and pain better on meds but pain still 4/10; complains of tingling in left upper extremity." PX 2, p 28. Examination revealed: "pain with palpation cervical paraspinals left and trap left full AROM left upper extremity decreased AROM flexion/extension and rotation left neck." PX 2, p 28-30. Physical therapy was ordered with diagnosis of neck pain/strain. PX 2, p 11.

Petitioner started physical therapy at Goodlife Physical Therapy. T 15. The medical records and bill of Goodlife Physical Therapy were admitted in evidence as Petitioner Exhibit 3. These records reveal that petitioner was initially evaluated for physical therapy on 6/18/15. PX 3, p 8-11. The location of Petitioner's pain was identified as the "bilateral posterior aspects of the neck; bilateral superior scapular region of the shoulder and shoulder girdle." PX 3, p 8.

Physical therapy continued through September 4, 2015. PX 3, p 41.

On 6/19/15, the Little Company of Mary Care Station record reported that Petitioner was in for a follow-up and since her last visit there had not been much change in reported pain. PX 2, p 31-32. Petitioner was ordered off work from 6/19/15 through 6/26/15, prescribed Flexeril and ibuprofen, and given the diagnosis of neck pain/strain. PX 2, p 14.

On 6/26/15, Petitioner returned to Little Company of Mary Care Station and it was noted she reported her neck was sore and pain sometimes radiated down her arm. She reported that physical therapy was helping and that she took ibuprofen and Flexeril two times per day. PX 2, p 33-34. Orders were that Petitioner remain off work 6/26/15 through 7/3/15, Flexeril was prescribed, continue physical therapy and a follow-up appointment was scheduled. PX 2, p 18.

On 7/3/15, the Little Company of Mary Care Station record indicates that Petitioner still had neck pain but had tried to wean herself off pain medication but had too much pain and so she continued to take Flexeril and ibuprofen. PX 2, p 27. The record notes that Petitioner still had very limited range of motion in her neck with occasional pain radiation down her left arm. Petitioner reported she had only improved about 10% since date of incident 6/9/15; has been in physical therapy with little relief. PX 2, p 38-40. Orders were that Petitioner remain off work, continue ibuprofen and Flexeril, and she was referred to an orthopedic surgeon. PX 2, p 22. The diagnosis was cervical strain with radiculopathy. PX 2, p 25.

Petitioner was treated by orthopedic surgeon Dr. Anis Mekhail at Parkview Orthopedic. These records were admitted in evidence as Petitioner Exhibit 4.

On 7/13/15, Petitioner was examined by Dr. Mekhail. Petitioner had complaints of neck pain going down the left arm with numbness and tingling. Petitioner reported this condition started on 6/9/15 when she was lifting a person from bed to chair with the gait belt and felt a twinge in her neck. Petitioner reported the pain got worse and had a range of 4-8/10. Petitioner reported physical therapy really didn't help that much and that she currently took Flexeril and ibuprofen

but that it is barely taking the edge off the pain. Petitioner reported no bowel or bladder control problems; no problem with walking balance; no significant weakness and had been off work since 6/9/15. PX 4, p 14. Physical exam revealed: "positive Sperling going down the left arm in the ulnar aspect of the arm; positive cubital tunnel, positive Tinel sign but she has intact sensation, normal motor power, symmetric deep tendon reflexes, no abnormal reflexes in the upper or lower extremities, normal gait; has significant stiffness of her neck turning her head only about 20° in either direction and also extending mostly 10-20°." PX 4, p 14. Dr. Mekhail's assessment was that Petitioner had significant neck pain, left cervical radiculopathy, and positive cubital tunnel syndrome. PX 4, p 15. The plan was to obtain an MRI of the cervical spine and an EMG to confirm if the origin is the neck versus cubital tunnel. Medrol Dosepak and tramadol were prescribed and Petitioner was to remain off work. PX 4, p 15.

On 7/17/15, a MRI of the cervical spine without contrast was performed in Chicago Ridge Medical Imaging. PX 5.

On 7/21/15, an EMG of the right upper extremity was performed by Dr. George E Charuk D. O. PX 6.

On 7/30/15, Dr. Mekhail noted Petitioner was still having neck pain and numbness and tingling in the left ring and little fingers. Physical examination revealed: negative Sperling; neurologically intact but with limited range of motion, lacking 20° or so of rotation to each side. The MRI was essentially negative in the neck and the EMG was normal. The diagnosis was whiplash injury. Given the physical demand of Petitioner's job, Dr. Mekhail prescribed physical therapy 3 times a week and kept her off work. Petitioner was to return in 3 weeks. It was further noted that Petitioner was taking tramadol and Mobic as needed. PX 4, p 27.

On 9/3/15, Petitioner was examined by respondent's Section 12 examining physician, Dr. Frank Phillips at Midwest Orthopedics at Rush. Dr. Phillips' IME reports dated September 3, 2015, February 23, 2017, June 7, 2018, and January 29, 2019 were admitted in evidence as Respondent Exhibit 5. The subjective findings were consistent with what Petitioner reported to her treating physicians. Physical examination revealed some posterior cervical and scapular tenderness bilaterally, limited cervical range of motion flexion, limited extension and side bending; all limited by axial neck pain; Sperling's and Lhermitt's are negative for reproduction of any radicular symptoms; upper extremity motor exam 5/5; sensation is intact in a C5 through C8 dermatomal pattern; reflexes are symmetric. Cervical MRI of July 17, 2015 was interpreted to reveal no evidence of disc herniation or any acute structural injury. Dr. Phillips evaluation was that Petitioner likely sustained a cervical sprain/strain injury and that he found no evidence of any structural injury to her cervical spine. Dr. Phillips noted that Petitioner seemed to be responding to physical therapy and recommended she complete course of physical therapy. After completion of physical therapy, Dr. Phillips opined that Petitioner could resume regular duty work at MMI. Respondent Exhibit 5.

On 9/3/15, the same date as the IME, Goodlife Physical Therapy medical records document that Petitioner was unable to tolerate overhead activity at all without pain and she was unable to tolerate repetitive upper extremity activity at all without pain. PX 3, p 41.

Petitioner testified that after the examination by Dr. Phillips she was ordered to return to work by her employer. She returned to see Dr.Mekhail. T 18.

On 9/12/15, Dr. Mekhail noted Petitioner has a neck strain and the MRI was unremarkable. Petitioner still gets this tingling in the ulnar aspect of the hand. He noted Petitioner was doing better with physical therapy but still had limitation of range of motion, posterior neck tenderness. He found Petitioner to be neurologically intact. Dr. Mekhail recorded that Petitioner did not think she was physically capable to do her job. Dr. Mekhail opined she could do light duty work with a 10 pound weight restriction and noted Petitioner was not thrilled about that recommendation. Pain medication prescriptions were re-filled, more physical therapy ordered, and Petitioner was to return in 4 weeks. PX 4, p 30. The primary diagnosis was left cervical radiculopathy and the secondary diagnosis was left cubital tunnel syndrome. The additional diagnosis was strain. PX 4, p 36.

Petitioner testified that her employer sent a letter indicating that she had to be back at work or she would be terminated. Petitioner returned to work on September 21, 2015 and attempted to work in the full capacity as a certified nursing assistant. T 19. Petitioner testified she was still having the same pain in her neck and in her left shoulder and down her left arm that she had from the date of the accident. T 20. She testified she was at work on that date for about 3 hours doing her normal duties and the pain was too great so that she had to take a break. She called her attorney and then decided to leave work. T 19-20. She advised her supervisor and left respondent's premises and went to Palos Immediate Care. T 20.

The records of Palos Immediate Care were admitted in evidence as Petitioner Exhibit 7. The 9/21/17 Palos Immediate Care Center records noted Petitioner complained of neck pain and reported that she previously injured the neck and had been cleared for work but today she reinjured. Petitioner reported feeling numbness and tingling in the left arm to the 5th digit. Petitioner reported that this was baseline since initial injury. Petitioner also reported that she took Mobic and tramadol before work because she was "preparing for the worst." Physical examination revealed reduced range of motion in her neck for lateral rotation decrease flex/extension, positive TTP paravertebral areas, full range of motion in her upper extremities, and 5/5 normal sensation. The cervical spine x-ray was negative. PX 7, p 5, 7. Discharge instructions to patient were take Norco, stop tramadol, ice, continue Mobic, no Valium with Norco, and to follow-up with your physician in 24 to 48 hours PX 7, p 9. Discharge diagnosis was: neck pain. PX 7, p 9. This record also indicates: injured at work in June; reinjured at work today; onset of pain since June. PX 7, p 8.

Petitioner testified she followed up with Dr. Ronald Silver of Orthopedic Specialists of the North Shore. T 21. These records were admitted in evidence as Petitioner Exhibit 8.

The 9/25/15 Dr. Ronald Silver/Orthopedic Specialists of the North Shore records indicate Petitioner was working as a nursing assistant on 9/21/15, recurrently lifting heavy patients and experienced severe pain in the left side of her neck radiating into the left shoulder and arm with numbness and tingling noted as well. Petitioner reported that prior to the work accident her left shoulder and arm were normal as well as her neck. Petitioner reported that she had a previous

accident with regard to her neck but this had resolved prior to this accident. Physical examination revealed tenderness over the cervical spine on the left side as well as her trapezius muscles and parascapular muscles on the left. It was noted that Petitioner has essentially no range of motion of her neck due to severe pain and spasms. Petitioner's shoulder motion on the left is normal, neurological examination is normal, and cervical spine x-rays were within normal limits. PX 8, p 9. The impression was cervical radiculopathy. PX 8, p 9. With regard to medications he prescribed, Dr. Silver indicated the following medications were a matter of medical necessity due to the original work injury: Meloxicam for soft tissue swelling and inflammation, Protonix for gastrointestinal protection as Petitioner had demonstrated gastrointestinal sensitivity to other nonsteroidal anti-inflammatory medication, hydrocodone for pain, and Ultram for lower level of discomfort. Petitioner was reported to have significant soft tissue swelling and inflammation about the trapezius for which topical anti-inflammatory Ketoprofen for swelling and inflammation reduction and pain control was prescribed. Additional orders were that Petitioner start physical therapy, Petitioner was referred to a cervical spine pain specialist, ordered off work, and ordered to obtain an MRI scan. PX 8, p 10.

Petitioner testified she was referred by Dr. Silver to Dr. Jared Kalina at the Kalina Pain Institute. T 22. The records of Dr. Jared Kalina/Kalina Pain Institute were admitted in evidence as Petitioner Exhibit 10.

On 9/29/15 Dr. Jared Kalina/Kalina Pain Institute records report that Petitioner was injured at work on 6/9/15 while at Manor Care Oak Lawn West while assisting a patient to the bathroom with gait belt when the patient she was assisting lost her balance falling backwards. The record indicates Petitioner had to suddenly pull back on the gait belt to steady the patient and had a sudden onset of neck pain following this incident. Petitioner reported she continued to work that day but 5-6 hours later the pain escalated to the point she could not tolerate work. Petitioner denied prior episodes of neck pain. Petitioner reported that she was referred to Little Company of Mary Immediate Care Center where x-rays were negative for facture and then was discharged on Tramadol, NSAID's and Flexeril. Petitioner reported that she had been treated thus far with medication and physical therapy, consulted an orthopedic surgeon, (Dr. Mekhail) who told her it was just a neck sprain and advised to continue therapy. Petitioner also indicated that after an MRI of the C-spine was performed and an IME was done, she was told to return to work without restrictions unrestricted duty. Petitioner reported that she returned to work September 21 and could not tolerate work duties due to pain so her attorney referred her to Dr. Silver for a second opinion. Petitioner reported constant shooting and achy neck pain left greater than right that radiates into her left shoulder blade and into the back of her arm and associated tingling pain in her left 4th and 5th digits. Petitioner reported the pain is worse with turning her head and sitting upright and is reduced with ice and medications. It was noted Petitioner was not currently engaged in formal PT but in the past it made her pain worse. PX 10, p 42. Dr. Silver's assessment was acute brachial neuritis, acute myalgia, and acute cervical spondylosis. PX 10, p 44-45. The plan was to undergo another trial of formal PT. Dr. Silver indicated he would manage pain medications and ordered a complete MRI of C-spine for further evaluation into her persistent pain complaints. PX 10, p 45.

On 10/2/15 MRI of the cervical spine was performed at Delaware Place MRI of the order of Dr. Silver. PX 10, p 86.

Petitioner testified that she was referred by Dr. Silver to Spine & Pain Center, Dr. Dan Catarello for physical therapy. T 23. The records of Spine & Pain Center, Dr. Dan Catarello were admitted in evidence as Petitioner Exhibit 11. On 10/5/15, Spine & Pain Center, Dr. Dan Catarello records note that just prior to the injury, Petitioner was performing her duties of helping a patient steady themselves when they pulled on her neck region; during voluntary movements she experienced pain, discomfort and loss of normal functions in the neck and left upper extremity; complaints of sharp achy upper back region pain; sharp achy left upper extremity region pain. PX 11, p 171. Physical therapy was directed to the upper back and left upper extremity region. PX 11, p 174- 345.

On 10/20/15 Dr. Jared Kalina/Kalina Pain Institute records indicate that Petitioner reported transient pain relief after 9 PT sessions. Petitioner continues to report constant neck pain left greater than right that radiates into her left shoulder blade and into the back of her arm; reports tingling as well left 4th and 5th digits. The record indicated that the recent C-spine MRI showed a moderate sized C6-7 paracentral to the left disc bulge and a mild central C5-6 disc bulge. PX 10, p 38. After physical exam the diagnosis was was acute brachial neuritis, acute myalgia, acute cervical spondylosis, radiculopathy in the cervical region, and muscle spasms of back. PX 10, p 40. A series of two left-sided C5-6 and C6-7 transforaminal epidural steroid injections to reduce her radicular pain were scheduled. The plan was to taper off Norco and Valium. Mobic, Protonix, Lunesta approved for sleep hygiene due to pain, were prescribed. PX 10 p 40.

On 10/27/15 Dr. Jared Kalina/Kalina Pain Institute records note Dr. Kalina performed cervical transforaminal epidural steroid injection left C5-6, left C6-7. PX 10, p 35-37. On 11/10/15, a second cervical transforaminal epidural steroid injection left C5-6, left C6-7 was performed. PX 10, p 32-34.

The 11/11/15 Dr. Silver/Orthopedic Specialists of the North Shore record indicates Petitioner continued to be symptomatic, had limited range of motion in her cervical spine regard to left and right side twisting and forward flexion, due to her work injury of September 21, 2015. Petitioner was noted to continue to have numbness, tingling and pain down her left arm for which she recently had two epidural steroid injections. Petitioner was to continue PT, remain off work, and obtain additional imaging studies. PX 8, p 8.

On 11/20/15, Dr. Aleksandr Goldvekht performed upper extremity NCS/EMG study interpreted to be abnormal with evidence of mild left C7 radiculopathy and focal left ulnar entrapment neuropathy at the cubital tunnel (cubital tunnel syndrome). Clinical correlation was recommended. PX 12, p 6.

On 11/24/15, Dr. Kalina noted that Petitioner underwent two C5-6 and C6-7 injections which resulted in no significant relief of her radicular pain, that she continues to have neck pain left greater than right that radiates into her left shoulder blade and into the back of her arm, and there is tingling in her left 4th and 5th digits. Dr. Kalina noted the most recent MRI of the C-spine demonstrated mild/moderate sized C6-7 paracentral to the left disc bulge and a mild central C5-6

is bulge, and the recent EMG/NCV demonstrated C7 radiculopathy. Dr. Kalina referred her to Dr. Sokolowski, an orthopedic spine surgeon. PX 10, p 28.

Petitioner testified that she continued to remain off work throughout this time. T 25.

Petitioner testified Dr. Kalina referred her to Dr. Mark Sokolowski for further treatment. T 25 The medical records of Dr. Mark Sokolowski M.D. /Orthopedic Surgery of the Spine were admitted in evidence as Petitioner Exhibit 13. The evidence deposition of Dr. Mark Sokolowski was taken on 12/13/18 and the transcript was admitted in evidence as Petitioner Exhibit 19.

On 12/2/15, Dr. Sokolowski examined Petitioner and noted her chief complaints were neck pain, left arm pain, numbness and tingling especially involving the left ring and small fingers. Petitioner reported these symptoms arose from a work injury on June 9, 2015 suffered while assisting a patient with a transfer when the patient began to fall backwards with her arms on Petitioner's shoulders. Dr. Sokolowski's history indicates that as a result the patient jerked Petitioner forward and Petitioner reported she developed the acute onset of neck pain with radiation to her left arm. Petitioner reported to Dr. Sokolowski that she had undergone some physical therapy with limited benefit, undergone two epidural steroid injections with limited benefit, had an MRI of her cervical spine and an EMG. Petitioner reported that her neck pain, left arm pain and left 4th and 5th digit numbness and tingling persisted and rated her pain at 6/10. Physical examination revealed the Sperling sign was positive production of periscapular pain and neck pain and some arm pain. Petitioner had Frank cervical facet joint tenderness to palpation on the left more than on the right. Petitioner also had neck pain with extension and relative relief flexion on the left more than on the right. She had an equivocal Tinel sign over the left elbow, decreased sensation in her left 4th and 5th digits, Hoffman sign was negative, reflexes were normal, and strength was symmetrically intact throughout her bilateral upper extremities and all muscle groups with the exception of the left grip, which was 4/5. Dr. Sokolowski reviewed an MRI of her cervical spine dated October 2, 2015 and noted Petitioner had small degrees of disc pathology at C5-6 and C6-7 with no large herniations noted. Dr. Sokolowski noted the EMG dated November 20, 2015 was interpreted as mild left C7 radiculopathy, with focal cubital tunnel syndrome. Diagnosis was: 1. Neck pain; 2. Symptoms consistent with ulnar nerve entrapment. Findings were consistent with cervical facet joint mediated pain. Petitioner was noted to be likely a good candidate for medial branch block with her independent pain specialist and if that gave her good short-term relief, but not long-lasting relief, she may be a candidate for more definitive interventions such as radio-frequency ablation. No surgical intervention was proposed for her cervical spine at this time. Dr. Sokolowski noted that Petitioner's numbness, paresthesias, and tingling were localized to the left 4th and 5th digits corresponds with either C8 nerve root or the ulnar nerve and given the absence of pathology on MRI at C7-T1, her symptoms were most likely cubital tunnel in origin. PX 13, p 151-152.

On 12/23/15, Dr. Silver examined Petitioner and indicated that her motion of her cervical spine with regard to left and right side twisting and forward flexion is limited and painful due to her work injury of September 21, 2015. Tenderness remained over the cervical spine on the left with limited range of motion. Petitioner reported that prior to the accident, her neck was normal. It

was noted that Petitioner had two epidural steroid injections. Petitioner was to continue physical therapy for cervical radiculopathy and medications were prescribed. PX 8, p 7.

On 12/29/15, Dr. Kalina noted Petitioner continued to report left-sided neck pain and had been examined by Dr. Sokolowski, who had recommended she consult with a hand surgeon to address her ulnar nerve entrapment. Dr. Kalina referred her to Dr. Rimington. Dr. Kalina also noted that Dr. Sokolowski recommended left C5, C6, C7 MBB followed by RFA if indicated to address her neck pain because Petitioner's MRI of the C-spine demonstrated mild/moderate sized C6-7 paracentral to the left disc bulge and a mild the C5-6 disc bulge and an EMG/NCV demonstrated C7 radiculopathy and left cubital tunnel syndrome. Care plan was to schedule a diagnostic left C5, C6 and C7 MBB and that Petitioner remained off work. Petitioner was also to receive medication refill per Dr. Silver and it was noted that her last urine toxicology screen demonstrated no red flags. PX 10, p 24-27.

The medical records of Dr. Todd R. Rimington, MD/Northwest Orthopedics & Sports Medicine were admitted in evidence as Petitioner Exhibit 14.

On 1/12/16, Dr. Rimington examined Petitioner and wrote Petitioner was at work on January 9, 2015 and when moving a patient by herself the patient began to fall. Petitioner reported that when catching the patient, she hyperextended her neck and has been having left arm pain and neck pain since the injury. Dr. Rimington noted Petitioner had an extensive course of conservative treatment including physical therapy, anti-inflammatory medication and pain medication. Petitioner reported persistent pain in her left arm with pain at the elbow and radicular symptoms extending from her neck down to her hand and numbness in her small and ring fingers. Examination revealed tenderness to the posterior cervical spine; limited flexion and extension; mild tenderness in the paraspinal muscles on the left side of her neck; Petitioner was able to fully abduct and forward flex her shoulders; rotator cuff strength is intact; biceps and triceps strength is intact; positive Tinel's in the left elbow with a markedly positive elbow flexion test; these tests are negative on the right side; with carpal tunnel compression she gets numbness in her small and ring fingers; negative Tinel's at her wrist; has subjective decreased sensation to the small and ring finger; sensation is intact to the remaining digits; her hand is warm and well perfused. Review of the EMG references an MRI with disc herniation's from C4-C6; on the EMG she has left C7 radiculopathy and left tunnel syndrome of moderate severity. Assessment was: 1. Cubital tunnel syndrome on the left; 2. Cervical radiculopathy. Dr. Rimington assessed Petitioner as having failed conservative treatment and recommended cubital tunnel release surgery. Petitioner decided to proceed with surgery. PX 14, p 6-7.

Petitioner testified that Dr. Rimington was going to be off work so that she had to get another doctor to do the surgery. T 28

On 1/19/16, Petitioner underwent medial branch block of C5/6, C6/7, and had a postoperative diagnosis of cervical spondylosis without myelopathy. PX 10, p 21-23. Petitioner testified this injection did provide relief for a few days. T 28.

Petitioner returned to Dr. Silver on 1/27/16 and he referred Petitioner to Dr. Blair Rhode of Orland Park Orthopedics for evaluation and treatment of her left elbow. T 28-29; PX 8, p 6.

The medical records of Dr. Blair Rhode/Orland Park Orthopedics were admitted in evidence as Petitioner Exhibit 15. The evidence deposition of Dr. Blair Rhode dated 3/7/19 was admitted in evidence as Petitioner Exhibit 20.

On 1/29/16, Dr. Rhode noted that Petitioner gave a history of working as a CNA and while transferring a patient to the bathroom, the patient began to fall and grabbed Petitioner's arms. Petitioner reported she sustained a traction injury to her bilateral upper extremities with the cervical injury; developed sudden onset of cervical pain with numbness and tingling to the ring and little finger; underwent conservative management with physical therapy and ultimately returned to full duty as per the IME physician recommendations on September 21, 2015. Petitioner reported that she was able to tolerate approximately 3 hours until her symptoms worsened and she went home. Petitioner reported she was performing the activities of patient transfer at time of her symptomatic aggravation and has continued to experience cervical pain with numbness and tingling to the ring and little finger. Dr. Rhode described Petitioner prior medical care and his assessment was that there is a component of double crush syndrome aggravating the patient's cubital tunnel syndrome. Dr. Rhode advised Petitioner continue conservative treatment, dispensed a night splint, and ordered Petitioner continue to perform home stretching. Dr. Rhode performed left cubital tunnel steroid injection. Petitioner was kept off work and was to follow up in two weeks for reassessment. PX 15, p 207-209.

Petitioner testified the injection by Dr. Rhode into the left elbow did not solve the complaints that she had been having in her left arm and down into her left hand. T 29.

On 1/29/16, Dr. Kalina performed a diagnostic left C5, C6 and C7 MBB which resulted in a reduction of Petitioner's pain for about one hour which was less than Dr. Kalina expected. Dr. Kalina noted he was considering proceeding with a RFA. Dr. Kalina also reported that Petitioner had consulted with Dr. Remington who recommended cubital tunnel surgery and Worker's Compensation denied this procedure. He also noted that Petitioner consulted a second surgeon, Dr. Blair Rhode, who also recommended surgery. Dr. Kalina advised Petitioner to return to Dr. Sokolowski. PX 10, p 17.

On 2/3/16, Dr. Ronald Silver noted that Petitioner continues to be symptomatic with pain at 7/10, range of motion was improved with regard to left and right side twisting and forward flexion though it remained limited. Dr. Silver transferred her care to her pain specialist and possible spinal surgeon. PX 8, p 5. Petitioner testified her pain specialist at that time was Dr. Kalina and her spine surgeon was Dr. Sokolowski. T 30.

On 2/12/16, Dr. Blair Rhode noted that Petitioner returned post cubital tunnel injection that provided temporary relief and that Petitioner was unwilling to live with her current symptoms and wished to proceed with a cubital tunnel release. Petitioner was to remain off work and medications were ordered including Norco, Ultram and Flexeril. PX 15, p 205-206.

On 2/17/16, Dr. Mark Sokolowski examined Petitioner and noted she was scheduled for cubital tunnel release in the coming weeks, rates her neck pain as 7/10, and denies any acute neurological changes. After physical examination, the assessment was: 1. Neck pain; 2. Clinical evidence of cubital tunnel syndrome. Recommendations were to proceed with cubital tunnel

release and if her cervical spine symptoms persist after surgery and therapy, Dr. Sokolowski would reevaluate her clinically but noted at present no surgical intervention for cervical spine was indicated. PX 13, p 148.

Petitioner testified that on March 4, 2016 she underwent a medical examination by respondent's Section 12 examining physician, Dr. Charles Carroll. T 31. The medical reports of Dr. Carroll dated March 4, 2016, March 31, 2016, and April 19, 2019 were admitted in evidence as Respondent's Exhibit 6.

The IME report of Dr. Carroll dated March 4, 2016 states: this is a 24-year-old right-hand dominant certified nursing assistant; she presents with a history of an injury to the left elbow on June 9, 2015; states she was lifting a patient and taking the patient to the bathroom; she was using a gait belt; states that she was pulled forward by the patient; she felt pain in the neck; states that had her shoulders pulled and felt a pulling feeling in the elbow that went from the neck all the way down into the fingers; stated this was on the ulnar side of her hand. After review of multiple treatment records, examination and review of diagnostic studies, Dr. Carroll opined: current diagnosis cervical strain; her history has changed over time; I do believe she suffers from cubital tunnel syndrome; it probably stems from the sensitivity up in the cervical spine; I do not believe that the injury in question caused her cubital tunnel syndrome in and of itself; she has not reached maximum medical benefit of her care; I advised that she be seen by hand surgeon who specializes nerve surgery; our (sic) release and possible transportation is indicated; present physical findings are tenderness over the ulnar nerve and the cervical spine; has evidence of ulnar nerve compression at the elbow on the electrodiagnostic studies and physical examination; may return to work at the present time with a 5-pound lifting restriction on the left; she can wear an elbow pad; she cannot do forceful gripping or grasping; she has no restrictions on the right; medication necessary at this time would be pain medication, hydrocodone or Ultram; I do not see a need for anti-inflammatories; she gives the history as noted; some variations are noted over time; I do believe that she does have ulnar nerve compression; release may be helpful. Respondent's Exhibit 6 report dated March 4, 2016. In addendum letter addressed to respondent from Dr. Carroll dated March 31, 2016 it is stated: I have reviewed the medical records concerning the care for this individual; I do not find that petitioner's (sic) work activities caused, exacerbated or accelerated her condition of cubital tunnel syndrome; this opinion is based on the descriptions provided and my examination findings; the description in the incident report outlines the history at the time of her alleged injury; I have carefully considered these opinions that relate to this individual only. Respondent Exhibit 6, letter dated 3/31/16.

On 3/21/16, Dr. Blair Rhode reported Petitioner continues to have left elbow pain and was awaiting surgery; medications continued; off work continued. PX 15, p 203-204.

On 4/18/16, 5/20/16, 6/8/16 and 6/13/16, Dr. Rhode noted Petitioner's continuing complaints of left elbow pain and neck pain and note increasing symptoms in the left elbow, increasing weakness, and that she was awaiting cubital tunnel surgery. PX 15, p 195-202. Petitioner testified during this time period she was awaiting authorization from Worker's Compensation to proceed with the left cubital tunnel surgery. Petitioner testified she thought that the Worker's Compensation never authorized the cubital tunnel surgery. T 31-32.

Petitioner testified that she was referred by Dr. Catarello to Dr. Scott Glaser at APM Surgical for injections into her neck. T 32. On 6/9/16, Dr. Daniel Catarello indicated that Petitioner described her pain as sharp and achy in the upper back region, aggravated by local movement, and that it had remained the same since last visit (frequent 4-6/10), and was aggravated by local physical exertion. PX 11, p 233.

The records of Dr. Scott Glaser/Advance Physical Medicine were admitted in evidence as Petitioner Exhibit 18. On 6/13/16, Dr. Scott Glaser reported that Petitioner's chief complaint was neck pain, her diagnosis was cervical facet arthropathy. A bilateral C5-6, C6-7, and C7-T1 intra-articular facet joint injection was performed. PX 18, p 6.

On 6/21/16, Dr. Rhode performed surgery on petitioner consisting of left open cubital tunnel release in situ with postoperative diagnosis of left cubital tunnel syndrome. PX 15, p 193-194.

On 6/27/16, Dr. Rhode saw Petitioner post-surgery and on 7/8/16 reported that Petitioner would begin therapy. Petitioner remained off work. PX 15, p 190-192.

On 8/3/16, Dr. Blair Rhode reported Petitioner had full passive ROM. Medications were ordered and Petitioner's work status was changed to modified duty with no use of her left upper extremity. PX 15, p 188-189.

On 8/15/16, Dr. Glaser recorded that Petitioner's chief complaint was neck pain, the diagnosis cervical facet arthropathy, and a bilateral C5, C6, C7, and C8 medial branch nerve block was performed. PX 18, p 7.

On 9/2/16, Dr. Rhode examined Petitioner and there were no changes since last visit. PX 15, p 186-187.

On 9/16/16, Dr. Rhode examined Petitioner and there were no changes since last visit.. PX 18, p 184-185.

On 10/21/16, Dr. Rhode indicated that Petitioner's reported baseline pain is 6/10 and at its worst, 8/10. He also noted that Petitioner had not been accepted back to work. On physical exam, pain was elicited at the medial epicondyle; Petitioner had full passive ROM. Orders were to continue therapy, continue modified light duty, and proceed with FCE as she has plateaued. He indicated that Petitioner was not capable of full duty work and has not been accommodated. PX 18, p 182-183.

On 10/31/16 Dr. Scott Glaser performed a C4-5, C5-6 and C6-7 cervical discography. Petitioner was then sent for CAT scan in order to return to discuss results of the procedure. PX 18, p 8. The CT scan of the cervical spine was interpreted to show: 1. At the C6-C7 level, there is a 3-4 millimeter central posterior broad-based disc herniation with an extruded nucleus pulposis which indents the ventral surface of the thecal sac with some central stenosis and mild bilateral neuroforaminal narrowing; this is probably Dallas classification type III; 2. At the C5-C6 level there is no significant posterior disc bulging, protrusion or herniation; there is no central stenosis or significant neuroforaminal narrowing seen; 3. At the C4-C5 level there is no significant

posterior disc bulging, protrusion or herniation; there is no spinal stenosis or significant neuroforaminal narrowing seen. PX 18, p 9.

Petitioner testified that the injections from Dr. Glaser did not help. T 32, T 33. During this time she continued to follow with Dr. Rhode. The surgery performed by Dr. Rhode on her elbow helped slightly but did not help the neck pain. T 34. She returned to Dr. Sokolowski. T 34.

On 11/16/16, Dr. Mark Sokolowski reported that since Petitioner last saw him, she has undergone cubital tunnel release and a provocative cervical discography with her independent pain specialist. Petitioner reported that the cubital tunnel release improved her hand and arm pain. Petitioner reported neck pain of 7/10, denied any acute neurologic changes, and indicated she is unwilling to tolerate her neck symptoms as they currently are. After examination and review of CT of her cervical spine after discography dated October 31, 2016, Dr. Sokolowski noted Petitioner had disc pathology and an extruded herniation at C6-7, with relative preservation of her other levels. His assessment was clear ongoing discogenic neck pain and the CT of her cervical spine after discogram demonstrates disc pathology at C6-7 leakage of contrast and an extruded herniation. Dr. Sokolowski noted that if Petitioner had concordant discogenic pain at C6-7 and negative controls elsewhere, she may be a good candidate for ACDF at C6-7 and if so he would recommend surgery. PX 13, p 122.

On 11/28/16 Dr. Rhode reported that Petitioner had seen a spine surgeon who recommended a cervical fusion. He had her continue therapy; continue modified light duty work status and reported she was awaiting authorization for neck surgery. PX 15, p 180-181.

Petitioner testified she remain off work at the direction of her treating doctors all through this time. T 35.

On 1/6/17, Dr. Rhode reported no change in Petitioner's status. PX 15, p 178-179.

On 2/6/17, Dr. Sokolowski reported Petitioner's neck pain had persisted at 8/10 and reports her symptoms adversely affect her quality of life. Petitioner is eager to proceed with surgical management, as she is unable to tolerate her symptoms any longer. After physical examination and review of provocative discogram report from C4 to C7 dated October 31, 2016 Dr. Sokolowski assessed Petitioner as having ongoing discogenic pain, and having reviewed her discography found Petitioner had no pain at C4-5, 7/10 pain at C5-6, and greater than 7/10 pain at C6-7. He noted the MRI from October 2015 demonstrates disc pathology at C5-6 and C6-7 and that Petitioner had concordant pain generation at both levels. Dr. Sokolowski was to seek approval for C5-7 ACDF surgery and held Petitoiner off work pending surgical approval. PX 13, p 117.

On 2/10/17, Dr. Blair Rhode reported Petitioner was status post cubital tunnel release and awaiting authorization for spine surgery. PX 15, p 176-177.

On 2/23/17, Petitioner was examined by Respondent's section 12 examining physician, Dr. Frank Phillips for a second time. The report of Dr. Frank Phillips dated 2/23/17 was admitted in evidence as part of Respondent Exhibit 5. The report notes: since seeing me last, Ms. Bird has undergone what she describes as extensive course of physical therapy and injections to the neck

not unexpectedly without any relief of her symptoms; she has also had cubital tunnel release performed in June 2016 with only minor improvement in those symptoms; currently complaints primarily of paracervical left-sided neck pain; describes some pain radiating down the left arm, mostly to the level of the elbow and according to her, this then causes swelling and aggravation of her pain around the site of the cubital tunnel surgery; she describes occasional paresthesias diffusely in the left hand; she has no frank weakness; her neck pain is more or less constant related to any type of activity; she describes being unable to do even this lightest activity; she is unable to go out of the house, go to movie, or out for dinner because of this excruciating neck pain; according to Ms. Bird her treating surgeon, Dr. Sokolowski has recommended C5 to C7 anterior cervical fusion and she is very keen to proceed. After review of medical records and examination of Petitioner, Dr. Phillips opines: Ms. Bird presents with ongoing subjective neck pain complaints that outweigh any objective findings; her MRI is unremarkable as has been noted by other physicians including Dr. Mikhail, one of the surgeons she has previously seen; her treating surgeon Dr. Sokolowski noted that if she had concordant discogenic pain at C6-7 and negative controls elsewhere, she may be a good candidate for ACDF at C6-7; apparently this did not occur and Ms. Bird actually had pain at C5-6 as well as C6-7 and as result now the 2-level fusion has been recommended; I believe Ms. Bird sustained a cervical sprain/strain 2015; she has subjective complaints that outweigh any objective findings; I believe that she is not a candidate for 2 level fusion as it relates to the injury in question; obviously Ms. Bird's subjective pain focus behavior will compromise her ability to resume her usual activities; however there is no objective contraindication to her resuming normal activities; the diagnosis as it relates to the 2015 injury remains cervical sprain/strain; currently Ms. Bird has symptoms around her neck unexplained with any objective findings; I do not believe additional treatment related to this injury is necessary; I believe Ms. Bird has reached MMI after she completed the therapy I had outlined in 2015; I believe non-narcotic analgesics and anti-inflammatories are reasonable to control Ms. Bird's subjective complaints; there are no objective findings; there is no objective contraindication to Ms. Bird working unrestricted as it relates to the injury in 2015, obviously has subjective pain focused behavior will likely limit her willingness to return to work. Respondent Exhibit 5, report dated 2/23/17.

Petitioner testified that after the examination by Respondent's IME on 2/23/17, she continued to see Dr. Rhode approximately every month February through October 2017 and Dr. Sokolowski every 60 days during that time, waiting for Worker's Compensation to authorization the neck surgery. When it was evident that the neck surgery was not going to be authorized, Petitioner used her Blue Cross Blue Shield group insurance. T 37. Petitioner testified that during this time she was also treating with Dr. Daniel Catarello. T 37-38.

On 9/12/17, Dr. Sokolowski reported he received approval from her insurer to proceed with ACDF at C5-7. PX 13, p 91.

On 11/29/1,7 Dr. Sokolowski performed surgery consisting of: 1. Anterior cervical discectomy, C6-C7 with decompression of spinal cord, nerve roots and foraminotomy; 2. Anterior cervical arthrodesis, C6-C7; 3. Insertion of machined biomedical device at C6-C7, Titan spine. PX 13, p 63-65.

On 12/12/17, Dr. Sokolowski reported that post C6-7 ACDF on November 29, 2017, Petitioner reports neck pain has already improved to 4/10 and she no longer reported radiating arm pain. Petitioner continued to wear an Aspen collar and took analgesic medications to limit the severity of her symptoms. Dr. Sokolowski removed her collar today and reported Petitioner had mild cervical paraspinals tenderness to palpation; shoulder range of motion is full; strength is intact throughout both arms and all muscle groups sensation grossly intact to light touch in all dermatomal distributions; Hoffman sign is negative. The plan was to wean Petitioner out of her cervical collar over the next 4 weeks, begin physical therapy at an independent facility of her choosing, and keep her off work. PX 13, p 57.

On 12/21/17, Petitioner was initially evaluated at ATI Physical Therapy. Plan of treatment was 3 times a week for 4 weeks for a total of 12 visit status post one level cervical fusion. PX 13, p 56. On 1/25/18, Petitioner was evaluated at ATI Physical Therapy having completed 11 sessions of physical therapy. She had some progress with AROM strength with decreased subjective complaints of pain noted and increased functional capabilities. PX 13, p 54-55.

On 1/31/18, Dr. Sokolowski reported Petitioner rates her neck pain as 5/10 today without radiating arm pain; mild cervical paraspinal tenderness to palpation; mild neck pain with extension; shoulder range of motion was full; strength is intact throughout arms and all muscle groups with sensation intact to light touch and all dermatomal distributions; Hoffman sign is negative. Petitioner was to continue PT and discontinue Norco and use tramadol instead. She remained off work. PX 13, p 48.

On 3/15/18, ATI Physical Therapy reported Petitioner attended 25 physical therapy sessions with good progress noted with AROM, strength and with decreased subjective complaints of pain. She demonstrated the ability to lift 15 pounds from the floor, carry 30 pounds, press 10 pounds above her shoulders, and push/pull up to 50 pounds; this is consistent with the light duty work. Petitioner was employed as a CNA which required her to function at a medium duty level. The recommendation was to transition Petitioner from formal physical therapy to a work conditioning program in order to increase her functional capabilities and facilitate a safe return to full duty work. PX 13, p 44-45.

On 3/16/18, Dr. Sokolowski reported Petitioner's neck pain had diminished to 3/10 and that she was pleased with the progress she has made. Petitioner was ordered to continue work conditioning and remain off work. PX 13, p 39.

On 5/1/18, Dr. Sokolowski reported Petitioner had progressed to minimal pain and was to return to work full duty. PX 13, p 30.

On 6/7/18, Petitioner returned to Respondent's Section 12 examining physician, Dr. Frank Phillips, for a third IME examination. Report of Dr. Phillips dated June 7, 2018 was admitted in evidence as part of Respondent Exhibit 5. The report indicates: Ms. Bird describes undergoing a single level ACDF in November 2017; she describes improvement in her symptoms; currently described no real neck or arm pain; overall doing well; since the surgery she has done physical therapy as well as work conditioning; she is apparently starting a new job next week; denies any neurologic symptoms; I am not provided any new imaging studies. After examination Dr.

Phillips opined: Ms. Bird has undergone an ACDF surgery; she has no ongoing neck pain; additional information does not alter the opinions expressed at the time of my prior IME; at this point Ms. Bird has reached MMI with regard to the injury, as well as MMI with regard to the surgery; there is no objective contraindication to her resuming regular unrestricted duty, assuming the fusion is healed. Respondent Exhibit 5, letter dated June 7, 2018.

On 1/29/19 Dr. Phillips prepared an IME addendum addressed to respondent attorney. The IME addendum of Dr. Phillips dated January 29, 2019 is part of Respondent Exhibit 5. In that IME addendum Dr. Phillips states: I have reviewed the deposition transcript of Dr. Mark Sokolowski from December 13, 2018; review of the deposition transcript does not alter any of the opinions expressed in my prior report; Dr. Sokolowski feels that the injury was responsible for causing and (sic) an occult cervical disc injury; this diagnosis, in my opinion, is not based on any objective findings; I do not concur with Dr. Sokolowski that the injury necessitated surgery at the C6-7 level; the reasons for my opinions are expressed throughout my prior IMEs; Dr. Sokolowski opined that the discogram in some way proved she sustained work-related injury at C6-7; interestingly, the discogram from October 31, 2016 notes concordant 7/10 pain at C5-6 as well as C6-7; Dr. Sokolowski then concludes that based on the discogram, Ms. Bird has a C6-7 related pain and recommends an ACDF at this level; I am uncertain as to how Dr. Sokolowski would determine based on the discogram report and lack of any objective findings, which level was specifically responsible for Ms. Bird's pain and which level was specifically injured in the work related injury. Respondent Exhibit 5, IME addendum dated January 29, 2019.

On 4/19/19, section 12 examining physician Dr. Charles Carroll reviewed medical records at the request of Respondent. The records request review report dated 4/19/19 from Dr. Charles Carroll is part of Respondent Exhibit 6. The report states: medical records were reviewed; she received further care from Dr. Rhode noted in his deposition of 3/7/19; she underwent a left ulnar nerve transposition on 6/21/16; she noted improvement; she underwent a C6-7 ACDF on 11/29/17; her symptoms were noted to resolve following that per the deposition transcript; I have reviewed my IME exam and supplemental report of 5/3/16; my opinions have not changed; I do not adopt the opinions of Dr. Rhode; although I respect his opinions I do not relate her left elbow complaints to the alleged injury and the variable descriptions provided of her injury; her symptoms were noted in the cervical spine at the time of the alleged injury; I did not find that the injury or the work activities have caused her ulnar neuritis based upon my review; my bases are the review, exam and my knowledge and experience; inconsistent histories make it difficult to relate her need for care for the elbow; the various descriptions make it difficult to truly get an understanding of her alleged injury; I have carefully considered these opinions that relate to this individual only. Respondent Exhibit 5, report dated 4/19/19.

The evidence deposition of Dr. Sokolowski was taken on December 13, 2018. The transcript of the evidence deposition of Dr. Sokolowski was admitted in evidence as Petitioner Exhibit 19. Dr. Sokolowski testified that prior to seeing him, Petitioner she undergone therapy, two epidural steroid injections, cervical MRI and an EMG, had persistent neck, left arm pain and left 4th and 5th digit numbness and tingling. She had no prior complaints with regard to these body parts. He reviewed MRI dated October 2, 2015 which showed some pathology at C5-6 and C6-7. His

assessment was neck pain and ulnar nerve entrapment. His plan at that time was injections into the facet joints of the neck and referral to a hand specialist to evaluate cubital tunnel syndrome. No surgical intervention was recommended at that point because of her young age and relatively early in post injury treatment. He wanted to see if additional conservative management would solve the problem. PX 18, p 10. She consulted with him again on February 17, 2016 after the injection and consult with a hand surgeon. Dr. Sokolowski's recommendation was to go forward with the cubital tunnel release and assess thereafter. If she got relief that would not require any surgery on her cervical line if she did not get relief would reevaluate thereafter. PX 18, p 11. Dr. Sokolowski examined her again on November 16, 2016 at which time he had a discogram and post discogram CT and report. Dr. Sokolowski interpreted the CT images to demonstrate disc pathology including an extruded herniation at C6-C7. Dr. Sokolowski stated she had ongoing axial neck pain despite cubital tunnel release. He requested a provocative discogram. PX 18, p 12. On his next exam of petitioner on February 6, 2017, she continued to complain of intolerable pain. Dr. Sokolowski testified Petitioner could potentially be a surgical candidate. He discussed surgery with Petitioner and she wanted to proceed with surgery she could not tolerate her symptoms any longer. PX 18, p 13. On November 29, 2017, Dr. Sokolowski performed anterior fusion at C6-C7 which was the level which was most compromised on the post discogram CT and on the MRI obtained. He removed the diseased disc at that level and performed a fusion which was uncomplicated. PX 18, p 17.

Dr. Sokolowski opined with a reasonable degree of medical and surgical certainty in the field of orthopedics that the condition he diagnosed and treated by the surgery he performed on Petitioner was caused by the work injury of June 9, 2015. That opinion was based upon past medical history prior to the inciting incident, temporal correlation between the onset of symptoms and the inciting event, corroborative physical examination findings, positive diagnostic studies including provocative discography, which on post discogram CT confirmed disc pathology at C6-7, and provocative pain response, amelioration of symptoms with surgery directed at that level, EMG of November 2015 consistent with left cervical radiculopathy and cubital tunnel syndrome. PX 18, p 20-21. Dr. Sokolowski reviewed the incident report dated June 9, 2015 with the description of the accident and the report of the patient the next day July 10, 2015 history of the accident given at Little Company of Mary Hospital and a July 13, 2015 office note of Dr. Mekhail which contained a history of the accident from the patient and other documents. Dr. Sokolowski after reviewing all of these documents stated that the history given by the patient to the multiple medical providers was essentially consistent with history given to him and did not change his opinion about the incident described being the cause of the condition that he diagnosed and treated by surgery. Dr. Sokolowski noted that the order from Dr. Mekhail for EMG/NCV dated 7/13/15 is for the left upper extremity but that the EMG report dated 7/21/15 from Dr. Mekhail's records shows a normal EMG nerve conduction study of the right upper extremity with no evidence of neuropathy or radiculopathy. Dr. Sokolowski opined that if the EMG/NCV reference was actually of the right upper extremity that EMG/NCV would have no relevance whatsoever to the patient's diagnosis with regard to her left upper extremity. PX 18, p 23-24. Dr. Sokolowski opined that if the EMG was actually performed on the left upper extremity and that the report contain simply a typographical error substituting the work "right" instead of "left" that would not change his opinion of causal relationship of the work accident to

the condition he diagnosed and treated because it was obtained less than 6 weeks after the inciting injury and in his practice he does not generally order an EMG less than 8 weeks after the injury as it takes about 6 to 8 weeks for there to be changes seen on the EMG. PX 18, p 24. Dr. Sokolowski noted that she later had a documented left upper extremity EMG from Dr. Goldvelt dated November 20, 2015 that diagnosed left C7 radiculopathy and cubital tunnel syndrome which was expected based on her clinical examination. PX 18, p 24-25. Dr. Sokolowski reviewed the 3 IME reports of Dr. Frank Phillips and the summaries of medical records that Dr. Phillips made in the reports. Dr. Sokolowski said none of those summaries of medical treatment changed his opinion as to what was the cause of the condition he diagnosed and treated in Brittany Bird. PX 18, p 25. Dr. Sokolowski testified that in the reports of Dr. Phillips there was agreement that: Brittany has axial neck pain; the pain is refractory to conservative management; she has a small intrusion at C6-C7; she is a young lady. That she was a young lady is what made the case difficult because he did not want to fuse her unless absolutely necessary. PX 18, p 25-26. Dr. Phillips also stated in his final IME that Petitioner was essentially asymptomatic and had no significant neck pain arm pain with which Dr. Sokolowski agreed. Dr. Sokolowski opined that this substantiates the success of the surgery undertaken. PX 18, p 26. Dr. Sokolowski opined that the cubital tunnel syndrome was causally related to the work injury based upon: temporal correlation between the inciting event and the onset of left arm symptoms; documentation by Dr. Mekhail of cubital tunnel syndrome symptoms on his first visit 4 days after the injury; the EMG of November 2015, which substantiates cubital tunnel; fact that she had at least some relief after she underwent cubital tunnel release with ultimate and complete resolution of arm pain after the adjunctive cervical spine surgery. PX 18, p 26-27. On cross-examination Dr. Sokolowski testified when he examined Petitioner on 12/2/15 he was not aware of the 7/21/15 negative EMG; as a board certified orthopedic surgeon he is eminently qualified to make a diagnosis of cubital tunnel syndrome; he does not do cubital tunnel release surgery; in the accident report of June 10, 2015 she reports that she felt a pull in her neck; at Little Company of Mary she says she felt a pull in her neck; to Dr. Mekhail she says she felt a twinge in her neck. PX 18, p 29. If he had had the 7/20/15 EMG available at the time that he first saw Petitioner, assuming the right versus left was a typographical error, that would not have changed his direction of treatment going forward; he probably would have ordered a new EMG if that was the only EMG he had because she clearly had left cubital tunnel syndrome clinically. Dr. Sokolowski testified he had the benefit of the November EMG that showed left cubital tunnel syndrome. He testified that EMG's are often fraught with false negatives and positives especially if they're done less than 28 weeks after the injury, because electrically, and injury may not manifest itself until more than 8 weeks. PX 18, p 29-30. The EMG of 11/20/15 could have also been a false positive or negative but here it corresponds clinically with her clinical situation; Dr. Mekhail thought she had cubital tunnel; Doctor Sokolowski thought she had cubital tunnel, and the EMG showed cubital tunnel. In addition, Petitioner had a positive Sperling's test on Dr. Sokolowski's exam and had findings of C7 radiculopathy, which corresponded with her MRI. PX 18, p 30. The earliest MRI that Dr. Sokolowski had available to him was October 2, 2015. He did not review the 7/20/15 MRI. He was aware that Dr. Mekhail interpreted the 7/20/15 MRI as being unremarkable and that Dr. Phillips said there was a small protrusion at C6-7 that he did not find clinically significant. It is possible that Petitioner's neck would have looked the same before the accident as it did on the

MRI of 7/20/15. Dr. Sokolowski opined she may well have had an asymptomatic small protrusion at C6-7 rendered symptomatic by the injury. PX 18, p 31. Dr. Sokolowski testified the interpretation of the MRI of 7/20/15 is comparable with the MRI of October 2, 2015; she ultimately did not have surgery for the protrusion; she had surgery for axial neck pain. PX 18, p 32. He disagrees with the opinion of Dr. Phillips that petitioner only sustained a cervical strain. Dr. Sokolowski opined she had persistent axial neck pain. He noted that Dr. Phillips in his reports states that she has persistent axial neck pain. A strain would expect to resolve within 3 to 6 months and she clearly has ongoing symptoms thereafter. A largely normal physical examination is consistent with axial neck pain. PX 18 p 32. Dr. Sokolowski opined that she did not exhibit symptom magnification. PX 18, p33. Dr. Sokolowski opined that the MRI did not change from 7/20/15 to the MRI of 10/2/15. Dr. Sokolowski noted that Dr. Phillips in his first IME report says that at C6-7 she has a tiny central disc bulge of no clinical significance; there is no disc herniation and when he looks at his interpretation of the MRI of October 2, 2015, Dr. Sokolowski says she had disc pathology at C5-6 and C6-7, with no large herniations noted. Dr. Sokolowski testified that a bulge does not cause axial neck pain. In order to have the protrusion she has a compromised annulus at C6-7. When contrast is injected during the provocative discogram, contrast leaks through that compromised annulus and that's seen on the post discogram CT and corresponds with her pain. She has a structural compromise of the integrity of the disc as a shock absorber. She doesn't have frankly radicular pain as her principal diagnosis. She had some radiculopathy because she ultimately had resolution of the arm pain with the surgery as well as an added bonus it addressed that EMG finding of left C7 radiculopathy from November 2015. PX 18, p 34-35. Dr. Sokolowski opined that the MRI of 9/25/17 was not a normal MRI. He reviewed the MRI and reviewed the radiology report as evidenced in his note of October 30, 2017. The radiologist says she has a very small focal central protrusion without cord deformity. Dr. Phillips saw a protrusion at C6-7 on September 3, 2015 in his IME report. Dr. Sokolowski testified he saw it when he saw her in December 2015. Two years later in October 2017 the radiologist again says there's a small central protrusion at C6-7. Dr. Sokolowski opined she has a compromised C6-C7 disc mechanically. PX 18, p 35-36. Dr. Mekhail's note, which precedes the EMG, notes that she had significant stiffness of her neck, turning her head only about 20°. That's before the EMG and that's dated July 13, 2015, 4 days after the injury. The EMG from 7/21/15 says she has good range of motion but the examiner either did the wrong side or wrote the wrong side so there's a serious question about the viability of this doctor's note. Dr. Sokolowski testified that Dr. Mekhail writes on July 30 that she has limitation of range of motion, so this is 9 days after the EMG, the same doctor saw who her 4 days after the accident is now seeing her 21 days after the accident and saying she basically has a whiplash injury, his verbiage, and has limitations of range of motion lacking 20° or so of rotation to each side. PX 18, p 37. Dr. Sokolowski noted that when Dr. Phillips saw her 3 months after the injury Dr. Phillips could optimistically have diagnosis cervical sprain/strain but in his later note indicates she had axial neck pain. Dr. Sokolowski testified that he had the benefit of hindsight; he saw her in December 2015 and she had axial neck pain at that point. She has a structural injury. Dr. Phillips also noted that she has a structural injury, a C6-7 protrusion. Dr. Sokolowski testified that the protrusion is responsible for her persistent axial neck pain. PX 18, p 38. Dr. Sokolowski testified the protrusion present at C6-7 noted by radiologists and noted in the provocative discography is

very small. A small herniation is less likely to cause overt radiculopathy, positive Sperling's etc. but can still cause mechanical compromise of the disc. PX 18, p 39. Dr. Sokolowski disagreed with Dr. Phillips note that the subjective complaints outweigh the objective findings. PX 18, p 39. Dr. Sokolowski testified that he disagreed with the statement of Dr. Phillips that her symptoms were unexplainable. She ultimately had a discogram that shows C6-7 produces pain; surgery at C6-7 resolves her pain; with the benefit of hindsight, her pain clearly originated from the C6-C7 level. PX 18, p 39-40. Dr. Sokolowski testified that stenosis or neuroforaminal narrowing does not cause axial neck pain; that would cause radiculopathy not discogenic neck pain. On redirect examination Dr. Sokolowski testified that the fact that the patient was able to do the heavy work of a certified nurse's aide prior to the work accident of June 9, 2015 without complaints and symptoms was consistent with his opinion that the work accident caused the symptoms for which he treated her. He testified that there is no actual indentation or protrusion touching the cervical spine as result of the compromise in the structure of the C6-7 disc space, nothing deforming cervical spinal cord. He explained she has a viscous gel-filled disc at C6-C7 that is compromised; it has a posterior annular tear and a protrusion; that disc is no longer a viable shock absorber hence the mechanical pain; there is also a traversing nerve root at C6-7, the C7 nerve root, so you can have an annular tear and the reason that people have some radicular pain with an annular tear is inflammation around the annular tear can manifest itself as radiculopathy; hence electrical changes in the C7 radicular pattern seen on the November 2015 EMG. PX 18, p 45-46.

The evidence deposition of Dr. Blair Rhode taken on March 7, 2019 was admitted in evidence as petitioner Exhibit 20. Dr. Rhode testified Petitioner underwent an EMG which demonstrated left sided C7 radiculopathy and cubital tunnel syndrome and at the time of her presentation to Orland Park Orthopedics she continued to have her cubital tunnel symptomology; she denied a prior cervical or left elbow injury. PX 20, p7-8. He reviewed diagnostic studies including EMG from November 20, 2015 which demonstrated C7 cervical radiculopathy and left sided cubital tunnel syndrome and MRI from October 2, 2015 which demonstrated disc bulge at C5- 6 and C6-7. PX 20, p8-9. After examination his diagnosis was evidence of left sided cubital tunnel syndrome and left side C-7 cervical radiculopathy due to her work related injury. PX 20, p 9. Rhode testified that he believed there is a component of double crush syndrome aggravating the Petitioner's cubital tunnel. He explained double crush syndrome as follows: if a nerve is compressed at 2 different levels, there is a multiplier effect; he describes this to patients that 2+2 doesn't equal for, 2+2 will equal 8; this has to do with the way nerves receive their nutrients; if you crush them into separate spots you actually get worsening of the symptomology; you can almost think of it as if it takes less insult to cause the carpal tunnel syndrome if the patient also has a cervical radiculopathy; the nerves related to the symptomology of cubital tunnel are the same nerves that were at issue in the neck and cervical spine; this is the C7 up in the neck crosses over and forms the peripheral nerve as the ulnar nerve at the elbow; that's the one associated with cubital tunnel. PX 20, p 10-11. Dr. Rhode opined that the patient sustained a traumatically induced cubital tunnel syndrome superimposed with a traumatically induced cervical radiculopathy causing a double crush phenomena. PX 20, p 12. The basis of that opinion is description of the mechanism of injury that Petitioner had the time of the injury, working as a CNA, and then the onset of symptomology, which was suggestive of the cervical radiculopathy and cubital tunnel syndrome.

The timing of the onset of the symptomology was a factor. PX 20, p 13. Petitioner continued to see Dr. Rhode until the surgery was performed on June 21, 2016. Dr. Rhode performed cubital tunnel release on June 21, 2016 at the Orland Park surgery center. PX 20, p 15. Dr. Rhode testified that Petitioner showed some improvement after the cubital tunnel release, she wasn't having Tinel's at the level of the elbow but she still complained of numbness and tingling to the ring and little finger. Her elbow is addressed but she still had pending definitive treatment of her neck as of the last visit on October 2017. PX 20, p 17. Dr. Rhode opined that if she had a C6-C7 ACDF on November 29, 2017 and if after that surgery she had very good recovery in the symptomology that he had described was essentially resolved, that would be consistent with his diagnosis of a double crush injury. PX 20, p 18.

On cross-examination Dr. Rhode testified that he reviewed Dr. Mekhail's 3 notes and Dr. Carroll's first IME report. He did not agree with the 3/31/16 addendum report of Doctor Carroll in which Dr. Carroll changed his opinion on causation. Dr. Rhode's opinion regarding the mechanism of injury is solely based on Petitioner's subjective report to him. Dr. Rhode was shown at deposition the record from Little Company of Mary Hospital dated 6/10/15 including the history therein, the described mechanism of injury in Dr. Mekhail's note of 7/13/15, the record of Dr. Silver dated 9/25/15, the note of Dr. Sokolowski dated 12/20/15. After reviewing the notes of the several doctors and the report of injury to the employer, Dr. Rhode did not agree that the description of the mechanism of injury got progressively more severe. PX 20, p 28. Dr. Rhode testified that the variances to the extent that they are not identical in the descriptions of the incident to the several doctors that the patient was treated by does not in any way changes opinion that he stated at the deposition relative to the cause of the Petitioner's condition. Dr. Rhode opined that in his opinion the multitude of descriptions given over the course of a year are actually very consistent. PX 20, p 30.

Petitioner testified she has not returned to see any doctors for her left arm, elbow or neck after May 1, 2018. At hearing she described what is different about her neck now than before the accident date of June 9, 2015. Petitioner testified she still has some pain in her neck and takes over-the-counter medication like ibuprofen or Aleve as needed. When Petitioner is not working, her neck pain is 2/10 while at work it is usually about 4/10 and in the winter months her neck gets stiff. T 39-41. After she was released to return to work by Dr. Sokolowski she worked for Amazon at a sort center. Petitioner testified that job was a lot heavier lifting than she was used to, so she sought a less strenuous job. She then worked at a Walmart Super Center in the garage writing up service orders for vehicles and operating the cash register. She continues to do that job to the date of hearing. T 43. Sometimes looking up and down at the computer, motion of her head up and down and left and right, causes problems with her neck. T 43-44.

Admitted in evidence as Petitioner Exhibit 21 are the unpaid bills of treatment rendered to petitioner.

Admitted in evidence as Petitioner Exhibit 22 Is the Blue Cross Blue Shield lien with attached bills for the surgery performed by Dr. Sokolowski.

Respondent's Exhibits 1 through 7 were admitted in evidence and reviewed by the Arbitrator. The Arbitrator notes specifically that he has reviewed the Respondent Exhibit 7, UR 10/5/16, 10/25/16, 1/11/17.

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 his claim (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980)), including that there is some causal relationship between his employment and his injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989). 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. Mathiessen & Hegeler Zinc. Co. V. Industrial Board, 284 Ill. 378 (1918).

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. Board of Trustees v. Industrial Commission, 44 Ill. 2d 214 (1969).

Credibility is the quality of a witness which renders his evidence worthy of belief. The arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972). 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).

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 was indicative of sincerity. The Arbitrator considered the testimony of Petitioner with all the other evidence in the record. The Arbitrator finds that Petitioner was a credible witness.

C. Did an Accident Occur That Arose Out Of and In The Course Of Petitioner's Employment By Respondent?

It is fundamental that the claimant employee has the burden of proving the elements of her claim by a preponderance of credible evidence. Vestal v. Indus. Comm'n, 84 Ill. 2nd 469 (1981). The claimant must show that she suffered an injury that arose out of the and in the course of her employment. Sisbro, Inc. v. Indus. Comm'n, 207 Ill. 2d 193 (2003). To prove a repetitive trauma claim, the claimant must prove by a preponderance of the evidence that the job is repetitive and that his current condition of ill being is causally-related to his repetitive job duties. Williams v. Indus. Comm'n, 244 Ill. App. 3d 204 (1993). It is well-settled Illinois law that "an employee who alleges injury based on repetitive trauma must still meet the same standard of proof as other claimants alleging an accidental injury. There must be a showing that the injury is work related and not the result of a normal degenerative aging process." Peoria County Bellwood Nursing Home v. Indus. Comm'n, 115 Ill. 2d 524 (1987). In repetitive trauma cases, the claimant generally relies on medical testimony establishing a causal connection between the work performed and claimant's disability. Nunn v. Indus. Comm'n, 157 Ill. App. 3d 470, 477 (1987). Compensation has been denied in numerous cases back on the lack of corroborative medical histories, conflicting medical histories and/or lack of claimant credibility. McRae v. Indus. Comm'n, 285 Ill. App. 3d 448 (1996).

Petitioner credibly testified that on the accident date of 6/9/15 she was an employee of respondent working as a certified nursing assistant, CNA. Her job duties included transferring patients. On that date she was transferring a patient from bed to wheelchair using a gait belt. The patient became unsteady and during the transfer petitioner felt a pull in her neck. She reported the incident that date to her supervisor. She completed an incident report and provided that to respondent. The incident report was admitted in evidence as Petitioner Exhibit 1. All the medical providers who took history of the incident document that the injury occurred while she was transferring a patient at work. Regarding the history of the accident as stated in the record of Dr. Silver, see paragraph F below. The Arbitrator finds based upon the weight of credible evidence in the record that on 6/9/15 an accident occurred that arose out of and in the course of petitioner's employment by respondent.

D. What Was the Date of the Accident?

Petitioner credibly testified that the accident occurred on 6/9/15. The incident report submitted to respondent, Petitioner Exhibit 1, identifies the date of accident as 6/9/15. History and medical records identify the accident date as 6/9/15. Regarding the history of the accident as stated in the record of Dr. Silver, see paragraph F below. The Arbitrator finds based upon the weight of credible evidence that the date of accident is 6/9/15.

F. Is Petitioner's Current Condition of Ill-Being Causally Related to the Injury?

Petitioner bears the burden of proving by a preponderance of the evidence all of the elements of his claim. R & D Thiel v. Workers' Compensation Comm'n, 398 Ill. App. 3d 858, 867 (2010). Among the elements that the Petitioner must establish is that his condition of ill-being is causally connected to his employment. Elgin Bd. of Education U-46 v. Workers' Compensation

Comm'n, 409 Ill. App. 3d 943, 948 (2011). The workplace injury need not be the sole factor, or even the primary factor of an injury, as long as it is a causative factor. Sisbro, Inc. v. Indus. Comm'n, 207 Ill. 2d 193, 205 (2003).

"A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in a disability may be sufficient circumstantial evidence to prove a causal connection between the accident and the employee's injury." Int'l Harvester v. Industrial Comm'n, 93 Ill. 2d 59, 63-64 (1982). If a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration. Schroeder v. Ill. Workers' Comp. Comm'n, 79 N.E.3d 833, 839 (Ill. App. 4th 2017).

Petitioner testified that she had no problems with her neck, shoulder, left arm or left elbow that required her to seek medical treatment before the accident date of June 9, 2015. She had worked in her job as a Certified Nursing Assistant starting January 7, 2015 and worked in that job up to the date of the accident. The job duties of Petitioner included transporting patients to and from rooms and to rehab rooms, showering, bathing, feeding dressing the patients and taking care of their bathroom needs. The patients she worked with were elderly or had some type of illness. Ages ranged from young to old. Some of the patients weighed more than 300 pounds. The onset of symptoms in the neck and left arm was immediate with the transfer of the patient from the bed to the wheelchair. The accident and complaints of pain in the neck were reported that date to the respondent. PX 1. Records from Little Company of Mary Hospital Urgent Care, PX 2, document the immediate onset of pain in the neck as she was lifting a patient with the pain worsening and going down her left shoulder, tingling in her left upper extremity, decreased active range of motion flexion/extension and rotation in the left neck. PX 2. The continuing complaints of pain in the left side of the neck, left shoulder left arm tingling, pain radiating down the left arm are documented in the first medical providers records Little Company of Mary PX 2, Goodlife Physical Therapy, PX 3, Parkview Orthopedic Group/Dr. Anis Mekhail, PX 4. The medical records of all of the subsequent providers document these continuous, ongoing complaints of pain. Petitioner testified she sustained no other injuries to her neck, left shoulder, left arm other than the work accident of 6/9/15. Based upon a chain of events analysis, the Arbitrator finds that the weight of credible evidence in this record demonstrates that Petitioner's current condition of ill being is causally related to the work accident of 6/9/15. Additionally, the records of Dr. Mekhail, PX 4; Dr. Kalina, PX 10; Dr. Dan Caddell, PX 11, Dr. Mark Sokolowski, PX 13, Dr. Todd Remington, PX 14, Dr. Blair Rhode, PX 15, all state that the condition that each of these doctors treated in this patient is caused by the work accident of 6/9/15.

The Arbitrator notes that the records of Dr. Ronald Silver MD who treated petitioner from 9/25/15 through 2/3/16 make reference to the 9/21/15 date when Petitioner was returned to work by Respondent as the date when Petitioner was recurrently lifting heavy patients and experienced severe pain in the left side of the neck radiating into the left shoulder and arm with numbness and tingling noted as well. PX 8, p 9. Dr. Silver's records further indicate Petitioner had a previous accident with regard to her neck but this had resolved prior to this accident. PX 8, p 9. The Arbitrator notes that history is, in part, at odds not only with Petitioner's testimony at hearing but

also at odds with all the documented history taken from all the medical providers whose records indicate that the left neck, left shoulder and left arm numbness was continuous up to the date of petitioner's return to work on 9/21/15 and had not resolved. Dr. Mekhail's record of 9/12/15 documents Petitioner still has limitation of range of motion, posterior neck tenderness, doesn't think she can do her job and as result ordered light duty 10-pound weight restrictions with the diagnosis of left cervical radiculopathy, left cubital tunnel and neck strain. PX 4. The medical records of Palos Immediate Care dated 9/21/17 when Petitioner sought treatment after she was unable to continue work for Respondent after 3 hours of work document positive numbness and tingling in the left arm to the fifth digit that is baseline since the initial injury in July and that Petitioner took medication before work anticipating that she would not be able to do the job. PX 7, p5, 7. The medical record of Dr. Kalina who saw Petitioner on 9/22/15, 4 days after Dr. Silver initially saw Petitioner, document the onset of symptoms on 6/9/15, the return to unrestricted duty which was not what Dr. Mekhail had recommended, returning to work on September 21 and not able to tolerate work duties due to pain and referral to Dr. Silver, a second orthopedic surgeon. PX 10, p 42. Dr. Kalina on 9/29/15 documents that Petitioner's MRI of the C- spine was ordered by Dr. Silver because her pain worsened after her return to work and was described as constant shooting and achy neck pain, left greater than right, radiating into her left shoulder blade and into the back of her arm with associated tingling pain in her left fourth and fifth digits. PX 10, p 42. Additionally, the History and Physical Review in the medical records of Dr. Silver dated 9/25/15, which was signed by Petitioner, identifies the onset of complaints as 6/9/15. PX 8, p 12-13. The Arbitrator finds that the weight of the evidence in the record demonstrates that Petitioner's complaints of neck pain, left shoulder pain left arm pain and tingling down her left arm into her hand had not resolved prior to the return to work on September 21 as Dr. Silver's records indicate. The Arbitrator interprets this history in Dr. Silver's records as an error on the part of the doctor's office in documenting the history from the patient.

Additionally, Petitioner's treating spine surgeon, Dr. Sokolowski opined by evidence deposition that the condition for which he treated Petitioner was caused by the work injury of 6/9/15, and he opined that the surgery he performed on Petitioner was reasonable and necessary medical treatment of that work injury. That opinion was based upon past medical history prior to the inciting incident, temporal correlation between the onset of symptoms and the inciting event, corroborative physical examination findings, positive diagnostic studies including provocative discography, which on the post discogram CT confirmed disc pathology at C6-7, and provocative pain response, amelioration of symptoms with surgery directed at the level, EMG of November 2015 consistent with left cervical radiculopathy and cubital tunnel syndrome. PX 18, p 20-21. Dr. Sokolowski explained in detail the bases of his opinion and how the spinal injury as documented the diagnostic testing and clinical examination was causing the pain which Petitioner complained of from 6/9/15 up to the date that he performed anterior cervical discectomy, C6-C7, on November 29, 2017. The significant relief of the symptoms that Petitioner had complained of from the day of the accident was noted on the first postoperative visit, 2 weeks after the surgery. PX 13, p 57. With postoperative therapy and work conditioning Petitioner achieved almost full resolution of the severe pain in the neck, left shoulder and left arm and tingling into the hand. PX 13. She was released by Dr. Sokolowski without work restrictions able to return to work in May 2018. PX 13, p 30. Dr. Sokolowski explained that the

IME reports of Dr. Phillips did not change his opinion as to diagnosis of the condition and causal connection. He explained that Dr. Phillips focused on the small central disc bulge at C6-7 as not being a cause of Petitioner's complaints of pain and radiculopathy. Dr. Sokolowski agreed that the small disc bulge was not impinging on the spine causing radiculopathy but that the small disc bulge was a result of a tear in the annulus which is the fibrous tissue that encloses the viscous gel inside and that tear results in a protrusion so that the disc is no longer a viable shock absorber, hence the mechanical pain. He explained there is also a traversing root at C6-7, the C7 nerve root so that the annular tear can cause inflammation around the annular tear and manifest itself as radiculopathy causing the electrical changes in C7 which were seen on the November 2015 EMG. PX 18, p 45-46. The Arbitrator finds the opinion of Dr. Sokolowski more persuasive and complete in explaining physiological cause of the symptoms coupled with the virtual complete resolution of the symptoms after the surgery performed by Dr. Sokolowski, as more persuasive and credible than the opinion of Dr. Phillips. The Arbitrator finds based upon the weight of credible evidence in the record that petitioner's condition of her cervical spine, which condition was diagnosed and treated by the multiple medical providers in the record, was caused by the work accident of 6/9/15.

Regarding the condition of cubital tunnel syndrome, Dr. Rhode, who performed the cubital tunnel release, opined that Petitioner sustained a trauma induced cubital tunnel syndrome superimposed with a trauma induced cervical radiculopathy causing a double crush phenomena. PX 20, p 12. He explained that the basis of his opinion is the description of the mechanism of injury that Petitioner had at the time of injury, working as a CNA, and then the onset of symptomology which was suggestive of the cervical radiculopathy and cubital tunnel syndrome. Timing of the onset of symptomology was a factor. PX 20, p 13. Additionally, Dr. Sokolowski opined that the work accident was the cause of the cubital tunnel syndrome. He explained that his opinion was based upon temporal correlation between the inciting event and the onset of left arm symptoms; documentation by Dr. Mikael of cubital tunnel syndrome symptoms on his first visit 4 days after the injury; the EMG of November 2015 which substantiates cubital tunnel; fact that she had at least some relief after she underwent cubital tunnel release with ultimate and complete resolution of arm pain after the adjunctive cervical spine surgery. PX 18, p 26-27. Respondent's section 12 examining physician Dr. Carroll opined in his initial report, dated March 4, 2016, that Petitioner had carpal tunnel syndrome and that he did "not believe that the injury in question caused her cubital tunnel syndrome in and of itself." RX 6. In the addendum report addressed to Respondent dated March 31, 2016, Dr. Carroll noted he had reviewed additional records and wrote that "I do not find that petitioner's (sic) work activities caused, exacerbated or accelerated her condition of cubital tunnel syndrome; this opinion is based on the descriptions provided and my examination findings, the description in the report outlines the history at the time of her alleged injury; I have carefully considered these opinions that relate to this individual only." Respondent Exhibit 6, letter dated 3/31/16. The arbitrator finds that the opinions and explanations from Petitioner's treating physicians, Dr. Rhode and Dr. Sokolowski, are more complete in explanation and are more credible than the IME reports of Respondent's section 12 examining physician. The Arbitrator finds that the weight of credible evidence in the record demonstrates that Petitioner's cubital tunnel syndrome of her left elbow was causally related to the work accident of 6/9/15.

Respondent suggests that there were variations in the description given by Petitioner of the accident of 6/9/15 and of the onset of symptoms. Dr. Sokolowski reviewed the incident report dated June 9, 2015 with the description of the accident, report of the patient the next day June 10, 2015 in the history of the accident given at the Little Company of Mary Hospital, the July 13, 2015 office note of Dr. Mekhail with history of the accident from the patient, and testified that the history given by the patient to the multiple medical providers was essentially consistent with history given to him and did not change his opinion about the incident described being the cause of the condition that he diagnosed and treated by surgery. PX 18, p 23-24. Dr. Rhode under cross-examination testified that he had not reviewed the incident report of HCR ManorCare dated 6/9/15, PX 20, p 22. However, when questioned by Respondent with regard to the specifics of what was stated in that incident report, he explained that the words used in that report were consistent with the explanation of the accident given to him by Petitioner. PX 20, p 24. Additionally, when shown at deposition the record of Little Company of Mary Hospital dated 6/10/15 including the history therein, the described mechanism of injury in Dr. Mekhail's note of 7/13/15, the record of Dr. Silver dated 9/25/15, the note of Dr. Sokolowski dated 12/20/15, he did not agree that the description of the mechanism of injury got progressively more severe and he testified that the variances to the extent that they are not identical in the descriptions of the incident to the several doctors does not in any way change his opinion to the cause of the condition that he treated in the patient. Dr. Rhode testified that the multitude of descriptions given over the course of a year are actually very consistent. PX 20, p 30. The Arbitrator finds that the description of the accident given by petitioner in the incident report and in the histories given to the multitude of providers are substantially consistent.

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, having found Petitioner's condition of ill being causally related to the work accident of June 9, 2015, and having reviewed the medical bills and records of the medical providers, the testimony of the treating physicians, Respondent's peer-reviewed utilization review, RX, 7, finds that the bills for treatment of Petitioner's work injury as identified in Petitioner Exhibit 21 and Petitioner Exhibit 22, are reasonable and necessary charges for reasonable, necessary and causally related medical services to treat the work injury. Respondent's utilization review rejects treatment and bills for medical treatment and medication based upon opinions that: imaging is not provided to corroborate pathology, there is limited documentation; medications are not documented to provide relief; no detailed documentation of functional improvement with medication. The Arbitrator has reviewed the medical record in its entirety and finds that the medical treatment including prescription medication was reasonable and necessary; that petitioner had a presentation of symptoms resulting in a diagnosis of both axial neck pain and cubital tunnel syndrome; that the medical testimony of record demonstrates that both of these conditions have origins in the C6-7 disc which impacted on the C7 nerve root associated with the cubital tunnel syndrome diagnosis. Respondent is ordered to pay those bills pursuant to the fee schedule. Additionally, the charges associated with the surgery performed by Dr. Sokolowski were paid through petitioner's group medical, Blue Cross Blue Shield as

identified in Petitioner Exhibit 22. Respondent is ordered to pay those bills at the lesser of the fee schedule or the negotiated rate as provided in section 8(a) and 8.2 of the Act.

K. What Temporary Benefits Are in Dispute? TTD.

Petitioner was off work at the direction of her treating physicians from 6/10/15 through 5/1/18 representing 151 weeks. Petitioner had attempted to return to work on 9/21/15 after the IME by Dr. Frank Phillips opined that she would be at MMI in 2 weeks after completing physical therapy. Petitioner credibly testified that her employer directed her to return to work or she would be terminated. She credibly testified that she was returned to work full duty and after 3 hours of work was unable to complete work and was seen at Palos Immediate Care with order to follow-up with your physician. She was ordered off work by Dr. Silver and off work order was continued by the treating physicians who performed her surgeries. The arbitrator finds that petitioner is entitled to TTD from 6/10/15 through 5/1/18 representing 151 weeks and respondent is ordered to pay petitioner TTD for that period. Respondent paid TTD in the amount of $3260.76 and is given credit for that amount.

L. What Is the Nature and Extent of the Injury?

Section 8.1 (b) provides that permanent partial disability shall be established using the criteria provided therein.

(i). Reported Level of Impairment. Neither party submitted an AMA impairment rating and therefore the Arbitrator gives the factor no weight.

(ii). Petitioner's Occupation. Petitioner worked as a Certified Nursing Assistant. Her job duties included transporting patients to and from the rooms and to the rehab rooms; showering, bathing feeding, dressing the patients; taking care of their bathroom needs. Patients range from young to old and some weighed more than 300 pounds. The Arbitrator finds that Petitioner's occupation as a Certified Nursing Assistant increases the level of permanent partial disability and gives this factor some weight.

(iii). The Age of the Employee at the Time of the Injury. Petitioner was 23 years old at the time of the injury. She has undergone a surgery to her cervical spine consisting of fusion with implantation of metal fixation in the spine. Dr. Sokolowski documented his reluctance to do a fusion on such a young patient. PX 13, p 117. Petitioner will have to live with this permanent alteration of her spine and the consequences thereof for a longer period of time because of her young age. The Arbitrator finds that petitioner's age increases the level of permanent partial disability and gives this factor some weight.

(iv). The Employee's Future Earnings Capacity. There is no evidence of record that the work injury impaired petitioner's future earnings capacity. The Arbitrator finds that this tends to lower the level of permanent partial disability and gives this factor some weight.

(v). Evidence of Disability Corroborated by the Treating Medical Records. Petitioner sustained injury to her cervical spine and left elbow. Medical record of Dr. Sokolowski documents persistent neck pain 8/10, pain each day with symptoms adversely affect her quality of life and

limiting her function and she is unable to tolerate her symptoms any longer. PX 13, p 117. Petitioner underwent course of physical therapy, injections both diagnostic and therapeutic, and surgery performed by Dr. Sokolowski consisting of: 1. Anterior cervical discectomy, C6-C7 decompression of spinal cord, nerve roots and foraminotomy; 2. Anterior cervical arthrodesis, C6-C7; 3. Insertion of machined biomedical device at C6-C7, Titan spine. PX 13, p 63-65. Petitioner also underwent a left cubital tunnel release performed by Dr. Blair Rhode. PX 15, p 193-194. The medical records document that the surgeries resulted in significant relief of the symptoms of neck pain, limited range of motion of the neck, numbness and tingling down the left arm into the fingers of the left-hand, which had prevented her from returning to work. She was able to return to work without restrictions after these surgeries. Dr. Sokolowski's records indicate that it was not expected that the surgeries would relieve all her symptoms and indicated that there are limitations of cervical spine surgery for relief of axial neck pain, risk of adjacent segment degeneration in a young person such as herself. PX 13, p 117. Petitioner testified that she continues to have neck pain currently that affects both her work and daily activities. Repetitive motion of the head up and down, left and right can bring on neck pain that ranges from 2/10 to 4/10. She takes over-the-counter medication to relieve this pain. When she returned to work after being released by Dr. Sokolowski, she was in a job that required a lot of heavy lifting and a lot of repetitive motion for hours at a time so that she had to leave that job and go to a less strenuous job because of the neck pain. Additionally, she credibly testified that in cold weather her neck gets stiff and she can get a sense of feeling the metal that is in her neck.

Considering all the factors pursuant to section 8.1(b) in conjunction with section 8(d)2 the arbitrator concludes that the work accident of 6/9/15 caused injury to the petitioner's cervical spine resulting in permanent partial disability of 25% man as a whole.

Additionally, with regard to the injury to the left arm, diagnosed as cubital tunnel syndrome for which cubital tunnel release surgery was performed, considering all the factors pursuant to section 8.1(b) in conjunction with section 8(e) the arbitrator concludes that the work accident of 6/9/15 caused injury to the petitioner's left arm resulting in permanent partial disability of 17.5% of the left arm.

O. Two Doctor Rule.

The arbitrator finds that the credible evidence of record demonstrates that petitioner was initially treated at Little Company of Mary Immediate Care, recommended by respondent with a referral and follow-up treatment by Dr. Anis Mekhail/Parkview Orthopedic. Petitioner then chose to treat with Dr. Silver, orthopedic surgeon. All medical providers thereafter were referred by Dr. Silver or were referred by the referred doctors from Dr. Silver. The Arbitrator finds that all treating medical providers are within the Two Doctor Rule.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC022681
Case Name	Albert Adams v. Davis and Houk Mechanical
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0363
Number of Pages of Decision	46
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Kevin Morrisson
Respondent Attorney	Bruce Magnuson

DATE FILED: 9/22/2022

/s/ Deborah Baker, Commissioner

Signature

22IWCC0363

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 up causal connection, medical, TTD, prospective	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ALBERT ADAMS,

Petitioner,

vs. NO: 20 WC 22681

DAVIS AND HOUK MECHANICAL,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein under §19(b) of the Act, and notice given to all parties, the Commission, after considering the issues of whether Petitioner's current left shoulder condition of ill-being remains causally related to the work injury, as well as entitlement to incurred medical expenses subsequent to the September 15, 2020 §12 examination report of Dr. George A. Paletta, Jr., prospective medical care, and temporary total disability benefits, and being advised of the facts and law, modifies the Decision of the Arbitrator. The Commission finds Petitioner's current left shoulder condition of ill-being is causally related to the work injury. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

FINDINGS OF FACT

i. Pre-accident left shoulder medical care

On November 18, 2016, Petitioner injured his left shoulder while working for another employer in Missouri. On December 12, 2016, Petitioner treated with Dr. Richard E. Hulsey with the chief complaint being his left shoulder. Dr. Hulsey examined Petitioner and found tenderness

over the glenohumeral joint posteriorly but no significant loss of function and no tenderness over the AC joint. Dr. Hulsey also noted Petitioner had good strength in the supraspinatus and infraspinatus. Dr. Hulsey reviewed an MRI which had been performed after the November 18, 2016, accident and noted moderate degenerative changes of the glenohumeral joint, moderate tendinopathy of the supraspinatus tendon and a tear of the posterior labrum with an os acromiale. Dr. Hulsey performed X-rays and found advanced osteoarthritis of the glenohumeral joint with near bone-on-bone and an inferior osteophyte off the humeral head.[1] Dr. Hulsey diagnosed osteoarthritis of the glenohumeral joint with a posterior labral tear and placed Petitioner on light duty.

On December 21, 2016, Petitioner followed up with Dr. Hulsey after undergoing a left shoulder CT scan on December 12, 2016. Dr. Hulsey noted significant arthritic changes in the left shoulder although there was small joint space remaining. Dr. Hulsey released Petitioner to full duty work, but continued treating him conservatively with a left shoulder injection on February 1, 2017, as well as physical therapy. During his last visit with Dr. Hulsey on May 10, 2017, Petitioner informed Dr. Hulsey that the injection had worn off and Petitioner complained of left shoulder soreness, occasional popping, and limited range of motion. Dr. Hulsey opined that Petitioner would require a total left shoulder arthroplasty in the future due to his underlying arthrosis. Dr. Hulsey continued Petitioner's physical therapy in order to keep his shoulder loose, but also discharged Petitioner from care at maximum medical improvement and released him to full duty.

On June 11, 2018, Petitioner suffered an unrelated right shoulder injury at work. On September 12, 2018, while treating for his right shoulder, Dr. Joseph Brunkhorst apparently examined Petitioner's left shoulder and found no evidence of a biceps tear, no tenderness to the bicipital groove and full range of motion.

ii. Stipulated accident & subsequent left shoulder medical care

Petitioner testified that he sustained a work-related left shoulder injury on April 22, 2020. On that date, his shift began at 7a.m. Petitioner alleges that at 11a.m. he lifted a 25-50 pound bundle of light gauge angle iron. He testified that he was carrying it on his left shoulder when he encountered a coworker walking down the hall. Petitioner testified that he backed up to avoid the coworker, and when he turned, the back of the bundle hit the wall and he felt a pop in his left shoulder. He testified that his shoulder hurt "like hell" and he immediately lost range of motion. Petitioner immediately reported the injury but completed his shift. He testified that he also worked the following day. Thereafter he was referred to occupational care at Carle Hospital.

The record reflects that on April 24, 2020, Petitioner visited Dr. Randy E. Cohen at Carle Hospital. Petitioner reported that he was walking downstairs carrying 30 pounds of 1 to 1-1/2 inch bent sheet metal. He reported that while turning a corner, the sheet metal hit the framing and he felt a pop and pain in his left shoulder. Petitioner reported to Dr. Cohen that he had continued working since then, but still had pain with range of motion. Petitioner informed Dr. Cohen of his

1 The December 12, 2016 note indicates that *right* shoulder X-rays were taken, but this appears to be a typographical error. A reading of the record reveals a chief complaint of the *left* shoulder, as well as references to a left shoulder injury and work restrictions imposed on the left shoulder. Accordingly, the Commission presumes the X-rays taken on this date were of the left shoulder.

prior degenerative left shoulder condition, which had been treated with an injection and physical therapy. Dr. Cohen noted that Petitioner had been working with his left shoulder condition with no reported difficulties until the instant accident date. Dr. Cohen examined Petitioner and noted left shoulder tenderness to palpation with limited external range of motion. Dr. Cohen ordered X-rays and subsequently opined that they verified Petitioner's degenerative left shoulder history. He diagnosed left shoulder pain and advanced degenerative arthritis of the left glenohumeral joint, and imposed work restrictions of 10-pounds lifting with the left arm and no overhead work. These restrictions were accommodated by Respondent.

On May 8, 2020, Petitioner followed up with Dr. Cohen, reporting that his left shoulder pain persisted. Dr. Cohen performed repeat X-rays and diagnosed a left shoulder injury, severe glenohumeral degenerative changes and questionable acromial fracture. Dr. Cohen referred Petitioner for orthopedic evaluation and continued the light duty restrictions of lifting, pushing, and pulling 10 pounds.

On May 26, 2020, Petitioner treated with Physicians' Assistant Danny McFarlin, who noted Petitioner had "no problems" before the instant accident, although Petitioner did report a few prior shoulder injuries. PA McFarlin ordered X-rays, which revealed severe arthritis of the glenohumeral joint with complete joint space loss. He diagnosed severe glenohumeral joint arthritis to the left shoulder and recommended an intraarticular injection. A left shoulder replacement was discussed. Mr. McFarlin also believed there was a chance of a rotator cuff tear. He ultimately recommended conservative treatment.

On June 5, 2020, Petitioner followed up with Dr. Cohen after undergoing an injection on June 2, 2020. Petitioner reported that after the intraarticular injection, he rolled over in bed and felt and heard a pop in his left shoulder. He informed Dr. Cohen that since then he had increasing pain and more diffuse discomfort. Dr. Cohen diagnosed severe glenohumeral arthritis in the left shoulder and aggravation of left shoulder pain on June 2, 2020. Petitioner informed Dr. Cohen that he had secured a consult with orthopedic surgeon Dr. Mark Dennis Greatting at Springfield Orthopedics on June 23, 2020. Petitioner testified that Springfield Orthopedics was closer to his home than was Carle Orthopedics. On June 16, 2020, Petitioner participated in a zoom appointment with Mr. McFarlin, and reported that the intraarticular injection had worsened his pain.

Dr. Greatting testified via deposition that his Nurse Practitioner initially met with Petitioner at Springfield Orthopedics on June 23, 2020, however this record is not contained in Dr. Greatting's office records in Petitioner's Exhibit 7. On July 16, 2020, Dr. Greatting's office performed a CT scan of Petitioner's left shoulder which revealed severe glenohumeral osteoarthritis with bone on bone articulation, several large intra-articular bodies in the subscapularis recess and an incidental note of an os acromiale.

On July 22, 2020, Petitioner was evaluated by Nurse Practitioner Mirjam Naughton at Springfield Orthopedics. Petitioner reported his pain was rated 5-8/10. Ms. Naughton opined that the July 16, 2020 CT scan was significant for severe left glenohumeral osteoarthritis with several large intraarticular bodies in the subscapularis recess. Ms. Naughton discussed treatment options with Petitioner, who opted to undergo a left total arthroplasty with Dr. Greatting.

On September 15, 2020, Dr. Paletta performed a Section 12 examination on Petitioner at Respondent's request. Petitioner described a consistent mechanism of injury. Petitioner reported ongoing left shoulder pain and limited range of motion, especially when reaching overhead or behind his body. He also denied prior left shoulder problems. Dr. Paletta reviewed the July 16, 2020 CT scan and confirmed advanced osteoarthritis of the glenohumeral joint with essentially full thickness chondral loss and bone on bone changes. Dr. Paletta noted that according to Petitioner's history, the condition was asymptomatic prior to the instant accident. Dr. Paletta ordered X-rays, finding advanced end-stage osteoarthritis of the glenohumeral joint with marked joint space narrowing, and large inferior humeral neck or goat's beard osteophyte. Dr. Paletta diagnosed end-stage osteoarthritis of the left shoulder, but opined it was not caused by Petitioner's work injury. He further opined that all diagnostic findings were longstanding and chronic and would not have occurred within 48 hours of the accident. He agreed with Springfield Orthopedics that a shoulder replacement was necessary, but reiterated that it was related to Petitioner's longstanding end-stage osteoarthritis, and that the work accident did not cause any change in the natural history of Petitioner's condition.

On November 23, 2020, Petitioner met with Dr. Greatting himself for the first time. Petitioner reported a mechanism of injury of carrying a 25-pound piece of angle iron on his left shoulder when he struck the angle iron on a pilon and felt a pop and immediate pain in his shoulder. He further reported that on the night of his accident he felt another pop while rolling over onto the shoulder in bed. He complained of pain and limited range of motion with popping in the shoulder. Petitioner indicated no left shoulder issues prior to this accident. Dr. Greatting reviewed the June 23, 2020 X-rays from his office and found severe osteoarthritis of the glenohumeral joint. He further opined that the July 16, 2020 CT scan revealed severe osteoarthritis with several large intraarticular loose bodies in the subscapularis recess. Dr. Greatting opined that these arthritic changes preexisted the injury, but noted that Petitioner indicated he was asymptomatic until the instant injury. Dr. Greatting opined that based on this history, the accident potentially exacerbated a preexisting condition and may have caused a rotator cuff tear. He opined the only real treatment would be a total shoulder arthroplasty.

On January 7, 2021, Petitioner followed up with Dr. Greatting. Petitioner reiterated that his left shoulder was asymptomatic prior to the instant accident, and that he had significant and ongoing problems of pain, weakness, and limited range of motion ever since. Dr. Greatting opined Petitioner's symptoms were related to the osteoarthritis. He reiterated his causation opinion, and opined that based on the history, the injury appeared to have exacerbated or accelerated the symptoms of Petitioner's pre-existing osteoarthritis. Dr. Greatting performed an intraarticular steroid injection and referred Petitioner for physical therapy. Dr. Greatting reiterated that the only real surgical option was a total shoulder arthroplasty.

On February 18, 2021, Petitioner followed up with Dr. Greatting. Petitioner reported no relief from the January 7, 2021 steroid injection. Dr. Greatting discussed further treatment options. Petitioner elected to undergo a series of viscosupplementation injections. Dr. Greatting informed Petitioner that if these injections did not provide improvement, a total shoulder arthroplasty may be necessary in the future. Petitioner testified that he requested a release to work the following day. He testified that he wanted to earn income but was unable to draw unemployment. Dr.

Greatting's office administered the viscosupplementation injections on three dates in March of 2021. Petitioner testified that they initially helped, but that the effects wore off after one month.

Since being released back to work, Petitioner has worked on at least three job assignments. He now works in Decatur, Illinois in a shop where he can use cranes and everything else available to move items. He is unable to pick up and throw sheet metal items onto a table. He testified that working in a shop requires less overhead work. He testified he works 8 hours per day and 40 hours per week with some overtime.

iii. Additional testimony at arbitration

Edmund Robison testified at trial on Petitioner's behalf. Mr. Robison is the Business Manager for Sheet Metal Workers Local 218. His duties include placing workers and handling their insurance and other benefits. He testified that Petitioner works whenever he is asked to work. Prior to 2020, he never had an issue with Petitioner performing any job. However, he testified that although Petitioner still accepted jobs after returning to work in February 2021, Mr. Robison had to get a doctor's release from Petitioner before he could work a job assignment. Mr. Robison testified to his belief that Petitioner "would rather be getting fixed, but he has to pay his bills and eat." Mr. Robison testified that the jobs Petitioner now performs are jobs that Mr. Robison usually has apprentices perform. He testified that a week prior to the instant trial he took another worker to the location Petitioner was working. While there, Mr. Robison observed Petitioner working in the shop, which is lighter work than fieldwork because machines do a lot of the work for you in the shop.

Jeff Addicott also testified on Petitioner's behalf. Mr. Addicott considers Petitioner a friend and socializes with him outside of work. They stay in the same motels when traveling. Mr. Addicott is a sheet metal journeyman who used to work with Petitioner "all of the time," although he testified he did not work for Respondent when Petitioner worked for Respondent. Mr. Addicott testified that Petitioner began his career as his apprentice and that Petitioner was capable of lifting heavier stuff than him. Mr. Addicott currently works with Petitioner again, but testified he now has to "baby him." Mr. Addicott testified to his belief that Petitioner is no longer capable of performing the same amount of work as he did previously. He testified Petitioner can no longer "hold or run a duct up" like Mr. Addicott can, nor can Petitioner help others without extra help or extra equipment.

Mr. Addicott testified that he works in the field while Petitioner works in the shop. He testified that in the field he gets a hand crank lift every now and then, while Petitioner gets a power lift with a crane overhead. Mr. Addicott testified that prior to working for Respondent, Petitioner would be in the field with Mr. Addicott. He testified Petitioner now complains of shoulder pain, whereas Mr. Addicott never heard such complaints from him before. Mr. Addicott testified that sheet metal workers normally have aches and pains, but Petitioner never used to complain. Now Mr. Addicott considers Petitioner to be "kind of whiny."

iv. Depositions

Dr. Mark Dennis Greatting

Dr. Greatting is a board-certified orthopedic surgeon with a specialty in hand surgery. He testified via deposition on June 14, 2021. He testified that it is common for a male of Petitioner's age, to have osteoarthritis, but noted a history of patients in the past who had pretty severe osteoarthritis but did not have a lot of symptoms. Dr. Greatting opined that a trauma such as the one sustained by Petitioner herein could aggravate an underlying degenerative condition such as shoulder osteoarthritis to the point where surgery becomes necessary. Given a history that Petitioner had minor left shoulder complaints and was working fairly consistently, then suffered an accident, then suffered more pain and loss of range of motion, then returned to work only for financial reasons, but remained symptomatic, Dr. Greatting opined that the accident in question would be an aggravating factor to the point where surgical intervention could be reasonable and necessary.

On cross examination, Dr. Greatting acknowledged that Dr. Hulsey's pre-accident treatment from December 2016 through May 2017 revealed similar symptoms, diagnostics and diagnosis as did the instant accident, and that Petitioner's marked degenerative osteoarthritic changes on December 12, 2016 suggested the degenerative process had been a longstanding process that began developing prior to the CT scan on that date. He also acknowledged a shoulder replacement was considered by Dr. Hulsey in 2017, three years prior to the instant accident. However, while Dr. Greatting acknowledged that the instant accident did not change the actual progression of Petitioner's osteoarthritis, it did exacerbate his symptoms. He opined that the necessity of Petitioner's shoulder replacement was based on his symptoms and how they affected his daily life. Dr. Greatting testified that he prefers to wait until a patient is as old as possible before performing a shoulder replacement. However, he stated if the pain is severe enough and nothing else helps, he will perform one on a younger patient.

Dr. George A. Paletta, Jr.

Dr. Paletta is a board-certified orthopedic surgeon. He testified via deposition on June 16, 2021. He performs 300 shoulder surgeries a year. He performed a Section 12 examination on Petitioner on September 15, 2020. Dr. Paletta testified that at the time of examination, Petitioner reported a consistent mechanism of injury, but specifically denied prior left shoulder issues. Dr. Paletta noted that this history was contradicted by prior medical records of Dr. Hulsey, which did reveal a history of left shoulder issues. Dr. Paletta testified his examination revealed loss of range of motion, pain, weakness, and crepitus in the left rotator cuff. He also performed X-rays which revealed advanced end-stage osteoarthritis. He testified that "end-stage" indicates that the joint is so worn out that there is really not a lot left to offer the patient other than injections or a shoulder replacement. Dr. Paletta testified that he also reviewed the July 16, 2020 CT scan, which confirmed his X-ray findings. He testified that advanced end-stage osteoarthritis means Petitioner had been undergoing a long term process over some years.

Dr. Paletta opined Petitioner's end-stage left shoulder osteoarthritis was not caused by his work injury, as this condition was too severe to have developed between April and July of 2020.

He testified that the severity of Petitioner's diagnostics corroborated the long-standing nature of his condition. Dr. Paletta opined that nothing occurred during the instant accident that could have changed or accelerated Petitioner's condition in a material way. He testified that patient symptoms will wax and wane, but that gradually the joint will wear out and cause decreased range of motion and will fail conservative care. Dr. Paletta saw no acute inflammation or bruising suggesting anything new or acute had occurred.

Dr. Paletta testified that Petitioner did require a left shoulder replacement, but opined it was not due to his work accident. He further opined that Petitioner's current condition (and more recent July 16, 2020 CT scan) were similar to the results of his December 2016 CT scan. He also noted that discussion of a shoulder replacement began with Dr. Hulsey's 2017 opinion, which pre-dated the instant accident. Dr. Paletta opined that if Petitioner had a good outcome from surgery, he could return to his pre-accident employment.

On cross examination, Dr. Paletta acknowledged that he did not review any left shoulder medical records between Dr. Hulsey's May 2017 release and the instant accident date, with the exception of a September 12, 2018 Iowa clinic record, which revealed no evidence of a biceps tear, no tenderness to the bicipital groove and full ROM. Dr. Paletta agreed that on the face of this record, Petitioner's left shoulder was doing better. Dr. Paletta testified to his familiarity with sheet metal workers and acknowledged that they perform a lot of overhead heavy activity work. He also agreed that trauma can cause existing arthritis to become more painful. However, he found it highly unlikely that the instant mechanism of injury could increase Petitioner's pain, since Petitioner did not hit his shoulder, fall on it, nor was his left arm jerked or twisted.

CONCLUSIONS OF LAW

I. Date of Accident

Initially, the Commission changes the date of accident to conform with the evidence. Throughout the trial, Petitioner alleged an accident date of April 22, 2020. This date is also noted in several medical records. However, the Commission recognizes and adheres to the stipulated accident date of April 23, 2020 contained in the Request for Hearing form. The request for hearing is binding on the parties as to the claims made therein. *Walker v. Industrial Commission*, 345 Ill. App. 3d 1084, 1088 (2004). In keeping with this precedent, the Commission changes the date of accident to the agreed upon date of April 23, 2020, which is binding on the parties.

II. Causal Connection

Determinative of this issue is whether Petitioner's April 23, 2020 work accident aggravated his pre-existing left shoulder condition. The applicable legal standard in such a case is as follows:

It is well established that an accident need not be the sole or primary cause—as long as employment is a cause—of a claimant's condition. *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 205 (2003). Furthermore, an employer takes its employees as it finds them (*St. Elizabeth's Hospital v. Illinois Workers' Compensation Commission*, 371 Ill. App. 3d 882, 888 (5th Dist.

2007)), and a claimant with a pre-existing condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Commission*, 92 Ill. 2d 30, 36 (1982). As the Appellate Court held in *Schroeder v. Illinois Workers' Compensation Commission*, 2017 IL App (4th) 160192WC, the inquiry focuses on whether there has been a deterioration in the claimant's condition:

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

In the instant case, it is undisputed that Petitioner had significant osteoarthritis of the left glenohumeral joint prior to the April 23, 2020, accident. The evidence demonstrates that Petitioner treated with Dr. Hulsey for left shoulder soreness and popping, but on May 10, 2017, Dr. Hulsey found Petitioner had reached maximum medical improvement and released him to full duty work. Thereafter, Petitioner performed his full duties as a sheet metal worker successfully until the April 23, 2020, accident, where he injured his left shoulder while performing strenuous and heavy lifting duties. This was corroborated by the testimony of Mr. Robison, who testified that prior to the instant accident, Petitioner could be relied upon to work any job he was asked to work, but that after the instant accident, Mr. Robison had to obtain a doctor's release from Petitioner before he could work a job.

After the April 23, 2020, accident, Petitioner was no longer able to perform heavy work duties, a fact highlighted in the testimony of coworker Mr. Addicott. Mr. Addicott testified that he worked with Petitioner both before and after Petitioner's employment with Respondent. Prior to Petitioner's employment with Respondent, Petitioner was Mr. Addicott's apprentice, and they both worked in the field together where Petitioner was capable of lifting heavier items than Mr. Addicott. Petitioner and Mr. Addicott worked for different employers while Petitioner worked for Respondent, however, Petitioner now works with Mr. Addicott again. Mr. Addicott testified he now has to "baby him." Mr. Addicott does not believe Petitioner is capable of performing the same amount of work as he did before. He testified Petitioner can no longer hold or run a duct up like Mr. Addicott can, nor can he help others without the assistance of extra help or extra equipment. Additionally, Mr. Addicott testified that he still works in the field, while Petitioner now works in the shop, which is less demanding and allows Petitioner to use equipment to assist him in performing his job duties. Mr. Addicott stated that sheet metal workers normally have aches and pains, but Petitioner never used to complain. Mr. Addicott testified Petitioner now complains of shoulder pain and he now considers Petitioner to be "kind of whiny."

The Commission further observes the evidence reflects there was a significant deterioration in Petitioner's condition following the work accident. The evidence reflects that prior to the April 23, 2020, accident, Dr. Hulsey noted Petitioner would likely require a future left shoulder replacement after his November 2016 left shoulder injury. However, Petitioner treated conservatively and was released to full duty work on May 10, 2017, thereafter working full duty without evidence of any left shoulder problems. The Commission notes that up to and including Dr Hulsey's May 10, 2017, discharge date, said surgery had not been recommended. On September

12, 2018, the last medical record before the instant accident, Dr. Brunkhorst examined Petitioner's left shoulder and found no tenderness and full range of motion. In contrast, immediately after the April 23, 2020, accident, Petitioner reported pain and tenderness to Dr. Cohen who found limited range of motion and imposed light duty restrictions of lifting limitations and no overhead work with the left arm. One month after the accident, physicians at Carle Hospital discussed a left shoulder replacement with Petitioner. Two months thereafter, Dr. Greatting's office recommended the same. Petitioner's testimony. and the testimony of Mr. Robison and Mr. Addicott, support a finding that Petitioner's left shoulder condition never returned to baseline after the accident. Although Petitioner had returned to full duty work on February 19, 2021, the Commission recognizes that this was borne out of financial necessity rather than a referendum on his physical ability.

Based on the evidence contained in the record, the Commission finds Petitioner's condition of ill-being remains causally related to the April 23, 2020, stipulated work accident. While Petitioner had severe osteoarthritis in his left shoulder prior to the instant accident, Petitioner was able to perform his full duties as a sheet metal worker before the work accident. However, after the accident, Petitioner was unable to perform his work duties and his left shoulder condition never returned to baseline. Dr. Paletta acknowledged as much in his Section 12 report, noting that Petitioner's condition appeared to be asymptomatic prior to the instant accident. The Commission finds further that the work accident aggravated and accelerated Petitioner's preexisting left shoulder condition and Petitioner's left shoulder condition has deteriorated so much since the accident that he now needs a left shoulder replacement. As such, the work accident is *a* factor in Petitioner's current left shoulder condition.

III. Temporary Disability

Based on the above finding that Petitioner's left shoulder condition is causally related to the stipulated April 23, 2020, accident, the Commission awards additional temporary total disability (TTD) benefits. The disputed period of temporary total disability is October 8, 2020 through February 19, 2021, the date Petitioner was returned to full duty work. While the parties agree that Petitioner was off work from May 14, 2020 through October 7, 2020, the medical records shows that Petitioner remained off work through February 19, 2021. As such, the Commission finds Petitioner proved entitlement to the disputed TTD benefits. The parties stipulated Petitioner's average weekly wage is $1,494.80. This yields a TTD rate of $996.54. Therefore, the Commission finds Petitioner is entitled to TTD benefits of $996.54 per week for a period of 40 & 2/7ths weeks.

IV. Incurred Medical Expenses and Prospective Treatment

Based on the above finding that Petitioner's left shoulder condition is causally related to the stipulated April 23, 2020, accident, the Commission awards additional incurred medical expenses. The Arbitrator found that Respondent was only liable for medical expenses through the September 15, 2020 Section 12 examination report of Dr. Paletta. Petitioner offered into evidence medical bills for charges incurred subsequent to September 15, 2020. The Commission, finding the opinions of Dr. Paletta to be unpersuasive and unsupported by the evidence and law, finds that the medical treatment and charges for Petitioner's left shoulder condition were incurred for

treatment that was reasonable, necessary, and causally related to the April 23, 2020 work accident.

Further, as Petitioner has yet to reach maximum medical improvement, the Commission orders Respondent to provide and pay for the prospective left shoulder replacement as recommended by Dr. Greatting. The Commission finds the proposed left shoulder replacement to be reasonably required to cure or relieve Petitioner of the effects of the accidental work injury to his left shoulder that occurred on April 23, 2020.

IT IS THEREFORE FOUND BY THE COMMISSION that the date of accident for Petitioner's injury is April 23, 2020, in conformation with the stipulated date on the Request for Hearing.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner's current left shoulder condition of ill-being remains causally related to the April 23, 2020, accident.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 20, 2021, is hereby modified.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $996.54 per week for a period of 40 & 2/7ths weeks, from May 14, 2020 through February 19, 2021, this being the period of temporary total incapacity for work under §8(b) of the Act, and that as provided in §19(b), this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall receive credit for temporary disability benefits paid in the amount of $20,927.13.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary and causally related medical expenses detailed in Petitioner's Exhibit 9, as provided in §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for the prospective total left shoulder arthroplasty as recommended by Dr. Greatting, 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 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 $52,400.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 22, 2022
O: 7/27/22
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	20WC022681
Case Name	ADAMS, ALBERT v. DAVIS HOUK MECHANICAL INC
Consolidated Cases	No Consolidated Cases
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	34
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Kevin Morrisson
Respondent Attorney	Bruce Magnuson

DATE FILED: 10/20/2021

THE INTEREST RATE FOR THE WEEK OF OCTOBER 19, 2021 0.06%

/s/Edward Lee, 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
19(b)

Albert Adams
Employee/Petitioner

v.

Davis Houk Mechanical, Inc.
Employer/Respondent

Case # **20** WC **022681**

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 **Springfield**, on **08/16/2021**. 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, **04/22/2020**, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**77,729.60**; the average weekly wage was $**1,494.80**.

On the date of accident, Petitioner was **51** years of age, ***single*** with **-0-** dependent children.

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

Respondent shall be given a credit of $**20,927.13** for TTD, $**-0-** for TPD, $**-0-** for maintenance, and $**-0-** for other benefits, for a total credit of $**20,927.13**.

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

ORDER

- The Arbitrator finds that Petitioner's condition of ill-being specifically related to the degenerative condition of the left shoulder did not arise out of and in the course of his employment. The need for medical treating, specifically a total shoulder arthroplasty, is not causally related to his work with Respondent.

- Respondent shall pay Petitioner TTD benefits for 20-6/7 weeks, commencing on 05/14/2020 through 10/07/2020, as provided in Section 8(b) of the Act. Respondent shall receive credit for $20,927.13 for TTD benefits paid.

- Respondent has paid reasonable and necessary medical services incurred through 09/15/2020 pursuant to Section 8(a) and Section 8.2 of the Act and Respondent is not liable for payment for medical services provided subsequent to 09/15/2020.

- Petitioner is not entitled to an award for prospective medical care.

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

OCTOBER 20, 2021

Re: Albert Adams v. Davis Houk Mechanical, Inc., Injury No. 20-WC-022681

THE ARBITRATOR FINDS THE FOLLOWING FACTS:

The Petitioner is a journeyman sheet metal worker. He belongs to the Sheet Metal Workers Local Union 218. The Petitioner's job involves measuring, fabricating, and installing ductwork, siding, gutters, and a variety of other sheet metal materials. The Petitioner testified that most of his work is done overhead. He also testified that heavy lifting was required. The amount of lifting will depend upon the size of the job. The Petitioner noted that when he worked on the Abraham Lincoln Museum, they lifted 50 pounds all day every day overhead. He testified that all sheet metal jobs require some overhead lifting.

Petitioner testified that he previously injured his left shoulder on November 18, 2016. On that occasion, he was working in Missouri and was helping to put up siding on the outside of a building. Petitioner testified that he was carrying a piece of the siding with another worker, and he tripped and fell, and everything came down onto his left shoulder. The Petitioner felt a pop in the left shoulder. Petitioner testified he treated with Dr. Richard Hulsey for that injury. Dr. Hulsey did not perform surgery, but he did perform an injection. Petitioner testified that he treated with Dr. Hulsey until May 10, 2017. After the injection therapy, the left shoulder was much better. The Petitioner agreed that when he last saw Dr. Hulsey, he complained of being a bit sore. He testified he continued to perform the physical therapy activities, even after he was discharged, in order to keep the left shoulder limber and loose. He returned to his work as a journeyman sheet metal worker.

Petitioner also testified that he sustained a right shoulder injury on June 11, 2018. He treated with a doctor in Iowa, Joseph Brunkhorst. He was diagnosed with a high-grade partial-

thickness tear and underwent a rotator cuff repair on September 27, 2018. Dr. Brunkhorst discharged Petitioner from care on April 13, 2020, 10 days before the injury in question.

Petitioner testified that he was working in Champaign on April 22, 2020 on a school project. He stated that apartments were being built, and he went to pick up a bundle that weighed anywhere between 25 to 50 pounds, of light-gauge angle iron. He was carrying this on his shoulder, and someone was coming through the hall. Petitioner testified that he backed up to miss this other worker, and when he went to turn, the back of the bundle hit the wall, and he then felt a pop in his left shoulder. Petitioner noticed that right after the incident, his shoulder hurt "like hell," and he immediately lost range of motion. He testified that after this incident, his left shoulder was really painful, and he noticed loss of strength and loss of range of motion. He reported the incident immediately to the employer and sought treatment at the occupational medicine clinic at Carle in Urbana.

With regard to the Petitioner's previous injury of November 18, 2016, he consulted with Dr. Richard Hulsey on December 12, 2016. On that occasion, Dr. Hulsey recorded Petitioner injured his left shoulder on November 18, 2016, when he was picking up a cement corner panel that was quite heavy. The report states Petitioner complained of a sudden, sharp pain and a popping noise involving his left posterior shoulder. There was immediate discomfort. Petitioner saw a Dr. Wetzel and was placed on limited duty. Petitioner complained of pain with most any activity that required reaching or lifting. He had not noticed much crepitation or popping on a regular basis. He noted that he had had mild discomfort in that shoulder in the past, but this had not kept him from his work or personal activities (Petitioner's Exhibit 2 at 1).

Dr. Hulsey examined the Petitioner and found mild pain but no significant loss of function. There was tenderness over the glenohumeral joint, especially posteriorly. Internal

rotation was quite painful. The lift-off test was negative. There was good strength on isolated testing to both the supraspinatus and infraspinatus tendons. An outside MRI was reviewed, which revealed moderate degenerative changes of the glenohumeral joint with mild tendinopathy of the supraspinatus tendon and a tear of the posterior labrum. X-rays were taken of the right shoulder, and those revealed advanced osteoarthritis of the glenohumeral joint with near bone-on-bone and an inferior osteophyte off the humeral head (Petitioner's Exhibit 2 at 2).

Dr. Hulsey's impression was that Petitioner had osteoarthritis in the glenohumeral joint with a posterior labral tear. He noted that the arthritic changes were quite advanced. The doctor felt that the described injury most likely resulted in a tear of the posterior labrum. However, it was noted Petitioner had significant pre-existing arthritic changes that were apparently minimally symptomatic. The doctor's prognosis was guarded, due to the severity of the arthritic changes. He recommended Petitioner undergo a CT scan to evaluate the degree of arthrosis. The doctor noted that if the arthritis was truly bone-on-bone, addressing the labrum by itself would usually not provide the necessary relief. However, if there was reasonable joint space remaining, the prognosis would be improved. Petitioner was placed on work restrictions and was set to undergo a CT scan.

The Petitioner underwent a CT scan at Watson Imaging Center on February 16, 2016. The radiologist found no evidence of fracture or dislocation. He noted degenerative changes involving the acromioclavicular joint and significant narrowing of the glenohumeral joint with associated hypertrophic spurs of the glenoid fossa and inferior aspect of the humerus at the head and neck junction. There was also some vacuum phenomenon present in this joint. The final opinion by the radiologist was no acute osseous abnormality, degenerative changes of the acromioclavicular joint with narrowing and hypertrophic spurs, and marked degenerative

changes of the glenohumeral joint with significant narrowing, hypertrophic spurs, and vacuum joint phenomenon (Petitioner's Exhibit 2 at 16).

Dr. Hulsey reevaluated the Petitioner on December 12, 2016. At that time, the Petitioner continued to complain of pain, although he noted that taking Mobic had provided significant relief. He also reported some occasional light popping. Dr. Hulsey reviewed the CT scan and stated it confirmed that Petitioner had significant arthritic changes, though there was small joint space remaining. The assessment was osteoarthritis to the left shoulder with labral tearing. Dr. Hulsey noted that the arthritic changes were significant and would progress with time. He noted that injury to the posterior labrum most likely occurred at the time of the injury on November 18, 2016, but it was weakened by the chronic arthritic changes within the joint. The doctor felt that in the future, Petitioner would most likely require a joint replacement, due to his arthritic changes. The doctor noted that, given the Petitioner's age, if his pain would flare back up, he would consider arthroscopic debridement, especially of the posterior labrum. The doctor allowed the Petitioner to resume regular duty (Petitioner's Exhibit 2 at 4).

Dr. Hulsey reevaluated the Petitioner on February 1, 2017. Petitioner reported that since the prior visit, his pain had increased in the left shoulder to the point where he had difficulty with most activities that required reaching out overhead. Physical examination showed range of motion to be uncomfortable. The doctor found good strength when testing the rotator cuff tendons, but there was increasing pain. The doctor's impression remained unchanged. The doctor noted there was a combination of a posterior labral tear as well as significant arthrosis. They discussed an arthroscopic debridement of the labrum and articular surface, although this entailed a significant risk of persistent discomfort. The doctor wanted to have Petitioner undergo a fluoroscopically guided intraarticular injection. The note concludes that Petitioner "realizes

that sometime in the future he will require a joint replacement" (Petitioner's Exhibit 2 at 7).

Dr. Mohammed Paracha, the interventional pain management specialist at Dr. Hulsey's office, administered a left glenohumeral shoulder joint injection on February 1, 2017. The procedure was well tolerated, and there were no apparent complications (Petitioner's Exhibit 2 at 10).

Petitioner returned to Dr. Hulsey for follow-up on March 1, 2017. He reported significant improvement in his pain after the injection. The doctor noted that since there was a nice improvement in functions secondary to the injection, he would not recommend aggressive surgical treatment at this time. Petitioner was to continue taking medication and return in a couple of months for follow-up. The doctor noted that if the pain remained functional, Petitioner could be released at the next visit, although he obviously has longstanding changes in his shoulder, secondary to both the arthritis and the labral tear (Petitioner's Exhibit 2 at 12).

Petitioner followed up with Dr. Hulsey on May 10, 2017. On that occasion, Petitioner reported that the effects of the injection had worn off. The doctor's note recorded that Petitioner was quite sore, especially when using the arm above shoulder level. He noted occasional popping in the shoulder. Petitioner reported that he was receiving limited improvement now from the Mobic and the tramadol. Dr. Hulsey's impression remained osteoarthritis of the left shoulder with posterior labral tear. The doctor's discussion in the notes states that Petitioner's improvement from the injection apparently was short-lived. He described advanced osteoarthritis of the glenohumeral joint. He felt that the arthritic changes present would make surgical treatment highly unpredictable. The doctor further stated that with time, Petitioner would require a total shoulder replacement, relating to his underlying arthrosis and not because of the labral tear. The doctor felt there was little else to offer, other than anti-inflammatory

medications. Otherwise, Petitioner was at maximum medical improvement. He was released to full-duty work status (Petitioner's Exhibit 2 at 14).

Petitioner was working in Iowa when he sustained the injury of June 11, 2018. He began treating with Dr. Joseph A. Brunkhorst of Des Moines Orthopaedic Surgeons. He was treated for rotator cuff and labral tears. He did not receive treatment for his left shoulder with Dr. Brunkhorst (Petitioner's Exhibit 3).

Petitioner last had a telemedicine appointment with Dr. Brunkhorst on April 13, 2020. The note records that overall, Petitioner is doing very well with regard to the right shoulder. He had no concerns. Petitioner was declared at MMI, and no further follow-up was required (Petitioner's Exhibit 3 at 20).

Following the incident of April 22, 2020, Petitioner consulted with Dr. Randy Cohen at Carle's Occupational Medicine Department. This visit took place on April 24, 2020. Petitioner complained of a left shoulder pain and pop. The history section states that Petitioner is a sheet metal worker and was carrying 30 pounds of 1 to 1-1/2-inch bent sheet metal on his left shoulder. he was walking down stairs, and while turning the corner, the bunch of sheet metal hit the framing, and he felt a pop in his left shoulder. Petitioner reported that he had continued to work since that time but noticed pain with range of motion. He reported the treatment in Iowa to the right shoulder for the rotator cuff. He also noted that with regard to the left shoulder, Petitioner had issues with it in the past and had been told he had degenerative changes in that shoulder and was treated with injection and physical therapy. Dr. Cohen recorded that Petitioner continued to work with the left shoulder and had not reported difficulties until the most recent injury (Petitioner's Exhibit 6 at 4).

Dr. Cohen performed a physical examination, finding that the left shoulder revealed no

tenderness to palpation over the posterior aspect of the shoulder or over the periacromial area. Petitioner had tenderness to palpation to the posterior aspect of the shoulder and peri-acromial area. He was able to full flex, but had marked pain at 90 degrees. He was able to abduct fully, but again at 90 degrees had marked pain. x-rays were taken, which showed inferior glenohumeral spurring, both on the humeral head inferiorly and on the inferior aspect of the glenohumeral fossa. There was also marked joint space narrowing of the glenohumeral joint. Dr. Cohen assessed Petitioner with left shoulder pain and pop, rule out rotator cuff tear, and advanced degenerative arthritis of the left glenohumeral joint. In the discussion section, Dr. Cohen noted that the prior history of left shoulder pain and degeneration was clearly verified by the day's x-rays, which showed advanced glenohumeral joint degeneration with reactive bone formation. The doctor wanted to see the 2017 MRI. He put Petitioner on light-duty status on this occasion (Petitioner's Exhibit 4 at 6).

The Petitioner's light-duty restrictions were accommodated by the Respondent, and he continued to work until May 13, 2020.

Petitioner returned to Dr. Cohen for follow-up on May 8, 2020. Petitioner was noted to have persistent pain in the left shoulder. He was taking medication without relief. Repeat x-rays were taken of the left shoulder. He was assessed with left shoulder injury, severe glenohumeral degenerative changes in the left shoulder, and questionable acromial fracture. Petitioner was to be referred to orthopedics for evaluation. He remained on light-duty status (Petitioner's Exhibit 6 at 14–26).

Petitioner was evaluated at the Carle Orthopedics and Sports Medicine Department on May 26, 2020. He was evaluated by a physician's assistant, Danny McFarlin. Mr. McFarlin noted that Petitioner had been referred to the clinic by Dr. Cohen with complaints of left

shoulder pain. Petitioner reported his injury of April 22, 2020. The report states that Petitioner had had "no problems before this." He did note a history of a couple of injuries in the past, involving the shoulder. He denied the presence of any notable neck pain. Mr. McFarlin performed a physical examination and reviewed x-rays of the shoulder. The x-rays were read to show severe arthritis of the glenohumeral joint with complete joint space loss. Mr. McFarlin also noted the large, bulky spur on the underside of the humeral head, as well as small spur forming at the inferior aspect of the glenoid. His assessment was severe glenohumeral joint arthritis to the left shoulder. He ordered an intraarticular injection to be given under fluoroscopy. He noted that surgical treatment would be a shoulder replacement. He felt there was a chance there might be a rotator cuff tear. Conservative treatment was recommended, and Petitioner remained on restrictions (Petitioner's Exhibit 6 at 57–69).

Petitioner underwent a fluoroscopically guided left shoulder steroid injection at Carle Foundation Hospital on June 6, 2020. This was performed by Dr. Devarshi Desai (Petitioner's Exhibit 6).

Petitioner was reevaluated by Dr. Cohen in the Occupational Medicine Department on June 5, 2020. At that time, the chief complaints were listed as left shoulder severe degenerative glenohumeral arthritis and possible left shoulder rotator cuff tear. Dr. Cohen reviewed the notes from Mr. McFarlin. He noted that Mr. McFarlin opined that Petitioner would require shoulder replacement therapy, and the status of the rotator cuff would determine how it would be done. The note goes on to report that Tuesday night, following the intraarticular injection, Petitioner had rolled over in bed, felt and heard a loud pop in his left shoulder. Since that incident in bed, he had increasing pain in the shoulder with more diffuse discomfort. Physical examination revealed marked limitation of flexion, abduction, adduction, and cross-arm adduction. The

doctor also found limited internal and external rotation. The assessment was severe glenohumeral arthritis in the left shoulder and aggravation of left shoulder and aggravation of left shoulder pain on Tuesday night. It was noted that Petitioner lives near Springfield and has secured a consultation with Dr. Greatting at the Springfield Clinic. It was noted that Dr. Greatting is an orthopedic surgeon who specializes in shoulders. Petitioner stated he would attend his Zoom appointment with Mr. McFarlin on June 16 and was to remain on light-duty status (Petitioner's exhibit 6 at 80–92).

Petitioner participated in a telemedicine visit with Mr. McFarlin on June 16, 2020. Petitioner reported that the intraarticular injection had made the pain worse. Mr. McFarlin again noted that the x-ray showed severe degenerative arthritis of the glenohumeral joint with complete joint space loss. The plan section of the note states that Petitioner is going to see Dr. Greatting in Springfield. It was noted that Springfield was more convenient for the Petitioner, considering his place of residence. Mr. McFarlin felt that physical therapy would not be helpful for the patient. He may require an MRI to determine the status of the rotator cuff (Petitioner's Exhibit 6 at 93–113).

Petitioner testified that he initially consulted with Dr. Greatting's office in June of 2020. He did not see Dr. Greatting, but instead saw the nurse practitioner. The office note from this visit was not contained in Petitioner's Exhibit 7.

Petitioner underwent a CT scan of the left shoulder at Springfield Clinic on July 16, 2020. The radiologist found no fracture, malalignment, or bone lesion. He did find severe glenohumeral osteoarthritis with bone-on-bone articulation at the anterior/inferior joint, with a large marginal osteophyte and several adjacent large intraarticular bodies in the subscapularis recess of the glenohumeral joint. The final impression was no acute fracture or bone lesion,

severe left glenohumeral osteoarthritis with bone-on-bone articulation, and several large intraarticular bodies in the subscapularis, and an incidental note of an os acromiale (Petitioner's Exhibit 7 at 16).

Following the CT scan, Petitioner was evaluated by Nurse Practitioner Naughton at the Springfield Clinic on July 22, 2020. It was noted that Petitioner had pain, which he rates at 5 out of 10 in severity and up to 8 out of 10 with exacerbating activities. He reports no new injury. Nurse Naughton reviewed the x-rays from June 23, 2020 and noted that they were significant for severe osteoarthritic changes of the glenohumeral joint. The CT scan which was completed on July 16, 2020 was significant for severe left glenohumeral osteoarthritis with several large intraarticular bodies in the subscapularis recess (Petitioner's Exhibit 7 at 18–20). Treatment options were discussed on this occasion. The CT scan was reviewed with Petitioner. It was noted he would like to undergo a left total arthroplasty with Dr. Greatting. The procedure and risk were discussed. Petitioner remained on light duty.

Petitioner underwent an Independent Medical Evaluation with Dr. George A. Paletta, Jr. of the Orthopedic Center of St. Louis. This examination took place on September 15, 2020. Dr. Paletta took a history from the Petitioner regarding the incident of April 22, 2020. Petitioner described carrying some sheet metal angles, noting he picked up a bundle of angles and he indicated that the total bundle weighed 25 to 30 pounds. Petitioner told Dr. Paletta that he put the bundle on his left shoulder to carry it and was turning to walk down some stairs when the metal hit the wall of the stairwell. Petitioner stated that when this happened, he felt and heard a pop in the shoulder and noted the immediate onset of pain. He reported the injury but was not evaluated medically on that date (Respondent's Exhibit 1, Deposition Exhibit 2).

Dr. Paletta reviewed the Petitioner's medical records and his diagnostic testing. He noted

the results from the CT scan of July 16, 2020. These findings were found to be consistent with severe glenohumeral joint osteoarthritis. Dr. Paletta noted bone-on-bone changes with large intraarticular loose bodies, particular in the subscapularis recess. There was no evidence of any acute fractures (Respondent's Exhibit 1, Deposition Exhibit 2).

Petitioner noted that he had not undergone and surgical treatment for the left shoulder to date. He complained of ongoing pain and noted limited range of motion, especially when reaching overhead or behind his body. He denied any prior history of left shoulder problems (Respondent's Exhibit 1, Deposition Exhibit 2).

Dr. Paletta had the Petitioner undergo imaging studies at the Orthopedic Center on the date of the evaluation. The images from those x-rays revealed advanced end-stage osteoarthritis of the glenohumeral joint with marked joint space narrowing. He also noted that large inferior humeral neck or goat's beard osteophyte. There was no eccentric glenoid wear. There was good relative sphericity of the humeral head without flattening, yet there was almost complete obliteration of the joint space. He noted that the CT scan from the outside source confirmed the advanced osteoarthritis of the glenohumeral joint with essentially full-thickness chondral loss and bone-on-bone changes (Respondent's Exhibit 1, Deposition Exhibit 2).

Dr. Paletta diagnosed Petitioner with end-stage osteoarthritis to the left shoulder. He noted that this underlying condition of advanced end-stage osteoarthritis to the left shoulder was not caused by the work injury. Petitioner only noted an increase in symptoms. The doctor noted that all of the findings on diagnostic testing were longstanding, chronic changes that would not occur within 48 hours of the described injury. He felt that the condition of arthritis was clearly longstanding. He agreed that the only reasonable surgical procedure would be a left shoulder total shoulder replacement. However, the work injury did not cause any change in the natural

history of the condition. The need for a total shoulder arthroplasty would be related to the end-stage osteoarthritis, which was a longstanding pre-existing condition that was not caused by the work injury; nor was the natural history of the condition changed by the work injury (Respondent's Exhibit 1, Deposition Exhibit 2).

Petitioner first consulted with Dr. Greatting himself on November 23, 2020. Dr. Greatting recorded that Petitioner indicated he had no problems with his left shoulder prior to the alleged work injury of April 22, 2020. He again described the incident, noting that when the piece of angle iron struck a pilon, he felt a pop and immediate pain in the left shoulder. The doctor noted that again Petitioner denied any problems with his shoulder prior to that injury. He also reported the additional pop and severe pain after rolling over in bed. Petitioner made no complaints of any neck pain or numbness or tingling in the left arm. He complained of limited motion in the shoulder along with pain (Petitioner's Exhibit 7 at 21).

Dr. Greatting reviewed the June 23, 2020 x-rays and felt they showed severe osteoarthritis of the glenohumeral joint. He reviewed the images from the CT scan of July 16, 2020 and again noted severe osteoarthritis with several large intraarticular loose bodies in the subscapularis recess (Petitioner's Exhibit 7 at 21).

Dr. Greatting stated Petitioner had severe osteoarthritis in his left glenohumeral joint. He discussed with the patient that obviously these arthritic changes pre-existed the injury, but Petitioner was recorded as indicating he was completely asymptomatic prior to this injury. Dr. Greatting stated that based upon the history given, it appears that the injury potentially exacerbated a pre-existing condition in the left shoulder and may have caused a rotator cuff tear. The doctor wanted him to undergo an MRI to evaluate for a rotator cuff tear. The only real surgical treatment, based on the severity of the arthritis present, would be total shoulder

arthroplasty (Petitioner's Exhibit 7 at 21–22).

The Petitioner underwent an MRI of the left shoulder at Springfield Clinic on January 2, 2021. The radiologist found the rotator cuff to be intact with no full-thickness tear or retraction seen. There was advanced rotator cuff tendinopathy. The radiologist also found severe glenohumeral osteoarthritis with diffuse degenerative tearing of the labrum. There was also a glenohumeral joint effusion. There was no acute fracture or dislocation. The final impressions were as follows: Severe glenohumeral osteoarthritis; moderate acromioclavicular joint osteoarthritis; rotator cuff tendinopathy with no full-thickness tear or retraction seen (Petitioner's Exhibit 7 at 24–25).

Dr. Greatting reevaluated the Petitioner on January 7, 2021, following the MRI. Again, the doctor noted Petitioner denied any problems with his left shoulder prior to April 2, 2020. He complained of significant ongoing problems since that date, including pain, weakness, and decreased range of motion. The doctor noted that the diagnostic testing showed pretty severe osteoarthritis. He felt the MRI of January 4, 2021 showed severe glenohumeral joint osteoarthritis and no full-thickness rotator cuff tearing. The doctor stated he felt Petitioner's symptoms were related to the osteoarthritis in the left shoulder. Based upon the history of an asymptomatic shoulder, Dr. Greatting noted that the injury appears to have exacerbated or accelerated the symptoms of pre-existing osteoarthritis in the glenohumeral joint. The doctor decided to inject corticosteroid into the intraarticular area and recommended some physical therapy. He again discussed that the only real surgical option would be total shoulder arthroplasty. The injection was administered (Petitioner's Exhibit 7 at 26–27).

Petitioner commenced physical therapy on January 12, 2021. It was noted that the shoulder injection from January 7, 2021 had taken the edge off of the pain. Petitioner

complained of an achy and sharp pain in the shoulder. He said that motions reaching overhead and behind hurt. Driving also hurt the left shoulder. He reported that he sleeps in a chair and sleeps two to three hours at a time. The objective evaluation noted that he demonstrated pain behaviors. He was assessed, and physical therapy commenced (Petitioner's Exhibit 7 at 29–30).

Petitioner last saw Dr. Greatting himself on February 18, 2021. At that time, Dr. Greatting recorded that the Petitioner reported the injection from January 7, 2021 had given him no relief of symptoms. He continued to complain of problems with pain, weakness, and decreased range of motion in the shoulder. It was noted that Petitioner was only 51 years of age. The doctor noted Petitioner had symptomatic osteoarthritis in the left shoulder. Since he did not respond to intraarticular injection, the doctor elected to offer a series of viscosupplementation injections. The doctor noted that if these injections did not provide him improvement, sometime in the future, Petitioner may require total shoulder arthroplasty (Petitioner's Exhibit 7 at 36–37).

Dr. Greatting also allowed the Petitioner to resume work without restriction as of February 19, 2021. A health status form to that effect was issued by the doctor (Petitioner's Exhibit 7 at 38).

Petitioner underwent three viscosupplementation injections, the first on March 16, 2021, the second on March 21, 2021, and the third on March 29, 2021 (Petitioner's Exhibit 7 at 40–45).

Petitioner testified that the physical therapy he received through Springfield Clinic helped a little bit, but he was not getting back his strength and his range of motion. He stated that he asked to be released to return to work, as he wanted to earn money. He could not draw unemployment.

Petitioner testified that he has worked on at least three jobs since his return to work. He has worked in Iowa and now works at King Lar in Decatur, Illinois. He stated that he has been

working in the shop, where he can use cranes and everything else available to move items. He testified he could not pick up and throw sheet metal items on a table and he has to use a crane. Working in the shop was not really easier than what he normally does, but it requires less overhead work. He stated that the work has not been so bad and he was not doing anything overhead at this point. Petitioner testified that when he was in Iowa, he tried to do ground stuff, such as fetching items, being a fire watch and doing safety work.

Petitioner testified that after he finished his third viscosupplementation injection, those helped out quite a little bit, but then they stopped helping. He stated that a month after the injections, the effect had worn off. He testified he would like to get back to work and be out in the field.

Petitioner testified upon cross-examination that he works from a union hall and was never a permanent employee of the Respondent. The alleged incident took place around 11:00 a.m., with the shift starting at 7:00. The Petitioner testified that he completed his shift on the date of the injury. He stated that afterwards, he did not do anything. He did come in to work the next day, April 23, 2020. He did not seek medical attention until April 24, 2020. Petitioner testified that the items he was carrying were resting on his left shoulder, and that was what hit the wall when he turned. He agreed he did not strike the wall with his left shoulder; nor did he fall to the ground or otherwise strike the left shoulder in any other manner.

Petitioner testified that he had injured his left shoulder back on November 18, 2016. April 22, 2020 was not the first time he had pain in that area. Petitioner testified that he had actually fallen on November 18, 2016, because the work area was very cluttered and crowded, and he tripped over other stuff, and that is how he fell. He agreed that after the November 2016 incident, he felt a pop in the shoulder and felt immediate pain. He testified that when he treated

with Dr. Hulsey, commencing on December 12, 2016, that he recalled that he was found to have quite advanced arthritic changes in his left shoulder at that time. He testified that the injection administered by Dr. Hulsey had provided help for a very short time, and then the pain returned. He recalled telling Dr. Hulsey, at the visit of May 10, 2017, that his left shoulder was quite sore, and he also noted some occasional popping. When questioned about whether Dr. Hulsey discussed with him back in 2017 the possibility of him needing a left shoulder replacement, Petitioner testified that he believed that the doctor had discussed that with him.

Petitioner testified that when he began treating in July of 2018 in Des Moines, Iowa, only the right shoulder was involved. The focus of the care by Dr. Brunkhorst was on the right shoulder.

Petitioner testified that he was on light duty with the insured from April 25, 2020 until May 13, 2020. They had him put sealer on the ductwork, where he could use his right arm, and paint.

Petitioner testified that his current work at King Lar involves ductwork and making rebar or rebar-type fittings. The ductwork is to be used in heating and cooling applications. He testified since he had gone back to work, he has been working an eight-hour day and a full 40-hour week. He has worked some overtime.

The Petitioner placed into evidence the Deposition of Dr. Mark Greatting. Dr. Greatting testified that he told the Petitioner that he had osteoarthritis in his shoulder that pre-existed his injury. He was concerned about the possibility of a rotator cuff tear and therefore sent him for an MRI (Petitioner's Exhibit 8 at 13). Dr. Greatting testified he reviewed the MRI results and it showed severe glenohumeral joint arthritis and moderate acromioclavicular joint arthritis but no rotator cuff tear (Petitioner's Exhibit 8 at 13–14). Dr. Greatting testified that Petitioner was 51

years of age and was asked whether the osteoarthritis present would be common in someone over that age. The doctor stated that in males particularly, he will see osteoarthritis of people in their 50s and 60s. He testified he was not aware of any information that indicates specifically that an occupation is the cause of developing shoulder arthritis (Petitioner's Exhibit 8 at 14).

With regard to the Petitioner's return to work as of February 19, 2021, the doctor stated that Petitioner apparently wanted to try to go back to work and see how he would do. The doctor had no objection to that request. The doctor also testified that sometimes he will see patients that do not have a lot of symptoms in their shoulders and can have pretty severe osteoarthritis. He stated that more frequently, symptoms correlate with the severity of the arthritis (Petitioner's Exhibit 8 at 17). Dr. Greatting testified that a trauma such as described by Petitioner was something that could aggravate an underlying degenerative condition such as osteoarthritis of the shoulder. Dr. Greatting also testified such an incident could aggravate the condition to the point where a surgical intervention becomes necessary (Petitioner's Exhibit 8 at 19).

Dr. Greatting then testified he reviewed the CT scan of December 16, 2016, after the radiology report was shown to him by Petitioner's attorney. The doctor noted that the radiology report from the December 16, 2016 CT scan at Watson Imaging Center revealed arthritis in the glenohumeral joint, which was noted as marked degenerative change (Petitioner's Exhibit 8 at 20). The doctor testified that the description contained in the 2016 MRI report of the findings were very similar to what was noted presently. The doctor stated that "it sounds very similar" (Petitioner's Exhibit 8 at 21).

Dr. Greatting testified that it was his opinion within a reasonable degree of medical certainty that the accident of February 23, 2020 was an aggravating factor in the Petitioner's development of pain in his left shoulder as diagnosed by him. The doctor also testified he

believed that the accident aggravated the underlying degenerative condition to the point that surgical intervention could be possible and reasonable and necessary (Petitioner's Exhibit 8 at 25). The doctor also confirmed that until February 19th of 2021, he had the Petitioner on work restrictions or totally off of work (Petitioner's Exhibit 8 at 26).

Upon cross-examination, Dr. Greatting testified that he was now aware of the treatment rendered by Dr. Hulsey between December 12, 2016 and May 10, 2017 regarding the left shoulder. The doctor agreed that the incident as described, with the results, were similar to what occurred in April of 2020. Dr. Greatting agreed that Dr. Hulsey had diagnosed Petitioner with osteoarthritis of the glenohumeral joint (Petitioner's Exhibit 8 at 28). The doctor then testified that he had seen the CT scan results from December 16, 2016 and those showed marked degenerative change of the glenohumeral joint with significant narrowing, hypertrophic spurs, and vacuum joint phenomenon. He agreed that those findings were consistent with the CT scan that had been done at Springfield Clinic in 2020. Dr. Greatting agreed that the fact that the changes were noted to be marked on December 16, 2016, would indicate that the degenerative process had been developing for a long period of time prior to the date of the testing. He also agreed that Dr. Hulsey's final impression on May 10, 2017 was osteoarthritis of the left shoulder with a posterior labral tear. He agreed that Dr. Hulsey had discussed that Petitioner would need a total shoulder replacement relating to the underlying arthrosis in 2017. He agreed that shoulder replacement was being considered three years before April 23, 2020 (Petitioner's Exhibit 8 at 28–30).

Dr. Greatting agreed that the history he recorded, that Petitioner did not have prior left shoulder problems, was not consistent with the records from Dr. Hulsey or those from Dr. Cohen. He testified that Petitioner did not discuss the prior left shoulder treatment with him

during his consultations of 2020 (Petitioner's Exhibit 8 at 30).

Dr. Greatting testified that he agreed with the radiologist's impression that the diagnostic imaging shows severe glenohumeral osteoarthritis and there was no sign of acute fracture or dislocation in the left shoulder joint. Dr. Greatting agreed that Petitioner could not develop severe osteoarthritis between April 22, 2020 and June 23, 2020. He agreed that the osteoarthritis clearly had been developing long before the date of injury (Petitioner's Exhibit 8 at 31–32).

Dr. Greatting testified that the CT scan performed at Springfield Clinic on July 16, 2020 showed no acute fracture or bone pathology. He also agreed with the radiologist's interpretation that the left glenohumeral osteoarthritis was accompanied by bone-on-bone articulation with several large intraarticular bodies. He agreed that when osteoarthritis is described using the term "bone-on-bone," that reveals a longstanding and developing degenerative process (Petitioner's Exhibit 8 at 32). Dr. Greatting further agreed that Petitioner certainly would not have developed bone-on-bone degeneration between April 22, 2020 and July 16, 2020 (Petitioner's Exhibit 8 at 32–33).

Dr. Greatting further agreed that the incident of April 2020 exacerbated symptoms but did not change the actual progression of the osteoarthritis itself. The doctor agreed that it would be very difficult to say that the incident of April 2020 accelerated the degree of degenerative changes (Petitioner's Exhibit 8 at 35–36). The doctor agreed that there was no change to the bone itself as a result of whatever took place on April 22, 2020 (Petitioner's Exhibit 8 at 37).

At the time of his testimony, Dr. Greatting did not know the impact of the viscosupplementation, since a follow-up had not taken place. The doctor stated that whether or not Petitioner underwent a shoulder replacement or arthroplasty would be based upon the symptoms and also the Petitioner's feeling that the issue affects his life enough on a daily basis

that he wants to go forward with the arthroplasty. Dr. Greatting further testified that with regard to joint replacement, in general, he wishes to wait until someone is as old as possible, although if the pain is severe enough and nothing else works, he will then perform it at a younger age (Petitioner's Exhibit 8 at 40).

Respondent secured the Deposition of Dr. George Paletta on June 16, 2021. Dr. Paletta testified that Petitioner denied any history of prior problems to the left shoulder, noting that he specifically asked that question (Respondent's Exhibit 1 at 9).

Dr. Paletta performed a physical examination. He noted some loss of motion in all planes of the shoulder. He noted that Petitioner was able to go through a larger range of motion passively than when actively measured. The doctor also noted crepitus and some weakness of the rotator cuff. He found a loss of motion, painful rotation, crepitus, and some weakness, and some weakness of the rotator cuff (Respondent's Exhibit 1 at 11–12). The doctor found no evidence of frozen shoulder (Respondent's Exhibit 1 at 13).

Dr. Paletta testified that he reviewed plain x-rays that were taken in his office on the date of the evaluation. He found those films to reveal that Petitioner had advanced end-stage osteoarthritis. The doctor testified this meant Petitioner had marked joint space narrowing and large bone spurs that were typical of end-stage osteoarthritis of the shoulder. The doctor testified that the term "end-stage" indicates that the joint is so worn out that there is not really a lot left to offer the patient other than some injections or a shoulder replacement. At this point, there is nothing that can be done to reverse the process, and it has reached "the end of the road" (Respondent's Exhibit 1 at 14–15).

Dr. Paletta also testified that he reviewed the images from the July 16, 2020 MRI. These were the tests that were performed at Springfield Clinic. He stated that the images confirmed the

findings from the plain x-rays, revealing severe osteoarthritis of the glenohumeral joint, which means the ball-and-joint socket. There was a full-thickness loss of cartilage, which the doctor noted was what people typically refer to as bone-on-bone. This means there is really no cartilage left in the joint. He also had large osteophytes, which are also called bone spurs (Respondent's Exhibit 1 at 15–16).

Dr. Paletta testified that the findings of advanced end-stage osteoarthritis of the glenohumeral joint with the bone-on-bone findings indicated Petitioner had been undergoing a long-term process. The findings noted do not occur rapidly, except in the setting of an infected joint, which this Petitioner did not have. The findings of osteoarthritis developed over the course of years (Respondent's Exhibit 1 at 16).

Dr. Paletta testified it was his diagnosis that the Petitioner had end-stage osteoarthritis of the left shoulder. It was his opinion that this condition was not caused by the work injury, due to the fact that it could not have developed over the course of three months, absent the history of an infected shoulder, which this Petitioner did not have. Based on the severity of the imaging study findings and based upon the physical examination findings and the timetable from the injury to the diagnostic studies, the arthritis was clearly longstanding and pre-existing. It could not have developed to the point of the severity demonstrated over the course of three months (Respondent's Exhibit 1 at 17–18). Dr. Paletta was further of the opinion that nothing occurred on April 22, 2020 that would have accelerated this condition or changed the underlying condition in any material way. The incident also did not change the natural history of the end-stage osteoarthritis. Dr. Paletta testified that people with this condition will have waxing and waning periods of symptoms where there are symptoms and other times they are relatively asymptomatic. However, gradually, the joint continues to wear out. The sufferer will

progressively lose range of motion and eventually will fail other nonsurgical treatments. That is the natural history degenerative arthritis. The doctor saw nothing in the imaging studies indicating that anything acute or new happened in April of 2020. There was no evidence of fracture or breaking of one of the bone spurs. He saw no evidence of inflammation or edema that would come from a bone bruise or any type of traumatic injury to the shoulder. He saw nothing on the imaging studies that would indicate a new injury or something that was not chronic or longstanding (Respondent's Exhibit 1 at 18–20).

Dr. Paletta agreed that Petitioner would require a total shoulder arthroplasty, but it was his opinion that the need for this was not related to any effects from the reported work injury. This was due to the fact that there was an underlying condition that was longstanding, chronic, and a gradually progressive condition. He testified that the need for a shoulder replacement would be related to the underlying condition of end-stage osteoarthritis (Respondent's Exhibit 1 at 19–20).

Dr. Paletta then testified that he reviewed records from Dr. Hulsey, covering the treatment dates between December 12, 2016 through May 12, 2016. Dr. Paletta knows that the Petitioner had been diagnosed with osteoarthritis of the glenohumeral joint and that Petitioner's prognosis was guarded and that a CT scan was recommended to better evaluate the arthritis. Dr. Paletta further reviewed the radiological report from the left shoulder CT scan from December 16, 2016 and noted that it showed marked degenerative changes to he glenohumeral joint, significant narrowing, and hypertrophic spurs, which is exactly what Petitioner has going on presently. He stated that the findings were all typical of advanced or severe osteoarthritis. Based on this radiologist's description, the findings appear to be very similar to those on the current CT scan. He also noted that Dr. Hulsey told the Petitioner that in the future he would most likely

require a joint replacement due to his arthritic changes (Respondent's Exhibit 1 at 23–25). Dr. Paletta testified that his review of the additional medical records from Dr. Hulsey reinforced the opinions that he expressed, that Petitioner has a chronic longstanding condition. He also noted that these records reveal that Petitioner had previous problems with his left shoulder, despite the history provided at the time of the Independent Medical Evaluation (Respondent's Exhibit 1 at 24–27).

Dr. Paletta further testified that he has performed total shoulder arthroplasties on people who perform heavy laboring work. He testified that if Petitioner had a good outcome from the total shoulder arthroplasty, as he has a good rotator cuff, he should be able to return to working in the sheet metal trade (Respondent's Exhibit 1 at 27–28).

Upon cross-examination, Dr. Paletta agreed that he had not reviewed any additional medical records between the release by Dr. Hulsey in February 2017 and Dr. Cohen's report of April 2020. He noted that he had reviewed a record from the Iowa clinic relative to the right shoulder. He agreed that a physical examination was done on September 13, 2018 of the left shoulder, and there was no evidence of biceps tear, no tenderness to the bicipital groove, and full range of motion. The doctor agreed that on the face of that report, it would indicate that the left shoulder was doing better then (Respondent's Exhibit 1 at 30–31). Dr. Paletta agreed that regardless of causation, Petitioner may require a should replacement in the future. The doctor testified he is familiar with sheet metal workers and has a general idea of what they do. He agreed that they do a lot of overhead work, which he would consider heavy activity (Respondent's Exhibit 1 at 31–32). Dr. Paletta further agreed that it is possible for trauma to cause pre-existing osteoarthritis to become more painful. When asked whether trauma can cause pain or symptomatology to persist for a long period of time, the doctor replied that pain is a

subjective complaint. The doctor agreed that at the time of his initial assessment, he did not have any doubts about Petitioner's complaints (Respondent's Exhibit 1 at 32–33). The doctor testified further that a total shoulder replacement should be done for complaints of pain or limited function. He noted that if a patient has enough motion loss that cannot do activities of daily living or cannot do his work, that would be the reason to consider a total shoulder arthroplasty (Respondent's Exhibit 1 at 33). Dr. Paletta further testified that it was his opinion that the trauma, as described by the Petitioner, would be highly unlikely to increase the pain in the Petitioner's condition, because the Petitioner described the bundle hitting he wall and the pop in the shoulder. Dr. Paletta noted that Petitioner did not describe anything happening to the shoulder in that he did not hit the shoulder against the wall and did not fall. He also noted Petitioner did not describe his arm as being jerked, twisted, or anything else. He felt that Petitioner described an incident which increased some pain, but there was nothing that happened to the shoulder itself, in terms of direct trauma, that he would consider to have changed the natural history of the arthritic condition or affected the joint itself (Respondent's Exhibit 1 at 35).

BJM:cae (lc:X1554556)

CONCLUSIONS OF LAW:

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The Petitioner bears the burden of proving every aspect of his claim by a preponderance of the evidence.

IN REGARD TO DISPUTED ISSUE (F), THE ARBITRATOR MAKES THE FOLLOWING CONCLUSION OF LAW:

The Arbitrator concludes that Petitioner's condition of ill-being in his left shoulder, as diagnosed and treated by Dr. Mark Greatting, is not causally related to the incident of April 22, 2020.

In support of his conclusion, the Arbitrator notes the following:

When a pre-existing condition is present, a Petitioner must show that a work-related accidental injury aggravated or accelerated the pre-existing condition such that the Petitioner's current condition of ill-being can be said to have been causally connected to the work-related injury. (St. Elizabeth's Hospital v. Workers' Compensation Commission, 864 N.E.2d 266 (5th District 2007)). A Petitioner's prior condition need not be of good health prior to the accident, if a Petitioner is in a certain condition, an accident occurs, and following the accident, the Claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration. The salient factor is not the precise previous condition, it is the resulting deterioration from whatever the previous condition had been. (Schroeder v, Illinois Workers' Compensation Commission, 4-16-0192 WC (4th District 2017)).

The Arbitrator has carefully reviewed and considered all of the medical evidence along with the testimony. The Arbitrator concludes that the preponderance of the evidence establishes that the Petitioner had a preexisting condition in the left shoulder that was not aggravated or accelerated but progressed in the normal cause for degenerative arthritis.

The Petitioner testified that he previously injured his left shoulder at work on November 18, 2016. The Petitioner testified that he was carrying a piece of siding with another worker and he tripped and fell, and everything came down onto his left shoulder. Petitioner felt a pop in that shoulder. The

medical records establish that he treated with Dr. Richard Hulsey of St. Louis commencing on December 12, 2016. Dr. Hulsey reviewed x-rays at that time which revealed advanced osteoarthritis of the glenohumeral joint with near bone-on-bone and an inferior osteophyte off of the humeral head. Dr. Hulsey at that time noted that the arthritic changes were quite advanced. His records state Petitioner had significant pre-existing arthritic changes. Dr. Hulsey's prognosis in 2016 was guarded, due to the severity of the arthritic changes.

The Arbitrator finds that Petitioner underwent a left shoulder CT scan on February 16, 2016. At that time, there was no evidence of fracture or dislocation. The radiologist noted degenerative changes of the acromioclavicular joint with significant narrowing of the glenohumeral joint, associated hypertrophic spurs of the glenoid fossa and the anterior aspect of the humerus at the head and neck junction. Dr. Hulsey reviewed this diagnostic test and recorded in his December 12, 2016 note that it confirmed Petitioner had significant arthritic changes and there was small joint space remaining. The changes were noted to be significant and the doctor stated they would progress with time. In that same office note, the Arbitrator notes that Dr. Hulsey told the Petitioner that he would most likely require a joint replacement due to his arthritic changes. Dr. Hulsey re-evaluated Petitioner on February 1, 2017, and found him to have difficulty with most activities that required reaching overhead. Physical examination showed his range of motion to be uncomfortable. The doctor's note from that date concludes that Petitioner "realizes that sometime in the future he will require a joint replacement."

The Arbitrator finds that Dr. Hulsey's note of March 1, 2017, records that the Petitioner obviously had long outstanding changes in his shoulder secondary to both arthritis and a labral tear. The last visit with Dr. Hulsey occurred on May 10, 2017. Petitioner was still symptomatic, noting that he was quite sore, especially when using the arm above shoulder level. Petitioner had received limited improvement from the medications prescribed. Dr. Hulsey's discussion section of his May 10, 2017 note describes advanced osteoarthritis of the humeral joint. The doctor further stated that, with time, Petitioner would require a total shoulder replacement relating to his underlying arthrosis and not related

to the labral tear.

The Arbitrator further finds that when Petitioner resumed treatment on April 24, 2020, it was noted that he reported having been told he had previous degenerative changes in the shoulder and Petitioner had been treated with injection and physical therapy. X-rays taken on that date again showed advanced glenohumeral joint degeneration with reactive bone formation. Dr. Randy Cohen, the occupational medicine specialist, diagnosed advanced degenerative arthritis of the left glenohumeral joint. Repeat x-rays were taken on May 8, 2020, and they again were read to show severe glenohumeral degenerative changes in the left joint and a questionable acromial fracture.

The Arbitrator finds that when Petitioner was examined at Carle Orthopedics on May 26, 2020, the physician's assistant reviewed the x-rays and read them to show severe osteoarthritis of the glenohumeral joint with complete joint loss.

Petitioner underwent a CT scan to the left shoulder on July 16, 2020, at the Springfield Clinic. There was no evidence of fracture, malalignment, or bone lesion. The Arbitrator notes there were no acute findings noted to the left shoulder on this CT scan. The Arbitrator further notes the radiologist found severe glenohumeral osteoarthritis with bone-on-bone articulation, a large marginal osteophyte, and several large adjacent intra-articular bodies in the subscapularis of the glenohumeral joint. Following this CT scan, the Arbitrator notes Petitioner was examined by a nurse practitioner at the Springfield Clinic on July 22, 2020. The CT scan was reviewed and noted to be significant for severe osteoarthritic changes in the glenohumeral joint.

The Respondent's examiner, Dr. George Paletta, also reviewed the diagnostic testing and performed his own x-rays. He found that Petitioner had advanced end-stage osteoarthritis of the glenohumeral joint with marked joint space narrowing. There was almost complete obliteration of the joint space. There was essentially full thickness chondral loss and bone-on-bone changes. Dr. Palletta diagnosed end-stage osteoarthritis to the left shoulder. The doctor noted that this was a long-standing chronic condition with changes that would not have occurred within a short time after the described

injury of April 22, 2020. He noted this condition was clearly long-standing. He found no evidence that the incident of April 22, 2020, caused any acute fracture or bone pathology and he found no evidence that the incident altered or accelerated the severe osteoarthritis. The doctor noted that the osteoarthritis clearly had been developing long before the date of the injury. He also noted that Dr. Hulsey had discussed with the Petitioner the need for a total shoulder replacement relating to this underlying arthrosis as far back as 2017.

The Arbitrator finds that while under the care of Dr. Greatting, Petitioner underwent an MRI of the left shoulder at Springfield Clinic on January 2, 2021. Again, it was found that Petitioner had severe glenohumeral osteoarthritis with diffuse degenerative tearing of the labrum. There was no acute fracture or dislocation. Dr. Greatting agreed that Petitioner had severe osteoarthritis. He determined that the symptoms were related to the osteoarthritis in the left shoulder. He treated Petitioner with intra-articular injections and viscosupplementation injections. The doctor stated that sometime in the future, the Petitioner might require a total shoulder arthroplasty.

The Arbitrator finds that Petitioner has clearly been diagnosed with a pre-existing degenerative condition that was already severely advanced as of December 2016. The Arbitrator further notes that the accident of 2016 was much more serious, in that the Petitioner actually fell and struck the left shoulder. The incident of April 22, 2020, involved items Petitioner was carrying resting on his left shoulder striking a wall. The Petitioner testified he did not strike the wall with his left shoulder, nor did he fall to the ground or otherwise strike the left shoulder in any other manner. Petitioner therefore did not sustain any direct injury to the left shoulder. He had some symptoms as a result, but there is no evidence that the underlying condition was accelerated or aggravated by the events of April 22, 2020.

The Arbitrator therefore concludes that the Petitioner has a long-standing and advanced condition of degenerative arthritis in the glenohumeral joint of his left shoulder. This was documented to be severe in 2016. The diagnostic testing does not establish that the underlying condition was aggravated or accelerated in 2020. The Arbitrator therefore finds that the Petitioner's current condition

of ill-being in the shoulder relates to his long-standing progressive condition of degenerative arthritis that has been progressing since before 2016 and the underlying condition was not fundamentally altered or aggravated by the April 22, 2020 incident.

IN REGARD TO DISPUTE ISSUE (J), THE ARBITRATOR MAKES THE FOLLOWING CONCLUSION OF LAW:

The Arbitrator concludes that the medical services provided to the Petitioner from April 24, 2020, to September 15, 2020, were reasonable and necessary and Respondent is liable for payment of these charges under Section 8.2 of the Illinois Workers' Compensation Act. The Arbitrator concludes that medical services rendered subsequent to that date are denied.

In support of this conclusion, the Arbitrator notes the following:

Petitioner had a pre-existing condition in his left shoulder which is documented by Dr. Richard Hulsey's records and the diagnostic testing results. The evidence (as incorporated in the discussion from disputed issue (F)) establishes that the condition was far advanced and the degeneration was severe over three years prior to April 22, 2020. The evidence further establishes that the left shoulder degenerative condition was not accelerated or aggravated by the incident of April 4, 2020. Dr. Hulsey informed Petitioner in 2017 that he would need a total shoulder arthroplasty. Comparison of the diagnostics from 2016, 2020, and 2021 show similar findings and no evidence that the underlying condition had been accelerated, aggravated, or altered by the April 22, 2020, incident. There is no evidence of acute injury to the left shoulder joint relating to that incident. Petitioner had a severely degenerative glenohumeral joint present on December 20, 2016, and subsequent imaging reveals the essentially same situation. The medical evidence fails to establish a change in the deterioration of the left glenohumeral joint that would be linked to the condition of April 22, 2020. The Arbitrator adopts the findings of Dr. George Paletta on this point, finding them to be more credible.

IN REGARD TO DISPUTED ISSUE (K), THE ARBITRATOR TO MAKE THE FOLLOWING CONCLUSIONS OF LAW:

The Arbitrator concludes that Petitioner is not entitled to an award for prospective medical care.

In support of this conclusion, the Arbitrator notes: The Petitioner has a severely degenerative shoulder which was documented to be present in 2016. A comparison of the diagnostic testing from 2016 and the present reveals no fundamental change in the underlying degenerative condition that was causally related to the incident of April 22, 2020. Dr. Paletta and Dr. Greatting have not identified any specific changes caused by the 2020 incident, and there is no evidence of any acute injury to the shoulder joint itself. The only finding is an increase in symptoms. The Arbitrator notes that the Petitioner did not describe an actual injury to the shoulder itself as there was no impact to the left shoulder. The items Petitioner was carrying on April 22, 2020, struck the wall, but Petitioner's shoulder was not struck by any item nor did he fall onto the left shoulder. The Petitioner requires a left shoulder arthroplasty, but the Arbitrator finds that the need for this is related to the long-standing condition documented as present in 2016 and is not necessary due to the April 22, 2020, incident. The Arbitrator has determined that the evidence shows that Petitioner needs surgery due to the progression of a long-standing chronic degenerative condition rather than any acute injury occurring on April 22, 2020.

IN REGARD TO DISPUTED ISSUE (L), THE ARBITRATOR MAKES THE FOLLOWING CONCLUSION OF LAW:

The Arbitrator concludes that Petitioner is not entitled to TTD benefits subsequent to October 7, 2020.

In support of this conclusion, the Arbitrator notes the following:

The evidence establishes that Petitioner's degenerative left shoulder condition was pre-existing and unaltered by the incident of April 22, 2020. The need for treatment and any resultant disability is found to be related to the arthritic condition that was long-standing, chronic, and progressing over time.

The evidence fails to establish that Petitioner's condition deteriorated and accelerated as a result of the incident of April 4, 2020.

The Arbitrator notes that the Petitioner is currently working and is handling his duties despite his complaints. The testimony confirms that Petitioner is performing heavy sheet metal work. The Arbitrator further finds that any need for the Petitioner to be disabled for treatment is related to the advancing degenerative condition that was pre-existing and is not related to the incident occurring at work on April 22, 2020.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC030592
Case Name	Ignacio Lemus-Lopez v. Lawn Ranger Landscape & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0364
Number of Pages of Decision	15
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Carolina Schottland
Respondent Attorney	Dan Kallio

DATE FILED: 9/23/2022

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Ignacio Lemus-Lopez,

Petitioner,

vs. No. 17WC 30592

Lawn Ranger Landscaping, and 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 Injured Workers' Benefit Fund and notice given to all parties, the Commission, after considering the issue of permanent disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 1, 2022, is hereby affirmed, and adopted.

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

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondents 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.

September 23, 2022

SJM/sj
o-07/27/2022
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	17WC030592
Case Name	LEMUS-LOPEZ, IGNACIO v. LAWN RANGER LANDSCAPING & ILLINOIS STATE TREASURER AS EX-OFFICIO CUSTODIAN OF THE INJURED WORKERS' BENEFIT FUND
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Carolina Schottland
Respondent Attorney	Dan Kallio

DATE FILED: 2/1/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 1, 2022 0.50%

/s/Michael Glaub, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF MCHENRY)

☒ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)

☐ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Ignacio Lemus-Lopez
Employee/Petitioner

v.

Case # **17** WC 30592

Consolidated cases: _____

Lawn Rangers Landscaping & Illinois State Treasurer as ex-officio custodian of the Injured Workers Benefit Fund
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Michael Glaub** Arbitrator of the Commission, in the city of Woodstock, Illinois on November 08, 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 **Insurance coverage and liability of the IWBF**

FINDINGS

On the date of accident, **12/09/2016**, 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's average weekly wage was **$632.50**.

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

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

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

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

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

ORDER

Respondent, Lawn Rangers Landscaping, and the Injured Workers' Benefit Fund shall pay directly to Petitioner $95,216.60 for reasonable and necessary medical services as provided in Section 8(a) of the Act and subject to the medical fee schedule of Section 8.2 of the Act.

Respondent, Lawn Rangers Landscaping, and the Injured Workers' Benefit Fund shall pay directly to Petitioner temporary partial disability benefits of $421.69/week for 14 & 1/7 weeks, commencing December 10, 2016 through March 19, 2017, for a total of $5,963.90 of temporary total disability benefits and additional temporary partial disability benefits of $402.52 as provided in Section 8(a) of the Act.

Respondent, Lawn Rangers Landscaping, and the Injured Workers' Benefit Fund shall pay Petitioner permanent partial disability benefits of $379.50/week for 96.75 weeks because the injuries he sustained caused 45% loss of use of the left leg as provided in Section 8(e)12 of the Act.

The Illinois State Treasurer, as ex-officio custodian of the Injured Workers' Benefit Fund was named as 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 the Act. In the event of the failure of Respondent-Employer to pay benefits due and owing the Petitioner, the Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of the Respondent-Employer that are paid to the Petitioner from the Injured Workers Benefit Fund.

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

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

Michael Glaub **FEBRUARY 1, 2022**

Signature of Arbitrator

State of Illinois)
)
County of McHenry)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Ignacio Lemus Lopez, Employee/Petitioner,	)	Case # 17 WC 30592
v.	)	Arbitrator Glaub--Woodstock
Lawn Rangers Landscaping and the State Treasurer as Ex-Officio Custodian of the Injured Workers' Benefit Fund Respondent/Employer.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACTS

Petitioner-Employee, Ignacio Lemus Lopez, pursued this action under the Illinois Workers' Compensation Act (the "Act) and sought relief from Respondent-Employer, Lawn Rangers Landscaping ("Lawn Rangers"), and the Illinois State Treasurer as *ex-officio* custodian of Injured Workers' Benefit Fund ("IWBF"). On November 08, 2021, the matter proceeded to hearing in Woodstock, Illinois. Lawn Rangers did not appear in person or by counsel. Petitioner and the IWBF were represented by counsel. All issues were placed in dispute.

The Petitioner testified that he worked as a laborer for Lawn Rangers, a landscaping company, from roughly 2006 through 2017. His work consisted of tasks such as mowing lawns, cutting trees, construction of patios and other general landscaping duties. Petitioner testified that this work was procured, organized, assigned and managed by the owner of the company, Jeff Michels. Petitioner explained that he received assignments on a daily basis from Mr. Michels every morning at the shop and that he was driven to and from the job site, wore a uniform, and did not procure clientele or assignments. He also testified that while working for Lawn Rangers, he was not allowed to work for other companies. He was paid weekly via check and federal and state taxes were taken directly from his check. He testified that Lawn Rangers purchased, provided and maintained all the equipment he used in his daily work.

Petitioner testified that in the year prior to the accident, he earned $11.50 an hour and worked approximately 55 hours a week. He would arrive at Mr. Michel's shop at about 7:00 am, be driven to the job sites to be worked for the day and then driven back to the shop at about 6:00 p.m. on Monday through Friday. On Saturday he would work about 5 hours. Petitioner testified he was 35 at the time of the accident and that his date of birth was July 31, 1981 and that he was unmarried and did not have children under the age of 18.

Petitioner testified that on December 09, 2016, he was working as a laborer for Lawn Rangers cutting a large tree trunk with a chainsaw. He testified that upon cutting the tree trunk, it fell onto his left leg and he felt immediate pain. He called for help and his coworkers called an ambulance and notified Mr. Michels. The Spring Grove Fire Protection District arrived at the scene of the accident located in Spring Grove, Illinois. (PX2). They noticed obvious deformity to his left leg and transported him to the Centegra Hospital ("Centegra") in McHenry, Illinois. (PX2). Petitioner testified that upon arriving at Centegra, diagnostic exams were conducted and confirmed that his leg was fractured. Initial diagnosis was a closed displaced intraarticular fracture of the proximal aspect of the left tibia and a closed nondisplaced and mildly angulated transverse fracture of the proximal aspect and shaft of the fibula. (PX4, p. 44). He testified that surgery was performed on December 11, 2016. He was under the care of Centegra on an inpatient basis from December 09, 2016 through December 12, 2016. (PX4).

Surgery was performed by Dr. Bohnenkamp on December 11, 2016. (PX4, p. 57-58). Petitioner's post-operative diagnosis was a closed, displaced comminuted left lateral tibial plateau split depression fracture, probable ligament injury, valgus load with heavy object, acutely torn irreparable lateral meniscus and probable medial collateral ligament posterior medial corner disruption. (PX4, p.57). Diagnostic images also showed a minimally angulated spiral fracture of the proximal fibula and a subluxation of the patella. (PX4, p. 80, 84). The surgery performed on December 11, 2016 consisted of an Open Reduction Internal Fixation (ORIF) of comminuted lateral tibial plateau fracture and lateral meniscectomy. (PX4, p. 57). He received an implant of a lateral tibial plateau locking plate and several screws. (PX4, p. 57-58). Petitioner testified that upon being released from Centegra he was placed in a full brace from ankle to hip and placed on crutches. He was told to be completely non-weight bearing and advised to follow up with his orthopedic surgeon, which he did promptly. (PX4, p.75). He presented to Dr. Bohnenkamp, the orthopedic surgeon, several times from December 23, 2016 through March 17, 2017. (PX6). On March 17, 2017 he was released from orthopedic treatment and allowed to return to work full-duty, but was told to continue physical therapy for an unspecified amount of time. (PX6, p. 146-148). He was discharged from physical therapy on April 26, 2017. (PX7, p. 224).

Petitioner testified that his cousin, Marcos Leon, called Mr. Michels to inform him of the accident almost immediately after it occurred on December 09, 2016. Petitioner also testified that Mr. Michels came to see him at the hospital on December 09, 2016 and he was able to speak with him face to face. Following the accident and through his treatment, Petitioner testified that he was in communication with Mr. Michels to advise him of his inability to work. Petitioner testified that he was instructed by his treating doctor to remain off work until March 17, 2017 when his restrictions were lifted. Medical records corroborate that Dr. Bohnenkamp indicated on January 6, 2017 and again on January 27, 2017 that Petitioner was totally incapacitated until a time to be determined. (PX 6, p.171-172). Dr. Bohnenkamp did not change Petitioner's work status until March 17, 2017 when he told Petitioner he could return to work with no restrictions. (PX 6, p. 147). On March 20, 2017, Petitioner returned to work at Lawn Rangers as a laborer. He testified that he continues to work as a laborer for a different landscaping company today.

Petitioner testified that as a result of this accident, he was off work from December 10, 2016 through March 19, 2017. He testified that during that time he was not paid any temporary total disability from any source. Further, he testified that as a result of having to finish his physical therapy upon returning to work on March 20, 2017, he missed several hours of work until he finished his physical therapy. He

explained that he was told by Mr. Michels to attend physical therapy in the morning because he was not allowed to drive himself to the job site. Petitioner would arrive at the shop on the days he did physical therapy at about 10:30 and he would be taken to the job site by Mr. Michels. He explained that it was not convenient for Mr. Michels to pick him up from the job site at the end of the day so he was instructed by Mr. Michels to attend Physical Therapy in the morning.

Petitioner testified that none of his medical bills have been paid. He testified that he has permanent hardware in his leg consisting of plates and screws. He explained that after sitting in the chair while testifying on the hearing date for about 45, his left leg was causing him considerable pain in the area around his knee, and that his baseline pain hovered around a level 6 out of 10. He testified that prior to the accident, he jogged about 3 times a week roughly six miles each time. Currently, he has attempted to resume his pre-accident activity but finds that at most, he can jog only about a mile and that even this causes him such pain and discomfort that he has to rest about 20 minutes to even be able to walk to his car. He gauges his level of pain when he attempts to jog at about an 8/10. He has also not been able to resume going to the gym as he did prior to the accident. He experiences pain and instability when he has tried to work out. He is also severely limited in movements such as squatting and kneeling and has to modify those activities in order to complete tasks. He has difficulty managing stairs and ladders, particularly descending where he feels substantial instability. While he has been able to return to work in landscaping, he has found that he cannot lift any amount of weight and carry it for any significant length due to the lack of strength and pain in his left leg. He also stated that he is unable to operate certain machinery due to the pain in his left leg.

CONCLUSIONS OF LAW

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

A. WAS RESPONDENT OPERATING UNDER AND SUBJECT TO THE ILLINOIS WORKERS' COMPENSATION ACT?

The Arbitrator finds that on December 09, 2016 the Respondent, Lawn Rangers was operating under and subject to the Illinois Workers' Compensation Act. Lawn Rangers was a landscaping business operating in the State of Illinois. (PX7, p. 327-328, PX10). The accident occurred in the Spring Grove, Illinois. (PX2). Pursuant to Section 3 of the Illinois Workers' Compensation Act, the Act automatically applies to any to an enterprise listed among the seventeen "extra-hazardous" activities. Lawn Rangers falls into at least two of those activities for being a business in which sharp edged cutting tools are used and also one in which electric, gasoline or other power driven equipment is used. Testimony at trial established that Respondent operated a landscaping company that employed Petitioner and about four other individuals engaging in landscaping activities such as lawn mowing, tree cutting, general landscaping and patio construction. Petitioner worked with machinery such as chainsaws and mowers. The Arbitrator finds that Respondent was operating under and subject to the Illinois Workers' Compensation Act on December 09, 2016.

B. WAS THERE AN EMPLOYEE-EMPLOYER RELATIONSHIP?

The Arbitrator finds that there was an employer-employee relationship between Petitioner and Respondent on December 09, 2016. Petitioner testified that he worked as a laborer for Respondent,

Lawn Rangers, whose owner was Jeffrey Michels. The jobs and sites were procured by Mr. Michels and he assigned the laborers to each site. Petitioner wore a uniform and was driven to each job site. His tools and equipment were provided, stored and maintained by Lawn Rangers. Petitioner received weekly pay checks from Lawn Rangers from which federal and state taxes were withdrawn. The Arbitrator finds that the evidence supports that there was an employer-employee relationship between Petitioner and Respondent on the date of his injury.

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT?

The claimant bears the burden of showing that he has suffered a disabling injury which arose out of and in the course of his employment. *Sisbro v. Industrial Commission*, 207 Ill. 2d 193, 203, (2003). Generally, an injury occurs within the course of employment if the injury occurs within the time, place and space boundaries of the employment. *Id*. Typically, an injury "arises out" of an employee's employment when the employee was performing acts reasonably expected to be performed relating to his assigned duties and instructed to perform by his employer. *Id*. The injury must have 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 203-204.

Petitioner testified that on the day of the accident, he was cutting a tree trunk with a chainsaw as part of his employment with Lawn Rangers. This work was part of the types of tasks he was normally instructed to perform for Respondent and the type of work Respondent normally performed as a landscaping company. Petitioner's testimony was undisputed and was corroborated by the medical records. Centegra records reflect "35 y/o healthy male injured at work today…" (PX4, p. 45). Further that "[p]atient states he was cutting down tree trunks in 5-6 foot section. He states that one of the logs rolled into his left lower extremity injuring his knee." (PX4, p.41). The operative report notes that Petitioner was "injured at work with a log on him…" (PX4, p. 57). The initial Physical Therapy evaluation noted that Petitioner "was injured at work on 12/9/16. Patient was hit by a tree log and he injured his left leg." (PX7, p. 307). Based on the testimony and corroborated by the medical records, the Arbitrator finds that the Petitioner had an accident that arose out of and in the course of employment with Respondent on December 09, 2016.

D. WHAT WAS THE DATE OF THE ACCIDENT?

The Arbitrator finds that the date of the accident occurred on December 09, 2016 based on the credible evidence of the Petitioner and corroborating medical records.

E. WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT?

The Arbitrator finds that notice of the accident was timely given to the Respondent. Petitioner testified that immediately after the accident, his cousin and co-worker, Marcos Leon, called Mr. Michels to inform him of Petitioner's accident. Further, Mr. Michels visited Petitioner at the hospital on the same date of the accident, December 09, 2016, and Petitioner was able to speak with him face to face. Medical records also reflect Petitioner's treatment providers contacted Mr. Michels on multiple occasions within days of the accident, leaving voicemails. (PX8, p 365, 356). Therefore, the Arbitrator finds that Petitioner gave timely notice of the accident.

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 is causally connected to the December 09, 2016 work accident. The evidence, Petitioner's testimony and medical records, supports that on December 09, 2016 a tree trunk fell onto Petitioner's lower extremity and fractured his left leg and tore his meniscus. The Spring Grove Fire Protection District arrived at the scene in the Village of Spring Grove, Illinois, in response to a traumatic injury at approximately 12:15 p.m. (PX2. p. 24). They noted that a tree trunk fell about 3 feet and landed on Petitioner's left leg and that there was an obvious deformity (PX2, p. 25). Petitioner was taken from the scene of the accident to Centegra Hospital in McHenry, Illinois. (PX2, p.25). At Centegra, diagnostic exams were conducted shortly after arrival showing a fracture of the tibia with associated varus angulation of the knee, and a spiral fracture of the fibula, and subluxation of the patella, and acute traumatic, comminuted fracture of the lateral tibial plateau. (PX4, p. 43-44). An acutely torn irreparable lateral meniscus and probable medial collateral ligament posterior medial corner disruption we evidence during the operation. (PX4, p.57). The treatment records reflect that emergency room care, hospital admittance, surgery, physical therapy, and post-surgery follow up care are direct results of the serious injury to his left knee and leg.

Petitioner testified that prior to the injury he was very active and did not have issues with his left leg or knee, running up to six miles about 3 times per week and going to the gym three times per week. He currently has permanent hardware in his left lower extremity consisting of a plate and screws. Petitioner testified that currently in his left leg, he continues to have pain, weakness and loss of range of motion and functional capacity to his left leg and knee. He is unable to perform the same activities and motions he could perform before the accident. The Arbitrator finds that Petitioner's current condition of ill-being—that is, pain, discomfort, instability, reduced strength and range of motion to his left lower extremity—is causally related to the injury.

G. WHAT WERE PETITIONER'S EARNINGS?

Petitioner testified that he presented to the Lawn Rangers Shop at 7:00 each morning Monday through Saturday, where he would receive instructions for that day's labor. He testified that he was not allowed to drive to the work sites and was driven to each site by a co-worker. He was driven back to the shop at the end of the work day, approximately 6:00 Monday through Friday. On Saturdays, there would only be about 5 hours of work. He would have a half hour of unpaid lunch every day. He testified that he worked about 55 hours per week and that he earned $11.50 per hour in the year prior to the accident. Given that Petitioner was not able to return to the shop as he did not have a car at the job site, his overtime work was mandatory. He literally was transported to and from the job site on a daily basis. He also testified that he worked approximately 55 hours on a weekly basis. The Arbitrator finds that the evidence shows the petitioner's regular work week was 55 hours.

Based on this and calculating the overtime as straight time, the Arbitrator finds that his Average Weekly Wage was $632.50.

H & I. WHAT WAS PETITIONER'S AGE AND MARITAL STATUS AT THE TIME OF THE ACCIDENT?

Petitioner testified that his date of birth is July 31, 1981, which is also corroborated in the medical records. He testified that he was unmarried at the time of the accident with no dependent children. Accordingly, the Arbitrator finds that Petitioner was 35 years old, unmarried, and with no dependent children 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?

The Arbitrator finds that the medical services rendered to the Petitioner as a result of the December 09, 2016 work accident were reasonable and necessary, and that Respondent has paid none of the charges for these medical services. Petitioner testified that immediately after he suffered an injury to his left leg on December 09, 2016, he was taken from the scene of the accident to Centegra in McHenry, Illinois via ambulance, where he remained from December 09, 2016 to December 12, 2016. He testified that while at Centegra, multiple diagnostic exams and ultimately surgery to his left leg and knee were performed. Petitioner testified that he followed up with the doctor and performed treatment as instructed. Petitioner's medical records document timely medical care rendered in connection with Petitioner's left leg. Petitioner's Exhibits 2-8 contain medical bills and statements that total $95,216.60. (PX2-8). These bills reflect reasonable and necessary medical treatment that resulted from the December 09, 2016 work accident. Petitioner testified that all of the bills remain unpaid, which is corroborated by the billing statements. The Arbitrator finds that all medical services provided to Petitioner were reasonable and necessary and further orders Respondent to pay directly to Petitioner the fee schedule amount of those bills pursuant to §8 (a) and § 8.2 of the Act with no credit to the Respondent.

K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

The Arbitrator finds that Petitioner is entitled to Temporary Total Disability Benefits from December 10, 2016 through March 19, 2017, a period of 14 and 1/7 week. The Arbitrator relies on the credible testimony of the Petitioner taken together with the records of his treating physicians. Petitioner testified that upon being injured on December 09, 2016 he was ordered to be completely non-weight bearing and off work. He testified that did not return to work until March 20, 2017 when his restrictions were lifted by his treating physician. Medical records corroborate that Dr. Bohnenkamp indicated on January 6, 2017 and again on January 27, 2017 that Petitioner was totally incapacitated until a time to be determined. (PX6, p.171-172). Petitioner was only allowed to begin weight bearing slowly at the February 10, 2017 visit and to gradually decrease his use of crutches until he was comfortable walking. (PX6, p. 152). Dr. Bohnenkamp did not change Petitioner's work status until March 17, 2017 when he told Petitioner he could return to work with no restrictions. (PX6, p. 147). He was not cleared to drive until the March 17, 2017 doctor visit. (PX7, p. 263). Petitioner testified that he was in contact with Mr. Michels throughout treatment and updated him about his inability to work until March 17, 2017. The arbitrator takes judicial notice that March 17, 2017 was a Friday. Petitioner testified that he promptly returned to work for Lawn Rangers on March 20, 2017.

The Arbitrator notes the respondent argument that there is no specific off work note until January 6, 2017. However, the Arbitrator notes the petitioner was transported to the Hospital from the jobsite. X-rays revealed a fracture of petitioner's leg on the day of the accident. Surgery appears to have been scheduled within 24 hours. Petitioner underwent surgery on December 11, 2016 which involved an open reduction and internal fixation of the comminuted tibia fracture as well as a meniscectomy.

Based on the above, the Arbitrator finds petitioner was Temporarily Totally Disabled for 14 1/7 weeks representing the period from December 10, 2016 through March 19, 2107 at a rate of $421.69 for a total of $5,963.90

Petitioner is claiming temporary partial disability from March 20, 2017 to April 26, 2017 for the hours missed when he attended Physical Therapy. Petitioner testified that upon returning to work for Lawn Rangers on March 20, 2017, he earned less money because he was still attending physical therapy. Petitioner testified that he completed his Physical Therapy in the mornings at the request of his employer to make it easier for employer to get Petitioner to or from job site. Records from Athletico show that he attended Physical therapy on the following dates in 2017 after returning to work: March 20, March 22, March 29, March 31, April 4, April 5, April 7, April 10, April, 12, April 14, April 18, April 19, April 21, April 24, April 26 (PX7, ps. 335-337)

On each date Petitioner attended Physical Therapy, he missed 3.5 hours of work. Over the course of the 15 sessions attended after returning to work, Petitioner lost a total of 52.5 hours of work, for total wage loss of $603.75. Accordingly, the Arbitrator orders Respondent to pay Petitioner $402.52 in Temporary Partial Disability.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

Pursuant to Section 8.1(b) of the Act, several factors are to be considered in determining permanent partial disability ("PPD").

With regard to the subsection (i) of Section 8.1(b) no AMA impairment rating was submitted into evidence. As such, no weight will be given to this factor.

With regard to subsection (ii) of Section 8.1(b), occupation of the employee, the Petitioner testified that he returned to work in landscaping after this injury and continues to work in landscaping today. The Arbitrator notes that Petitioner's permanent partial disability, given his job duties, will be larger than an individual who performs sedentary work. He is required to be on his feet throughout the workday and work in a physically demanding job category. The Arbitrator finds that this factor weighs in favor of increased permanence.

With regard to subsection (iii) of Section 8.1(b), age, it is noted that Petitioner was 35 years old on December 09, 2016. The Arbitrator notes that Petitioner is relatively young and has over 30 years of working life ahead of him. The Arbitrator finds that this factor weighs in favor of increased permanence.

With regard to subsection (iv) of Section 8.1(b), future earnings capacity, the Petitioner testified that he now works for a different landscaping company and makes approximately $14.00 per hour. There was

no evidence introduced at trial to establish any effect on future earnings capacity. The Arbitrator finds this factor weighs in favor of decreased permanence.

With regard to subsection (v) of Section 8.1(b, involving evidence of disability corroborated by treating medical records, the Arbitrator notes that Petitioner's injuries included a fracture of the tibia with associated varus angulation of the knee, and a spiral fracture of the fibula, and subluxation of the patella, and acute traumatic, comminuted fracture of the lateral tibial plateau, a complete and complex torn lateral meniscus, probable MCL/PMC injury and bone loss from comminution. (PX4, p. 43-44, 64). Surgical notes also indicate that "there was significant comminution and bone loss and cartilage loss in the center fragment, which was… irreparable." (PX4, p.58). Petitioner's lateral meniscus was completely excised due to a complete tear and was also deemed irreparable. (PX4, p.58). Petitioner underwent ORIF left lateral tibial plateau with bone grating and permanent hardware. (PX4, p. 57-58). He has permanent hardware in his left leg in the form of a Synthes lateral tibial locking plate and several screws. (PX.4, p. 57-58). The doctor also notes "possible future surgeries down the road for ligament repair" given the trauma due to the "valgus load with a heavy object" (PX4. 57). Petitioner was discharged from physical therapy for having plateaued with his range of motion at 90° of knee flex, from which points he was not able to progress, despite maximum effort. (PX7, p. 222). His Flexion goal was 120° but this goal was never met. (PX7, p. 223). Additionally most of the goals from physical therapy—patient to be able to ascend/descend stairs, patient to be able to increase MMT to assist with heavy lifting at work, patient to be able to stand/walk at work for 8 hour shift—were not met as of the date of discharge from physical therapy. (PX7, p. 222-223.) Part of this lack of progress can be placed on Respondent's lack of insurance. Dr. Bohnenkamp released Petitioner despite not progressing to MMI on March 17, 2017. (PX6, p. 147). Extensive notes in his medical file with OrthoIllinois show that Dr. Bohnenkamp's office was becoming more and more certain that there was no insurance to pay for treatment and Mr. Michels was unresponsive to communications. (PX6, p. 154-155). Petitioner's surgical wound was not healing well and Dr. Bohnenkamp ordered wound treatment to help with infection and scar tissue, however this was not completed because of lack of insurance from Respondent. (PX6, p. 154). Athletico also recommended a contraption called a Flexinator to help with flexion. (PX7 p. 222-245). Petitioner was unsuccessful in procuring this apparatus despite efforts to communicate with Dr. Bohnenkamp's office.

The Petitioner testified that his left leg pains him greatly, sometimes as high as 8/10 when he physically exerts himself and that his baseline is about a 6/10. He experiences frequent moments of instability in his left leg. He has to modify actions such as kneeling and squatting and has to use additional caution when using ladders. He is unable to walk and carry weight and he is unable to use certain machinery. He is not able to perform many of the same activities as he performed prior to the accident and when he does it is at excruciating pain. He resorts to over the counter pain relief several times a month and has permanent hardware in his leg. At trial, Petitioner indicated that he has a metal plate running from his knee to halfway down his lower leg. Petitioner also testified to having difficulty sleeping on his left side due to pain, which would be strong enough to wake him up. The Arbitrator finds that this factor weighs in favor of increased permanence.

Based on the above factors, the Arbitrator finds that the Petitioner sustained the permanent loss of 45% of the left leg pursuant to Section 8(e)12 of the Act. Respondent, therefore, shall pay Petitioner permanent partial disability benefits of $379.50 per week for 96.75 weeks for a total Permanent Partial Disability Payment of $36,716.63.

M. SHOULD PENALTIES OR FEES BE IMPOSED UPON RESPONDENT?

The Arbitrator finds that no claim has been made and no evidence submitted related to penalties and fees and therefore none are awarded.

N. IS RESPONDENT DUE ANY CREDIT?

Petitioner testified that the Respondent paid no benefits. No evidence was provided to dispute this testimony. Therefore, the Arbitrator finds that Respondent is not due any credit.

O. INSURANCE COVERAGE AND LIABILITY OF THE INJURED WORKERS' BENEFIT FUND.

The Illinois State Treasurer as *ex-officio* custodian of the Injured Workers Benefit Fund ("IWBF") was named as a party respondent in this matter. Respondent-Employer never filed an appearance in this matter either pro-se or through counsel despite having notice of the proceedingsss. He was aware of proceedings. (PX 11). Respondent-Employer was properly served with notice of these proceedings via certified mail to the last known address of Jeffrey Michels in his capacity as President of Lawn Rangers Landscaping as appearing in the Secretary of State Corporate information for Lawn Rangers Landscaping. (PX 10). Lawn Rangers Landscaping was also personally served with notice of trial. (PX10).

The Arbitrator finds that the Respondent-Employer was not properly insured. (PX 9). In the event of the failure of Respondent-Employer to pay the benefits due and owing the Petitioner, this award is hereby also entered against the IWBF to the extent permitted and allowed under Section 4 (d) of the Act. Respondent-Employer shall reimburse the IWBF for any compensation obligations of Respondent-Employer that are paid to the Petitioner from the IWBF, including but not limited to the full award in this matter, the amounts of any medical bills paid, temporary total and partial disability and/or permanent partial disability paid. The Respondent-Employer's obligation to reimburse the IWBF as set forth above in no way limits or modifies its independent and separate liability for fines and penalties set forth I the Act for its failure to be properly insured.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC029628
Case Name	Monica Solis v. Winston Brands Inc
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0365
Number of Pages of Decision	13
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Nicholas Rubino

DATE FILED: 9/23/2022

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Monica Solis,

Petitioner,

vs. NO: 18 WC 29628

Winston Brands, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, notice 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 12, 2022, is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $50,800.00. 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.

September 23, 2022
o9/14/22
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	18WC029628
Case Name	SOLIS, MONICA v. WINSTON BRANDS
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Nicholas Rubino

DATE FILED: 1/12/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 11, 2022 0.27%

/s/ Raychel Wesley, Arbitrator

Signature

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

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

22IWCC0365

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Monica Solis,
Employee/Petitioner18
v.
Winston Brands,
Employer/Respondent

Case # **18** WC **29628**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Arbitrator Raychel A. Wesley**, Arbitrator of the Commission, in the city of **Chicago**, on **October 1, 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 24, 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 $**636.71**.

On the date of accident, Petitioner was **24** years of age, ***single*** with **two** dependent children.

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**8,584.89**.

Respondent is entitled to a credit of $**8,584.89** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $424.47/week for 96.71 weeks, commencing April 25, 2019 through August 1, 2019 and March 1, 2020 through October 1, 2021, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act, as follows below. Respondent shall be credited for all payments made as presented in Respondent's Exhibit 7, and no double-recovery is intended.
AMITA Health Medical Group - $1,101.00
Hand to Shoulder Associates - $171.00
Illinois Orthopedic Network - $4,668.00
LaClinica - $9,086.95
Midwest Specialty Pharmacy - $3,250.07

Respondent shall authorize and pay for bilateral cubital tunnel surgeries as recommended by Dr. Irvin Wiesman.

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

RULES REGARDING APPEALS Unless a party 1) files a *Petition for Review* within 30 days after receipt of this decision; and 2) certifies that he or she has paid the court reporter the ***final*** cost of the arbitration transcript and attaches a copy of the check to the *Petition*; and 3) perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

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

/s/ *Raychel A. Wesley* **JANUARY 12, 2022**
Signature of Arbitrator

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Petiitioner testified that in April 2018, she was employed by Winston Brands, the Respondent. Tx9. She began working there in September 2006, as a quality assurance clerk. Id. at 10. By April 2018, Petitioner was working as a quality control inspector, and had held that job title for twenty-two months as of April 2018. Id. Petitioner testified that Winston Brands is a "catalog" company that sells household items and ships them to customers. Id. Petitioner described the duties of a quality control inspector as inspecting items like bedspreads and pillows. Id. at 11. She would inspect approximately fifteen items per day, and the inspection involved opening the items up, reviewing them, taking many photographs, weighing and measuring the items. Id. She would then upload the photographs and enter all of this data into a computer portal. Id. In an eight and a half hour shift, Petitioner spent approximately four hours inspecting items, and the rest of her day was spent doing data entry and email correspondence. Id. at 12. Prior to working as a quality control inspector, Petitioner worked for Respondent as a slotting coordinator for about two years. Id. at 13. This job was approximately 7.5 hours of data entry in a day, with an hour for lunch. Id. at 14.

Petitioner testified she began to notice pain and weakness in both arms and hands around January 2018. Id. at 14. At trial, Petitioner physically indicated her left upper arm, from the elbow to the shoulder. Id. Petitioner stated that she notified her supervisor, Debbie, of these issues in January 2018. Id. Of minor note, Petitioner testified that she missed about three weeks of work in January and February 2018 due to a gallbladder surgery. Id. at 15. During this three week period, Petitioner's symptoms improved. Id. When Petitioner returned to work, the pain and weakness returned. Id. Petitioner testified that her work station was a tall table with a chair without arm rests, and that she rested her elbows on the metal table while working. Id. In an attempt to alleviate her symptoms, Petitioner and her employer took steps, including moving the computer and switching to an ergonomic keyboard. Id. at 17. They also tried lowering the table and adding a chair with arm rests. Id. at 17. Petitioner testified that, ultimately, she believed her elbows resting on the hard surface of the metal table was contributory to her issues. Id.

Petitioner completed a written accident report on April 24, 2018. Tx17, Rx2. The report confirms Petitioner's account that she notified her supervisor of her medical issues in her bilateral arms and hands on January 2, 2018. Rx2. The report also confirms the various steps taken from January to April 2018 regarding changes to Petitioner's work station. Id. Petitioner was sent to Amita Health Medical Group in Bensenville on April 24, 2018. Px1. The records indicate a history of left shoulder and elbow pain since or even slightly before January 2018. Id. Petitioner reported a significant amount of computer work and typing. Id. She reported left elbow and upper trapezius pain, with the left hand dropping objects. Id. Orthopedic testing was largely negative. Id. The diagnosis was a strain of the left upper trapezius and a left elbow strain. Id. Physical therapy was ordered and certified by utilization review. Id. No work restrictions were imposed. On the handwritten forms, a box was checked indicating that the injury was work related. Id.

Petitioner returned to Amita on May 17, 2018. Id. At that time, she had undergone three sessions of physical therapy, with continued elbow pain, but less frequently. Id. Again, a box was

checked indicating the injuries were work related. Id. Again, no work restrictions were imposed. Id. On May 17, 2018, the record indicates ongoing pain from the tip of her fingers up to the shoulder. Id. On June 7, 2018, therapy was ordered for the right side as well as the left. Id. By June 21, 2018, Petitioner noted no improvement with therapy. Id. Referral was made to Dr. Michael Birman. Id.

Petitioner saw Dr. Birman for the first time on June 22, 2018. Px2. Dr. Birman noted the referral from Alexian Brothers Occupational Health (Dr. Timothy Lyman). Id. The history was given as bilateral numbness and tingling, first reported in January 2018. Id. Symptoms were initially most significant in the left arm, but had recently been beginning in the right arm as well. Id. Rheumatological workup was negative. Id. Dr. Birman recommended a bilateral upper extremity EMG/NCV test, on suspicion of possible carpal or cubital tunnel syndrome. Id. Dr. Birman did note positive flexion compression testing at the carpal tunnel bilaterally on exam. Id. The EMG was completed July 2, 2018, and was essentially normal. Id. The same date, Petitioner was seen again by Dr. Birman to review the results. Id. Recommendation was made for full duty work, with another round of physical therapy. Id.

On July 27, 2018, Dr. Birman noted continued bilateral pain, numbness, and tingling. Id. Symptoms appeared to be worsening. Id. Petitioner reported being off work this week, and that her symptoms had lessened as a result. Id. Physical therapy was again recommended. Id. By September 14, 2018. Dr. Birman modified his diagnosis to left lateral epicondylitis and neuritis. Id. He stated that, despite the negative EMG, the symptoms were consistent with an ulnar neuritis or cubital tunnel syndrome. Id. He recommended a cubital tunnel release and lateral epicondylitis debridement. Id. This was the last time Petitioner was seen by Dr. Birman. Id.

Petitioner saw Dr. Shoeb Mohuiddin and physician's assistant, Brittany Macleod at Illinois Orthopedic Network on October 2, 2018. Px3. The history indicated eight hours of typing, all day, every day, for the last four years. Id. The history of ergonomic changes to her workspace is documented. Id. Again, the records indicate that Petitioner's symptoms subsided when she was not working while out for her gallbladder surgery. Id. Dr. Mohuiddin recommended four weeks of rest with no therapy and no work. Id. On November 6, 2018, Petitioner returned with slight improvement but ongoing soreness and tenderness through the lateral aspect of both elbows, worse on the left. Id. Dr. Mohuiddin noted the negative EMG, but that the symptoms were pathognomonic for cubital tunnel syndrome. He recommended physical therapy care, which began at LaClinica two days later, on November 8, 2018 continuing through January 29, 2019. Px4.

On November 27, 2018, Dr. Mohuiddin performed bilateral cubital tunnel steroid injections, which were beneficial for about a week and a half, per the December 28, 2018 note. Px3. On December 13, 2018, Petitioner was seen by Dr. Arthur Itkin, under Section 12 of the Act, and at the request of the Respondent. Rx6. Dr. Itkin diagnosed arthropathy, or joint pain, in the wrists and elbows, which could be addressed by an orthopedic specialist, but he did not believe this would be

work related. Id. Dr. Itkin stated, "she did not sustain a repetitive work injury," and that any such diagnoses would be unrelated to the work activities. Id.

On January 28, 2019, Petitioner was seen by Dr. Irvin Wiesman at Illinois Orthopedic Network. Px3. Dr. Wiesman reviewed the report of Dr. Itkin and took a history. Dr. Wiesman concurred with Dr. Birman's diagnosis of bilateral cubital tunnel syndrome and recommended surgical intervention, as Dr. Birman had done. He indicated that Petitioner's job activities included flexion and extension of the elbow which would chronically cause pathology in the ulnar nerve bilaterally. Id.

Petitioner continued following up with Dr. Wiesman and Illinois Orthopedic Network through July 2, 2021, and continued the same surgical recommendation. Id. Petitioner testified that her employment with Respondent ended on April 25, 2019, when she was advised that they had no work for her within the restrictions set out by Dr. Wiesman. Tx20. Petitioner testified that she worked for a company called United Delivery Service from August 2019 through February 2020, scanning labels and placing new labels on boxes on a conveyor belt. Tx21-22. Petitioner testified that this caused further pain and numbness in her pinky and ring fingers. Id.

Petitioner testified that she wishes to undergo the bilateral cubital tunnel release surgeries recommended by Dr. Wiesman. Id. She has ongoing numbness in her ring and pinky fingers. Id. She has ongoing pain in her left elbow. Id. She has difficulty caring heavy items, like bringing in the groceries. Id. at 24. She continues taking Gabapentin, but not during the day, as it makes her drowsy. Id.

Petitioner attended a second evaluation with Dr. Itkin on January 5, 2021. Rx6. Dr. Itkin noted a possible diagnosis of Raynaud phenomenon or vascular or neurogenic deficits, or possibly thoracic outlet syndrome. Id. He did not believe any of these would be work related. Id. He did not believe there was an injury to the ulnar nerve based upon the EMG results. Id.

On cross-examination, Petitioner testified that her work with Respondent did not involve heavy lifting. Tx25. There was no use of pressurized or pneumatic tools. Id. She again testified that she notified a supervisor, of her complaints on January 2, 2018, and that the supervisor notified HR. Id. at 40. She confirmed that Illinois Orthopedic Network referred her to LaClinica. Id. at 53.

Respondent presented the testimony of Ms. Heidi McCreight. Tx58. Ms. McCreight is the director of Human Resources for the Respondent, and has been so employed since January of 2020. Ms. McCreight confirmed the various changes to Petitioner's work station at her request in 2018. Tx62-63. The first incident report in the file was from April 24, 2018. Id.

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CONCLUSIONS OF LAW

Accident & Notice

The Arbitrator finds that Petitioner suffered accidental injuries arising out of an in the course of her employment with Respondent, with a manifestation date of April 24, 2018. The Arbitrator relies on the credible testimony of Petitioner, the statements in the medical records, and the accident report of April 24, 2018. The Arbitrator further finds that adequate notice was provided to the employer.

Petitioner testified she was employed by the Respondent in a variety of positions beginning in September 2006. These positions involved varying degrees of activity, but the most recent positions, quality control inspector and slotting coordinator, involved significant data entry work with the elbows resting on a metal table, as well as opening and handling product, which resulted in significant flexion and extension of the elbows, albeit not forcefully. Petitioner credibly testified she began having these symptoms around January 2018, and that she discussed them with her supervisor on January 2, 2018.

In this case, the appropriate manifestation date is April 24, 2018, the date of the first medical treatment. The facts must be closely examined in repetitive-injury cases to ensure a fair result for both the faithful employee and the employer's insurance carrier. *Three "D" Discount Store*, 198 Ill.App.3d at 49, 144 Ill.Dec. 794, 556 N.E.2d 261. As the Illinois Supreme Court stated in *Durand v. Industrial Commission* in 2006*:*

> In short, courts considering various factors have typically set the manifestation date on either the date on which the employee requires medical treatment or the date on which the employee can no longer perform work activities. *See* *Peoria County Bellwood Nursing Home v. Industrial Comm'n*, 138 Ill.App.3d 880, 887, 93 Ill.Dec. 689, 487 N.E.2d 356 (1985), aff'd, 115 Ill.2d 524, 106 Ill.Dec. 235, 505 N.E.2d 1026 (1987) (holding that determining the manifestation date is a question of fact and that "the onset of pain and the inability to perform one's job, are among the facts which may be introduced to establish the date of injury"). A formal diagnosis, of course, is not required. The manifestation date is not the date on which the injury and its causal link to work became plainly apparent to a reasonable physician, but the date on which it became plainly apparent to a reasonable employee. *See* *General Electric Co. v. Industrial Comm'n*, 190 Ill.App.3d 847, 857, 137 Ill.Dec. 874, 546 N.E.2d 987 (1989). However, because repetitive-trauma injuries are progressive, the employee's medical treatment, as well as the severity of the injury and particularly how it affects the employee's performance, are relevant in determining objectively when a reasonable person would have plainly recognized the injury and its relation to work. *See* *Oscar Mayer*, 176 Ill.App.3d at 610, 126 Ill.Dec. 41, 531 N.E.2d 174.

In the present case, Petitioner began having symptoms in late 2017 and early 2018. She notified her supervisor that she was having issues on January 2, 2018. A formal report was completed on April 24, 2018, and Petitioner was sent by the employer to AMITA in Bensenville for care. This is the first date a potential diagnosis was given, and thus is the appropriate manifestation date.

Having found that the appropriate accident date is April 24, 2018, the Arbitrator finds that adequate notice was given, with the written accident report having been completed that date. Petitioner had provided notice of her symptoms as early as January 2, 2018, but had not yet received a diagnosis or medical treatment. Thus, she was under no obligation to provide notice until the manifestation date. Under the Act, so long as some notice is provided within 45 days, the burden shifts to the employer to show that a deficiency in notice hindered its investigation of the claim. No such evidence was presented by the Respondent in this case, with respect to any alternative manifestation date. Thus, the Arbitrator finds Respondent was provided with adequate notice of an accident under Section 6(c).

Causal Connection

Petitioner has been diagnosed with bilateral cubital tunnel syndrome. Dr. Wiesman opined that these conditions are causally related to her job activities. Dr. Michael Birman concurred as to diagnosis, but did not provide any opinions about workplace causation. Dr. Lyman at AMITA diagnosed sprains and strains of the forearm, and checked several boxes indicating the condition was work-related, but did not specifically opine. Dr. Itkin, Respondent's Section 12 examiner, stated that Petitioner might suffer from any number of conditions, but that none of those would be work related. The Arbitrator places reliance on the opinions of Dr. Wiesman, Dr. Lyman, and Dr. Birman that Petitioner's diagnosis is bilateral cubital tunnel (Dr. Birman and Dr. Wiesman) and that the condition is causally related to the job activities (Dr. Lyman and Dr. Wiesman.) The Arbitrator does not find the opinions of Dr. Itkin to be persuasive on this issue.

There seems to be general agreement in the evidence as to Petitioner's job duties. Dr. Itkin said there was no work injury, and that Petitioner had no neurological diagnosis. Rx6 at 25. He based this on a negative Tinel's test on examination, as well as the negative EMG. He suggested possible diagnoses of Raynaud's phenomenon, which can cause numbness in the fingers. Id. at 31.

Dr. Wiesman's testimony was that he understood Petitioner's job to include significant typing with the elbows kept in a flexed position throughout the day. Px6 at 7. On examination, Dr. Wiesman noted positive Tinel's testing at the elbow, as well as a loss of sensation in the pinky and ring fingers bilaterally based upon the two-point discrimination test. Id. at 10. Dr. Wiesman acknowledged the negative EMG testing, and noted that EMG studies have a 15 to 18 percent false negative rate. Id. at 13. Dr. Wiesman stated that keeping the elbow in a flexed position of 90 degrees or longer, typing or resting on a table would increase pressure on the nerve and cause nerve irritation. Id. at 16.

The Arbitrator finds the bilateral cubital tunnel diagnoses of Dr. Birman and Dr. Wiesman to be well supported, despite the negative EMG studies. The Arbitrator further finds credible Dr. Wiesman's explanation of how Petitioner's job duties would cause bilateral irritation of the ulnar nerve at the elbow. The Arbitrator thus finds Petitioner's diagnosis of bilateral cubital tunnel syndrome is causally related to her job activities with the Respondent.

Past Medical

The Arbitrator has reviewed the medical opinions in this case, and awards all past medical treatment claimed by the Petitioner at trial. The dispute in this case is over diagnosis and its causal relationship, not the reasonableness and necessity of medical care. Respondent provided no utilization review reports, other than those contained in the records of AMITA, which certified physical therapy. Having found for the Petitioner on the issues of accident and causal connection, the Arbitrator awards past medical as claimed.

Respondent has raised the issue of the "two doctor rule" with respect to the treatment rendered by LaClinica in this case. The Arbitrator has analyzed the chains of referral in this case, and finds that LaClinica is within the first applicable chain of referrals chosen by Petitioner. Assuming, *in arguendo*, that the original treatment at AMITA in Bensenville constituted a choice of physician, the Arbitrator would find that LaClinica is thus within the second chain of referrals beginning with Illinois Orthopedic Network.

Petitioner's first medical treatment with AMITA in Bensenville was on referral by the Respondent. AMITA referred her to Dr. Birman at Hand to Shoulder Associates. As these providers began with referrals from Respondent directly, they do not constitute a choice of physician under the Act. As stated above, assuming that AMITA and its referral to Hand to Shoulder Associates constitutes a choice, then LaClinica is still within the second set of referrals. Petitioner saw Dr. Shoeb Mohiuddin and his Physician Assistant, Brittany Macleod at ION on October 2, 2018. This would be the second doctor choice, assuming AMITA was choice one. In follow up on November 6, 2018, Dr. Mohiuddin and Physician's Assistant Macleod recommended physical therapy care. A document entitled Occupational Therapy Prescription dated November 6, 2018 is contained within the LaClinica records, and is signed by Physician's Assistant Macleod. Px4. Someone, presumably Physician's Assistant Macleod, also hand-wrote on the form "LaClinica - Stone Park." Id. The Initial History and Examination form at LaClinica indicates Petitioner was seen at their Stone Park facility. Id. Thus, a referral relationship between Illinois Orthopaedic Network and LaClinica is established by the treating records.

Temporary Total Disability

Petitioner claims entitlement to TTD benefits from April 25, 2019, her date of termination by the Respondent, through August 1, 2019, when she obtained new employment through United Delivery Service. Petitioner claims entitlement to further TTD from March 1, 2020 (when her employment with

UDS ended) until October 1, 2021, the date of trial. The Arbitrator notes that Petitioner has been either off work or on light duty restrictions per Dr. Wiesman throughout this time. No evidence of a light duty job offer by Respondent after April 25, 2019 has been presented. Petitioner attempted to return to a new job within her restrictions, but was only able to do this for about seven months before she could no longer tolerate it due to her bilateral hand and arm symptoms. The Arbitrator thus awards TTD as claimed.

Prospective Medical

Having found for the Petitioner on the issues of accident and causal connection, the Arbitrator relies on the credible opinions of Dr. Birman and Dr. Wiesman, and awards the bilateral cubital tunnel surgeries as described by Dr. Wiesman.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC023670
Case Name	Franklin Wade v. City of Chicago
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0366
Number of Pages of Decision	16
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Michael Kedzie
Respondent Attorney	Donald Chittick

DATE FILED: 9/26/2022

/s/ Thomas Tyrrell, Commissioner

Signature

22IWCC0366

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Franklin Wade,

Petitioner,

vs. NO: 15 WC 023670

City of Chicago,

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 temporary total disability ("TTD"), maintenance, and permanent partial disability ("PPD"), 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 affirms the Decision of the Arbitrator on the issue of TTD.

As it pertains to maintenance, the Commission modifies the Decision of the Arbitrator and finds Petitioner entitled to same from April 3, 2019 through August 19, 2019. Petitioner retired from the City on August 19, 2019. On the Request for Hearing form, the parties stipulated to maintenance benefits through same.

"Under section 8(a) of the Act (820 ILCS 305/8(a) (West 2010)), an employer "shall *** pay for treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the employee, including all maintenance costs and expenses incidental thereto." Since maintenance is awarded incidental to vocational rehabilitation, an employer is obligated to pay maintenance only "while a claimant is engaged in a prescribed vocational-rehabilitation program."" *Euclid Bev. v. Ill. Workers' Comp. Comm'n,* 124 N.E. 3d 1027 (2019), citing *W.B. Olson, Inc*., 2012 IL App (1st) 113129WC, ¶ 39. Rehabilitation is neither mandatory nor appropriate if an injured employee does not intend, although capable, to return to work. *Id.*, citing *Schoon v. Indus. Comm'n*, 259 Ill. App. 3d 587, 594 (1994).

In the instant matter, Petitioner never sought employment following his retirement from

the City on August 19, 2019. Thus, Petitioner is not entitled to maintenance costs after that date.

As it pertains to permanent disability ("PPD"), the Commission views the level of disability differently than the Arbitrator. As the date of the accident occurred after the effective date of the Amendment, an analysis pursuant to §8.1b of the Act is necessary. However, the Arbitrator only analyzed four of the five factors.

The Commission modifies the Arbitrator's award as to the nature and extent of the injury from 65% to 50% loss of use of the person as a whole pursuant to Section 8(d)2 of the Act. In so finding, the Commission modifies the Arbitrator's analysis as follows:

(i) ***The reported level of impairment*** -- In this case, neither party entered an impairment rating into evidence; however, this alone does not preclude an award for permanent partial disability. The Commission places no weight on this factor.

(ii) ***The occupation of the injured employee*** -- Petitioner was employed as a Motor Truck Driver and, following an extensive and arduous course of treatment, he was released with a 10-pound lifting restriction and sedentary work restriction, which precluded a return to his usual and customary employment. The Commission places great weight on this factor.

(iii) ***The age of the employee at the time of the injury --*** Petitioner was 72 years of age on the date of his accident and was nearing the end of his career. This is confirmed by his retirement from employment on August 19, 2019. The Commission places great weight on this factor.

(iv) ***The employee's future earning capacity --*** Petitioner's future earning capacity is indeterminate as neither party submitted any evidence addressing Petitioner's post-accident wage earning potential. Petitioner has retired with his pension and has not sought alternative employment within his restrictions. The Commission places little weight on this factor.

(v) ***Evidence of disability corroborated by the treating medical records*** -- The treating medical records in this case corroborate Petitioner's severe lumbar spine injury which necessitated extensive treatment with mixed results as documented above. As a result, Petitioner was released to return to work with permanent restrictions. Petitioner chose retirement over trying to find a new job within his restrictions. The Commission places some weight on this factor.

The Commission strikes Section (O) on page 7 of the Arbitration Decision, and replaces it with the following calculations:

On the Request for Hearing form, the parties agreed to an Average Weekly Wage (AWW) of $1,379.32 along with Respondent's credit of $252,099.03 for TTD/Maintenance benefits paid. An AWW of $1,379.32 yields a weekly TTD/Maintenance rate of $919.55 ($1379.32 X 2/3 = $919.55).

Petitioner is entitled to TTD from 6/19/15 through 4/2/19, which equates to

197-4/7 weeks. Petitioner is further entitled to maintenance from 4/3/19 through 8/19/19, which equates to 19-6/7 weeks. As such, Petitioner is entitled to TTD/Maintenance benefits for a total of 217-3/7 weeks.

217-3/7 x $919.55 = $199,936.44

$252,099.03 – 199,936.44 = 52,162.59

Accordingly, Respondent overpaid by $52,162.59 given modification of maintenance benefits and same shall be applied against permanency.

The Commission corrects a scrivener's error in the Arbitrator's Decision on page 1 of the Memorandum of Arbitration Decision to strike "Petitioner's Proposed Findings."

The Commission modifies the Arbitrator's Decision on page 4, section (F) to state, "In this case, Respondent agrees that Petitioner's current lower back condition is causally related to his 6/18/15 accident." The remainder of the paragraph is stricken.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on November 29, 2021, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner temporary total disability benefits of $919.55/week from June 19, 2015 through April 2, 2019, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner maintenance benefits of $919.55/week from April 3, 2019 through August 19, 2019, as provided in Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner reasonable and necessary medical expenses of $77,982.00, subject to the fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $735.37per week for a period of 250 weeks, as provided in § 8(d)2 of the Act, for the reason that the injury sustained to the right shoulder caused the loss of use of 50% of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall receive credit of $2,583.71 for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall receive a

credit of $52,162.59 for an overpayment of maintenance benefits.

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.

September 26, 2022

o: 07/26/2022
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	15WC023670
Case Name	WADE, FRANKLIN v. CITY OF CHICAGO
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Michael Kedzie
Respondent Attorney	Donald Chittick

DATE FILED: 11/29/2021

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

/s/ Paul Seal, 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

Franklin Wade
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # **15** WC **23670**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal**, Arbitrator of the Commission, in the city of **Chicago**, on **9/28/21**. 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 **Overpayment of Maintenance/TTD**

FINDINGS

On **6/18/15**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**71,724.38**; the average weekly wage was $**1,379.32**.

On the date of accident, Petitioner was **72** 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 $**252,099.03** for TTD/Maintenance, $**0** for TPD, $ **0** for other benefits, for a total credit of $**252,099.03**.

Respondent is entitled to a credit of $**2,583.71**under Section 8(j) of the Act.

ORDER

Petitioner is entitled to TTD from 6/19/15 through 4/2/19 for a total of 197 & 4/7 weeks.

Petitioner is entitled to Maintenance benefits from 4/3/19 through 9/28/21, for a total of 129 & 6/7 weeks.

As a result of the injuries sustained, Petitioner is entitled to have and receive from Respondent 325 weeks at a rate of $735.37 per week because he sustained a 65% loss of use of the person as a whole.

After credits for TTD/Maintenance previously paid, Respondent shall pay Petitioner $48,988.30 for unpaid TTD/Maintenance in addition to the award for permanency.

Respondent shall pay all reasonable and necessary unpaid medical of $77,982.00 based on the fee schedule as provided in Section 8(a) of the Act.

Respondent shall be given a credit of $2,583.71for 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.

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

Signature of Arbitrator

Franklin Wade v. City of Chicago

15 WC 23670

Petitioner's Proposed Findings

Petitioner credibly testified that on 6/18/ 2015, he was 72 years of age, married, and had been employed by the respondent since 1996. His highest level of education was three years of high school. He been a truck driver for Chicago Streets and Sanitation Department of Forestry for over 23 years. On the date of the accident he was exiting his work truck when he missed a step and landed hard on his right leg sustaining injury to his lower back. He reported the accident to a supervisor and sought treatment at Advocate Trinity Hospital the following day where he complained of pain radiating from the right buttock/thigh down the right lower extremity. All symptoms began after exiting his vehicle and his foot slipped. This occurred at work. He filed an incident report. Petitioner was diagnosed with acute back pain with sciatica. He was instructed to follow up with a primary care giver in one to three days, prescribed valium 5 mg tablet to take for seven days for back pain and Ibuprofen 600 mg tablets to take as needed for pain. (Px1).

On 6/22/15, Petitioner presented to Dr. Homer Diadula of MercyWorks for an initial consultation (Px3). He rated his pain at 6-7/10 on the rating scale in the right lower back by the sacroiliac joint radiating to the right foot with tingling in all the toes. He had no similar condition in the past. On 6/22/15, Dr. Diadula diagnosed Petitioner with sprains of the right sacroiliac joint and lower back, prescribed ibuprofen 600 mg, a muscle relaxant, Cyclobenazprine, and heat and took Petitioner off work. On 6/26/15, Dr. Diadula's diagnoses were sprain, right sacroiliac joint, strain, right lower back and right sciatica, and he ordered an MRI. On 7/2/15, Petitioner returned to Dr. Diadula, who reviewed a lumbar spine MRI, which revealed moderate to severe L3-4, L4-5 and L5-S1 bilateral neuroforaminal stenosis, with disc bulging diffusely and abundant superimposed bony spondylotic changes, primarily along the posterior facet joints. On 7/7/15, Petitioner rated his pain at 6-7/10, and Dr. Diadula referred him to a course of physical therapy at Athletico**.** Physical therapy was held on 7/16/15 due to Petitioner's high levels of pain with treatment that he reported as 9-10/10 even with pain medication. On 7/17/15, Petitioner followed up with Dr. Diadula, who referred Petitioner to an orthopedic spine specialist of Petitioner's choosing and discharged him from care.

On 7/22/15, Petitioner presented to Dr. Alpesh Patel of Northwestern Medical Group and reported his symptoms began on 6/18/15 when stepping out of a truck. He was coming down and missed a step landing forcefully onto his right leg catching himself with his arms. He noted an acute onset of severe right sided leg pain symptoms since that time. Dr. Patel recommended an initial course of conservative treatment before consideration of surgical intervention and referred him to Dr. Daniel Blatz at Northwestern. On 8/7/15, Dr. Blatz prescribed physical therapy to try to relieve stress on the pain generators in the low back and take pressure off the right S1 nerve root and advised Petitioner to take the steroid Dosepak prescribed by Dr. Patel. Petitioner followed up with Dr. Blatz on 9/4/15 and reported he still had significant pain at an 8 out of 10 (Px7). Dr. Blatz continued his physical therapy, prescribed Gabapentin and ordered a right L5-S1 transforaminal epidural steroid injection that was performed at the Rehabilitation

Institute of Chicago on 9/28/15 (Px6). Petitioner returned to physical therapy and on 10/27/15 reported to Dr. Blatz he received only temporary relief from the injection for a few days and then the pain returned. Dr. Blatz added Tramadol for pain control and prescribed a repeat injection. A right L5-S1 TFESI was performed on 10/30/15 which again provided only partial temporary relief for a few days. On 12/1/15, Dr. Blatz held physical therapy as it exacerbated Petitioner's pain, referred him back to Dr. Patel to discuss surgical options and ordered a final repeat TFESI. A right S1 TFESI was performed on 12/7/15. On 12/29/15, Dr. Blatz notes that Petitioner continued to have persistent pain that was not alleviated by conservative measures of physical therapy, medications and the administration of three epidural steroid injections. On 12/22/15, Petitioner returned to Dr. Patel and reported only temporary relief from the injections. Dr. Patel recommended Petitioner proceed with an L5-S1 instrumented decompression and fusion (Px6, Px7).

On 2/8/16, Petitioner underwent surgery consisting of posterior lumbar interbody fusion with excision of a cyst at L5-S1 performed by Dr. Patel (Px7). On 3/22/16, Petitioner followed up with Dr. Patel, who referred Petitioner to a course of post-operative physical therapy. On 8/5/16, the therapist noted Petitioner's recent progress was limited secondary to pain level and he had been unable to tolerate further progression of strengthening exercises. Physician follow-up was recommended. Petitioner was discharged from physical therapy at Athletico on 8/31/16 after therapy was held on 8/5/16 pending further testing (Px8).

On 8/16/16, following administration of a diagnostic hip injection, Petitioner returned to Dr. Patel and reported persistent right-sided lower back and buttock pain (Px7). Based on these complaints, Dr. Patel recommended Petitioner obtain a CT myelogram. On 9/27/16, Dr. Patel reviewed the CT Myelogram and noted that Petitioner's fusion mass had not healed. On 1/3/17, Dr. Patel reviewed x-rays, which were suggestive of ongoing nonunion and symptomatic hardware failure. On 1/17/17, Dr. Patel recommended Petitioner undergo an anterior L5-S1 interbody decompression and fusion with a posterior removal of instrumentation, exploration of fusion, and a revision instrumentation and fusion. Based upon Petitioner's hesitancy to pursue additional surgery, Dr. Patel prescribed use of a bone stimulator with a follow up CT scan in three months to assess interval bone healing.

On 4/18/17, Petitioner followed up with Dr. Patel after a CT scan on 3/28/17, who noted minimal improvement through usage of the bone stimulator (Px7). On 4/18/17, Petitioner's pain was quite severe, and he agreed to proceed with the recommended surgery. On 5/30/17, Petitioner returned to Dr. Patel, who further discussed with Petitioner his plan for surgery.

On 6/13/17, prior to Petitioner undergoing the recommended surgery, Petitioner suffered a stroke (Px7). Following initial emergency room care at Trinity Hospital, Petitioner sought follow up care with Dr. Ilana Treiber of Northwestern along with his primary care physician, Dr. Paul Pickering. As a result of Petitioner's stroke, his scheduled lumbar spine surgery was cancelled. Per a 2/21/18 letter issued by Dr. Patel, Petitioner's neurologist recommended that the surgery be postponed 6 months.

On 4/3/18, Petitioner returned to Dr. Patel, who discussed proceeding with the lumbar spine surgery delayed by Petitioner's stroke (Px7). On 4/20/18, Petitioner underwent surgery consisting of anterior retroperitoneal diskectomy with decompression and arthrodesis, L5-S1; anterior lumbar instrumentation, L5 and S1; posterior removal and re-instrumentation, L5-S1; and, posterior lumbar arthrodesis, L5-S1. Following surgery, Petitioner began a course of post-operative physical therapy at Athletico and continued to follow up with Dr. Patel. At Petitioner's 9/4/18 follow up with Dr. Patel, he rated his back and leg pain at a 6-7 out of 10 in severity and was taking Tramadol for pain. On 10/17/18, his therapist reported Petitioner had pain with lifting greater than 20 pounds and had plateaued in physical therapy. (Px8).

On 11/6/18, Petitioner returned to Dr. Patel, who noted a stable fusion and recommended Petitioner undergo a functional capacity evaluation to determine his baseline status followed by a course of work conditioning (Px7). On 12/18/18, Petitioner followed up with Dr. Patel and reported that his assessment for work conditioning at Athletico had been halted due to concerns over Petitioner's high blood pressure. He reported persistent lower back soreness and unchanged numbness in his right foot. He was using a cane for ambulation and taking Tramadol daily for pain (Px7). On 2/18/19, Petitioner began a trial work conditioning/hardening program but it was halted 2/26/19 due to elevated blood pressure and increased pain after each session (Px8).

On 4/2/19, Petitioner returned to Dr. Patel, who noted that Petitioner's primary care physician had documented persistently high blood pressure. Petitioner was still having daily pain in his lower back and was getting paroxysmal episodes of severe back pain and spasms in the back. On 4/2/19, Dr. Patel recommended that physical therapy and work hardening be discontinued as it would provide no further additional information and only seemed to be causing Petitioner problems, especially with regard to high blood pressure, and he released Petitioner with permanent restrictions of sedentary work only along with a 10-pound lifting restriction.

On 4/29/19, Petitioner presented to Dr. Alexander Ghanayem of Loyola University Medical Center for an Independent Medical Examination (IME) (Rx1). Following his examination of Petitioner and review of Petitioner's medical records, Dr. Ghanayem issued an IME report. In his report, Dr. Ghanayem found that Petitioner had reached maximum medical improvement (MMI) and concurred with the 10-pound lifting restriction provided by Dr. Patel.

Based upon Petitioner's permanent restrictions, he was unable to return to work for Respondent as Motor Truck Driver.

After being released by Dr. Patel, the Petitioner still had back pain and shooting pain down his right leg. On 11/11/20, he began treatment at Miracles Revealed Chiropractic for lumbar, right sacroiliac and right leg pain and discomfort that he rated as a 10 at its worst and 3 at its best (Px14). Petitioner tested positive for myofascitis and had significant decreased range of motion of lumbar flexion. An increase in pain was noted in the lumbar region that was rated as a Grade 3: severe pain observed and reported. His movement was observed to be painful. He was treated for complaints of continuous sharp and tightness discomfort in the low back.

Conclusions on Law

To be compensable under the Illinois Workers' Compensation Act, the injury complained of must be one "arising out of and in the course of the employment." *Ill.Rev.Stat.1991, ch. 48, par. 138.2*. The employee has the burden of establishing both requirements. *Castaneda v. Industrial Comm'n (1983), 97 Ill.2d 338, 341, 73 Ill.Dec. 535, 454 N.E.2d 632*. An injury "arises out of one's employment if its origin is in some risk connected with or incident to the employment, so that there is a causal connection between the employment and the accidental injury." *Jewel Cos. v. Industrial Comm'n (1974), 57 Ill.2d 38, 40, 310 N.E.2d 12*.

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

In this case, Respondent agrees that Petitioner's current lower back condition is causally related to his 6/18/15 accident; however, Petitioner's treatment records also document other conditions which may or may not have been exacerbated by his injury and related treatment, including hypertension, diabetes and a small perforator vessel stroke in June of 2017.

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?

All of the medical submitted to by petitioner reasonable and necessary and causally related to the petitioner's injury. The bills listed on Petitioner's Exhibit 15 totaling $76,203.00 to Northwestern and $1779 to Miracles Revealed Chiropractic (P.Ex. 14 & 15) are unpaid and should be paid by respondent. The parties have agreed that Respondent is authorized to resolve any awarded bills directly with the medical providers pursuant to the fee schedule.

The parties further stipulated to Respondent's entitlement to a Section 8(j) credit in the amount of $2,583.71 for payments made by Petitioner's group health insurance plan (Rx3), but respondent shall indemnify petitioner subrogation claims asserted by the group health carrier.

K) What temporary benefits are in dispute? Maintenance, TTD.

TTD:

Petitioner is entitled to temporary total disability benefits (TTD) from 6/19/15 through 4/2/19, the date of Dr. Patel's release with permanent restrictions preventing Petitioner from returning to his job. Respondent agrees to Petitioner's entitlement to TTD during this time frame, with the exception of the period from 11/25/17 through 3/31/18, when Petitioner's stroke interrupted his course of treatment for his lower back injury.

Respondent relies on section 19(d) of the Illinois Workers Compensation Act which states that "If any employee shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery *or* [emphasis added] shall refuse to submit to such medical, surgical, or hospital treatment as is reasonably essential to promote his recovery, the Commission may, in its discretion, reduce or suspend the compensation of any such injured employee." This section is clearly not applicable to the evidence in this case.

While it is true that Petitioner was scheduled for his second lower back surgery due to non-union and failure of the instrumentation of the first fusion surgery along with post laminectomy syndrome, prior to his stroke, and that this procedure along with all other work-related treatment was suspended for approximately ten months while Petitioner recovered from this condition, the delay was a reasonable decision recommended by his doctors. As respondent admits, Petitioner's decision to delay his second back surgery in light of the recommendations of his stroke doctor, Dr. Treiber, and primary care physician, Dr. Pickering, was reasonable. In fact, it would've been unreasonable for the petitioner to proceed with the surgery at the risk of his life and the respondent would no doubt have resisted paying a death benefit on that basis, if the surgery had not gone well. Given that the petitioner's refusal to go forward with the second surgery was on the advice of his physicians and was reasonable there is no basis to withhold TTD benefits under 19(d).

In ABF Freight Sys. v. Ill. Workers' Comp. Comm'n, 2018 IL App (4th) 170737WC-U, ¶¶ 68-70, the employer argued section 19(d) of the Act precluded an award of vocational rehabilitation and maintenance benefits to claimant due to his refusal to undergo fusion surgery or to work with an assistive splint.

"If a claimant's response to an offer of treatment is within the bounds of reason, his freedom of choice should be preserved even when an operation might mitigate the employer's damages." *Rockford Clutch Division, Borg—Warner Corp. v. Industrial Comm'n*, 34 Ill.2d 240, 247-48, 215 N.E.2d 209, 212 (1966). Thus, the question "is whether the course of treatment chosen by claimant was unreasonable." *Bob Red Remodeling, Inc. v. Illinois Workers Compensation Comm'n*, 2014 IL App (1st) 130974WC, ¶ 43, 23 N.E.3d 1248, 388 Ill. Dec. 50..

Claimant in ABF Freight presented evidence that he suffered from significant psychological issues and would be unable to tolerate the results of fusion surgery. Based on those issues, his treating physician opined claimant was not a good candidate for a fusion. Thus, the appellate court said, "the record does not support a finding that claimant refused surgical treatment. Rather it shows such treatment was not recommended due to claimant's mental health issues." ABF Freight Sys. v. Ill. Workers' Comp. Comm'n, 2018 IL App (4th) 170737WC-U, ¶¶ 68-70. Likewise, Mr. Wade did not unreasonably refuse the surgery, but rather chose the most reasonable course of treatment as Respondent admits. This does not give the respondent a free pass to deny temporary total disability benefits during the duration of the petitioner's convalescence.

"In *Schmidgall*, the claimant testified at his arbitration hearing that he was experiencing constant pain as a result of his work-related injury and his doctors had not released him to return to work. The Commission denied the claim for TTD benefits, however, concluding that the claimant, who had begun receiving social security pension benefits, was automatically precluded from simultaneously receiving workers' compensation benefits. *Schmidgall*, 268 Ill. App. 3d at 848. On appeal, the appellate court set aside the Commission's decision, holding that the claimant's receipt of social security benefits was not dispositive of his eligibility for TTD benefits. The court noted that the claimant was not receiving social security benefits because he had left the workforce, but because he had not been released by his doctor and could not work. Whether the

claimant *desired* to work was deemed not relevant since he was not *physically capable* of working at that time. *Schmidgall*, 268 Ill. App. 3d at 849.

In both *Schmidgall* and *Granite City*, the touchstone for determining whether the claimants were entitled to TTD benefits was not the voluntariness of their departure from the workforce, as the appellate court believed. Rather, the touchstone was whether the claimants' conditions had stabilized to the extent that they were able to reenter the work force.

Looking to the Act, we find that no reasonable construction of its provisions supports a finding that TTD benefits may be denied an employee who remains injured yet has been discharged by his employer for "volitional conduct" unrelated to his injury. A thorough examination of the Act reveals that it contains no provision for the denial, suspension, or termination of TTD benefits as a result of an employee's discharge by his employer. Nor does the Act condition TTD benefits on whether there has been "cause" for the employee's dismissal. Such an inquiry is foreign to the Illinois workers' compensation system." *Interstate Scaffolding, Inc. v. Ill. Workers ' Comp. Comm'n,* 236 Ill. 2d 132,146, 923 N.E.2d 266, 274 (2010).

Since, at the time of his stroke, the Petitioner was unable to work according to his treating physicians, he is entitled to temporary disability benefits for the duration of his rehabilitation.

Thus, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits (TTD) from 6/19/15 through 4/2/19, the date of Dr. Patel's release with permanent restrictions.
Maintenance:

With respect to Maintenance benefits, Petitioner claims entitlement from 4/3/19 through 9/28/21, the date of hearing, while Respondent disputes Petitioner's entitlement to benefits following his 8/19/19 retirement from the city.

As shown above in *Schmidgall* and *Granite City,* the issue is whether Petitioner was able to return to employment, not about whether he voluntarily chose to retire. Given the circumstances that the petitioner was precluded from returning to his former job due to the permanent restrictions placed on him by Dr. but tall, and the respondent did not offer a light duty position or any position within Petitioner's restrictions, Petitioner is entitled to a maintenance award between the time he was released from active treatment until the date of the hearing. Petitioner's election to receive retirement while he was also receiving maintenance payments from the respondent has no bearing on the respondent's obligation to continue to pay maintenance until a lump sum award is entered.

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

In determining the level of Petitioner's disability, the Arbitrator considers four factors:

1) In this case, neither party entered an impairment rating into evidence; however, this alone does not preclude an award for permanent partial disability.

2) Petitioner was employed as a Motor Truck Driver and, following an extensive and arduous course of treatment, he was released with a 10-pound lifting restriction and sedentary work restriction, which precluded a return to his usual and customary employment. The Arbitrator places great weight on this factor.

3) Petitioner's future earning capacity is negligible given his age, prior work experience, education, extensive medical treatment for his injury including epidural steroid injections, two back surgeries, medical restrictions of lifting no more than 10 lbs. and sedentary work, combined with Petitioner's testimony that he has daily pain, can sit for no more than an hour and is unable to do any work around the house. Petitioner was 72 years of age on the date of his accident, had three years of high school education and 23 years working for the city as a truck driver. The Arbitrator, places great weight on this factor.

4) The treating medical records in this case corroborate Petitioner's severe lumbar spine injury which necessitated extensive treatment with mixed results as documented above. Petitioner's injury combined with his underlying medical conditions made it extremely difficult Petitioner to return to the workforce, even though he chose retirement over trying to find a new job within his restrictions. The Arbitrator places great weight on this factor.

As a result of the injuries sustained, Petitioner is entitled to have and receive from Respondent Permanent Partial Disability benefits of 325 weeks at a rate of $735.37 per week representing

65 % loss of use of a whole person.

O) Other: Overpayment of Maintenance/TTD.

On the Request for Hearing form, the parties agreed to an Average Weekly Wage (AWW) of $1,379.32 along with Respondent's credit of $252,099.03 for TTD/Maintenance benefits paid. An AWW of $1,379.32 yields a weekly TTD/Maintenance rate of $919.55 ($1379.32 X 2/3 = $919.55)

In Section (O), the Arbitrator found that Petitioner is entitled to TTD from 6/19/15 through 4/2/19, which equates to 197 4/7 weeks. The Arbitrator further determined that Petitioner is entitled to Maintenance from 4/3/19 through 9/28/21, which equates to 129 6/7 weeks. As such, Petitioner is entitled to TTD/Maintenance benefits for a total of 327 3/7 weeks. Therefore, the Arbitrator's calculations are as follows:

327.429 X $919.55 = $301,087.33

$301,087.33– $252,099.03 = $48,988.30

Accordingly, the Arbitrator finds that Petitioner is entitled to an award of back TTD and Maintenance in the amount of $48,988.30 plus a lump sum award of $294,148.00

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC037388
Case Name	Zofia Parys v. Rich's Fresh Market
Consolidated Cases	
Proceeding Type	Remand
Decision Type	Commission Decision
Commission Decision Number	22IWCC0367
Number of Pages of Decision	18
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	David Menchetti
Respondent Attorney	Jason Kolecke

DATE FILED: 9/27/2022

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ZOFIA PARYS,

Petitioner,

vs. NO: 17 WC 037388

RICH'S FRESH MARKET,

Respondent.

DECISION AND OPINION ON APPELLATE COURT REMAND

This cause comes before the Commission on remand pursuant to the Rule 23 Order of the Appellate Court of Illinois First District Worker's Compensation Commission Division, filed November 5, 2021, reversing the judgment of the circuit court confirming the decision of the Commission, and reversing the decision of the Commission finding that the claimant failed to prove that she suffered a work-related accident on December 2, 2017, and remanding the case to the Commission for further proceedings consistent with the opinions expressed therein. The Court expressed no opinions on the following issues: nature and extent of the claimant's condition of ill-being; whether there is causal connection between the claimant's work-related accident and her current condition of ill-being; notice; and whether, or to what extent, the claimant is entitled to benefits under the Act. After considering the Remand Order, and the entire record, the Commission, reverses the Decision of the Arbitrator and finds that Petitioner sustained an accident arising out of and in the course of her employment by Respondent on December 2, 2017; that Petitioner's condition of ill-being through the date of Dr. Lami's Section 12 evaluation on January 29, 2018, is causally related to the accident on December 2, 2017; that Petitioner is entitled to 8-2/7 weeks of temporary total disability benefits for the period between December 3, 2017, and January 29, 2018, that Petitioner sustained 2.5% loss of use of a person under Section 8(d)2 of the Act; and Petitioner is entitled to medical expenses for reasonable related medical treatment to

Petitioner's lumbar back from December 3, 2017, through January 29, 2018, under Section 8(a) and Section 8.2 of the Act.

Background

The Appellate Court recited the following facts relevant to disposition of the appeal taken from the evidence adduced at the arbitration hearings held on April 19, 2018, and May 15, 2018.

> The claimant's medical treatment prior to the events giving rise to this action are relevant to the issues in this appeal. On December 21, 2014, the claimant had three episodes of "nearsyncope" (*sic*) with hyperventilation. Her medical records also reflect that she had a history of hypertension for which she was prescribed Amlodipine.
>
> On March 10, 2015, the claimant sought medical treatment for left ankle pain resulting from an injury that had occurred 3 weeks prior. She also complained of hip and pelvis pain. The claimant had an EMG on March 19, 2015, which revealed acute bilateral L4-5 and L5-S1 radiculopathy which was noted to be chronic. There was no evidence of peripheral neuropathy. The test report noted a two-month history of left foot and ankle pain after twisting and falling on ice.
>
> On March 24, 2015, the claimant had an MRI scan that reflected a large sequestered L4-5 disc fragment causing severe compression of the thecal sac and probable compression of the left L5 nerve root. Also noted was a mild disc-osteophyte at L3-4 producing mild canal and mild bilateral neuroforaminal stenosis. The claimant saw Dr. Benson Yang on March 25, 2015, complaining of intractable pain in the left leg radiating into the ankle and foot. According to the doctor's records, the claimant's pain started in the low back. She reported that she was in extreme pain and could barely move. Dr. Yang recommended surgery, and on April 2, 2015, the claimant underwent a left L4-5 microdiscectomy, which was performed by Dr. Yang. A large, extruded disc fragment was noted at L4-5.
>
> On April 15, 2015, Dr. Yang noted that the claimant reported almost full recovery of her left foot motor function and that her left leg pain had resolved. He also noted that the numbness the claimant was experiencing could take time to resolve and might be permanent depending on the amount of nerve damage she had suffered. In his notes, Dr. Yang also recorded the claimant's history of high blood pressure. The claimant, however, denied suffering from hypertension or currently taking blood pressure medication.
>
> In his August 19, 2015 notes, Dr. Yang recorded the claimant's complaints of increased back pain for several weeks. The claimant reported that she was experiencing pain extending down her left leg when she flexes to put on socks, but the pain subsides when she straightens her leg. Dr. Yang was of the opinion that the pain the claimant was experiencing was musculoskeletal in nature. He recommended that the claimant undergo therapy and have an MRI of her spine. Dr. Yang also prescribed valium for pain.

In his notes of the claimant's December 30, 2015 visit, Dr. Yang recorded the claimant's complaints of back pain and that she reported feeling worse after physical therapy. His neurological exam of the claimant was normal. He also noted that the December 21, 2015, MRI of the claimant's spine, when compared to her March 24, 2015 MRI, revealed that the previously seen L4-5 disc protrusion had been removed with a remaining very small right protrusion with minimal encroachment on the thecal sac. The MRI also revealed a new disc protrusion at L3-4 with diffuse bulging, resulting in a moderate thecal sac encroachment on the inferior margins of the bilateral neuroforamina, slightly greater on the right. A new left sided pelvic cyst was also revealed by the scan. According to Dr. Yang's notes, the MRI showed degenerative disc disease at L4-5 greater than at L3-4. Dr. Yang's notes state that he discussed the possibility of the claimant having a spinal fusion, but that she rejected the suggestion at that time. Dr. Yang recorded an opinion that the back tightness and pain the claimant was experiencing was likely caused by her muscles. He recommended that the claimant exercise.

The claimant denied seeking treatment for back pain from December 2015 until December 2017.

The events giving rise to the instant litigation occurred on December 2, 2017. The claimant testified that she was employed by Rich's as a buffet worker and had been so employed since May 2015. She stated that, about 3 weeks prior to December 2, 2017, she was assigned to a substitute position as a food re-packer and labeler. According to the claimant, the position required her to unload and lift heavy items such as food pallets weighing 70 to 100 pounds multiple times in an 8-hour shift. The claimant also testified that she would weigh salads, place them in containers, place the containers on a cart, and place the containers either in the store or in a walk-in cooler.

On Saturday, December 2, 2017, the claimant was scheduled to work a normal shift from 8:00 a.m. until 4:00 p.m. The claimant testified that, at approximately 10:00 a.m., she went to the cooler to get some salads; no cart was available for her use. She stated that she went into the cooler and picked up two boxes or crates when she felt a sudden back pain. She testified that there was no one else in the cooler at the time. According to the claimant, she dropped the boxes and screamed, but did not know if anyone heard her. She testified that she slid the boxes on the floor to her workstation, and when her back pain increased, she yelled out: "I'm in pain and cannot continue doing this." The claimant stated that her co-workers, Janina Kruzolek and Wanda Ostrowska came to help her, and she told them that she was experiencing back pain. However, she admitted that she did not say how it happened. The claimant testified that she asked Kruzolek to call the manager and told Ostrowska that she wanted to leave her workstation to tell the manager. According to the claimant, the manager, Anita Paluch, arrived, and she told Paluch that she hurt her back. She stated that Paluch never asked her how she hurt her back. The claimant testified that Paluch said that she could see that something was wrong with her, sat her in a chair, and advised her to call her

daughter. The claimant testified that she called her daughter, Natalia Parys, and told her to come and pick her up because she had lifted some boxes and could not walk home. According to the claimant, Paluch was present when she called her daughter and overheard what she said. The claimant stated that her back pain worsened as she waited the 20 or 25 minutes before Natalia arrived. The claimant described how Paluch and Ostrowska helped her up and out of the store. The store video shows the claimant being supported from both sides by Paluch and Ostrowska. The claimant testified that Natalia took her home, helped her to the bathroom, and helped her to bed. She admitted that, despite her pain, she sought no medical treatment on December 2 or 3, 2017, as she believed that the pain would go away.

Natalia testified that the claimant called her on December 2, 2017, and stated that she was in severe pain and asked her to come and pick her up. According to Natalia, when she arrived at Rich's, she was greeted by Paluch who escorted her to where the claimant was seated. Natalia testified that the claimant was pale and appeared to be in pain. She stated that the claimant pointed to her back and said that it hurt. She testified that she heard the claimant tell Paluch that she hurt her back but could not recall if the claimant stated how she hurt her back. Natalia stated that the claimant was unable to get up on her own and that she took the claimant home. Kruzolek, Rich's kitchen manager and chef, testified that she saw the claimant between 7:30 a.m. and 8:00 a.m. on December 2, 2017. She described the claimant as pale with dry lips, moving slowly, and appearing weak and faint. According to Kruzolek, the claimant told her that she was feeling ill due to high blood pressure and that she had not slept well the night before. Kruzolek testified that she asked the claimant why she had come to work, and the claimant replied that she thought that she would feel better. Kruzolek stated that she checked on the claimant from time to time because she was aware that on a previous occasion the claimant left work in an ambulance due to high blood pressure. Kruzolek recounted a second conversation with the claimant who again stated that she did not want to go home. Kruzolek testified that she asked the claimant's manager, Paluch, to look at the claimant because she did not appear well. She stated that she was asked by Art Hajdus, one of Rich's managers, to prepare a written statement of her observations on December 7, 2017. That statement was consistent with her testimony. In that statement, Kruzolek wrote that the claimant often complained of high blood pressure, stating that it was a family problem. According to Kruzolek, the claimant never told her on December 2, 2017, that she had injured her back. Kruzolek testified that she wrote the statement in Polish and that it was later translated into English. She acknowledged that she was not in the cooler with the claimant on December 2, 2017, and that the claimant could have injured herself when she was not present.

Wladyslawa Trznadel, testified that she works at Rich's as a vegetable peeler and that she works in the same room as the claimant. According to Trznadel, she saw the claimant in the morning of December 2, 2017, at approximately 8:00 a.m. when they both started work. She testified that the claimant looked pale and

that the claimant stated that she did not feel well but did not say why. Trznadel stated that the cooler was about 20 meters from her workstation and that she never heard the claimant scream on December 2, 2017. Trznadel testified that she never saw the claimant slide any crates or boxes on the floor. She did witness Paluch sit the claimant down in a chair and call her daughter. Trznadel testified that she never heard the claimant say that she had hurt her back on that day or that her back hurt. She stated that she observed the claimant working on December 2, 2017, and periodically saw her go to the cooler and bring back boxes and crates using a cart. According to Trznadel, the claimant did not appear to be in pain at any time when she came back from the cooler. Trznadel admitted that she could not see the cooler from her workstation and did not see the claimant while she was in the cooler. She testified that she had no knowledge as to whether the claimant was injured while in the cooler on December 2, 2017. Trznadel also gave a written statement in Polish that was translated into English. The written statement was consistent with her testimony. In that statement, Trznadel wrote that she had seen the claimant with the same problems on prior occasions and that she had to go home due to high blood pressure. Trznadel also wrote that the claimant had complained to her many times of having high blood pressure.

Ostrowska testified that she is employed by Rich's as a cook and that, on December 2, 2017, she saw the claimant in the kitchen several times that morning. At approximately 10:00 a.m., she saw the claimant seated in a chair with Paluch and Natalia, the claimant's daughter, present. According to Ostrowska, the claimant did not look well, and she complained of a headache and feeling faint. Ostrowska testified that she did not hear the claimant complain of back pain either while she was seated or when she and Paluch helped the claimant walk to Natalia's car. Ostrowska admitted that she did not see the claimant while she was in the cooler and did not see her have an accident. Ostrowska also gave a written statement in Polish that was translated into English. The written statement was consistent with her testimony. Ostrowska wrote that the claimant often complained of having high blood pressure.

Eliza Zacharow, Rich's customer service manager, testified that she saw the claimant on December 2, 2017, at approximately 8:00 a.m. and that she he did not look well. According to Zacharow, the claimant had complained of hypertension on prior occasions. She testified that, other than that initial encounter, she did not see the claimant again on December 2, 2017, and had no knowledge as to whether the claimant was injured while working on that date. Zacharow also prepared a written statement in English. The statement was consistent with her testimony and also noted that when she spoke to the claimant on December 2, 2017, the claimant complained of a headache due to hypertension. Zacharow also testified that she was the person who had translated the other witnesses' statements from Polish to English.

Paluch testified that the claimant was sent home from work on December 2, 2017, at approximately 10:00 a.m. after complaining of high blood

pressure. According to Paluch, this was not the first time the claimant had been sent home complaining of high blood pressure. She stated that the claimant often spoke about her hypertension that she had apparently inherited from her mother and that an ambulance was called for the claimant on two occasions prior to December 2, 2017. Paluch testified that, at approximately 9:00 a.m. on December 2, 2017, she was notified by Kruzolek that the claimant "feels bad again." She stated that, when she got to the claimant's workstation, she found the claimant standing and labeling soups. Paluch testified that the claimant told her that she had high blood pressure and that she had not slept the entire night before. According to Paluch, it was at that point that she told the claimant to sit down. She testified that the claimant did not tell her that she was injured lifting crates or report experiencing back pain, and she did not hear the claimant tell anyone else that she was injured while working or that she had a back problem. Paluch stated that there were three other employees in the kitchen at the time: Kruzolek, Trznadel, and Ostrowska. Paluch testified that she told the claimant to call her daughter and that the claimant's daughter, Natalia, arrive about 20 to 30 minutes later. According to Paluch, the claimant had to be assisted out of the store. In a written statement that Paluch wrote for Rich's insurance carrier concerning the events of December 2, 2017, she stated that the claimant "did not even tell me that she felt bad that day." According to her written statement, it was another worker that notified her concerning the claimant's condition. Paluch admitted that the claimant was assisted out of the store. The claimant denied telling Paluch on December 2, 2017, that she was having an episode of high blood pressure.

The claimant testified that, on Monday, December 4, 2017, Natalia took her to the office of Dr. Bohdan Dudas, her family physician. Dr. Dudas's notes of that visit state that the claimant reported acute low back pain and that she had "picked up big boxes of salads Saturday at work." She complained of low back pain, radiating to her left leg with spasms. Lumbar x-rays were taken that revealed stable mild to moderate spondylitic changes of the mid to lower lumbar spine with greatest involvement at L4-5 when compared to films taken in December 2015. The x-rays also revealed that the milder disc space narrowing at L3-4 and L5-S1 was unchanged. Dr. Dudas diagnosed a lumbar strain, prescribed medication, and placed the claimant on off work status. The claimant testified that Dr. Dudas referred her to Dr. Yang.

On December 6, 2017, the claimant presented to Dr. Yang. In his notes of that visit, Dr. Yang wrote that the claimant gave a history of having developed pain in her back 5 days earlier after lifting a heavy object at work. The claimant reported that her pain had improved but that she was still experiencing pain across her low back extending upwards, along with left outer foot numbness. Dr. Yang noted the claimant's 2015 L4-5 discectomy. He recorded that the results of his neurological exam of the claimant appeared normal. Dr. Yang's impression on examination was that the claimant had stable mild spondylitic changes of the mid to lower lumbar spine with the greatest involvement at L4-5. He diagnosed a herniated disc. In a

separate note, Dr. Yang diagnosed lumbar disc displacement without myelopathy and a lumbar strain. He prescribed physical therapy for the claimant and held her off from work. He also noted that, if the claimant did not improve with therapy, she should have a lumbar MRI.

The claimant had the recommended MRI on December 29, 2017. The radiologist's report states that the scan revealed: a broad-based 4 to 5 mm L3-4 disc herniation with extruded pulposus and generalized spinal stenosis and neuroforaminal narrowing; a posterior and right sided 2 to 3 mm L4-5 disc herniation indenting the thecal sac with bilateral neuroforaminal stenosis, right greater than left, and discogenic endplate changes with loss of disc height; and a road-based 3 to 4 mm posterior L5-S1 herniation indenting the thecal sac with mild bilateral foraminal narrowing.

The claimant next saw Dr. Yang on January 5, 2018. The claimant reported some improvement in her symptoms with physical therapy and that her left knee pain had resolved. She still complained of low back pain radiating to her right side when she moved. Dr. Yang noted the MRI findings and wrote: "I continue to suspect her back pain is likely muscular in origin." He did not recommend a spinal fusion. He also noted that the claimant reported being uncomfortable if her legs were still, and he recommended that she see her primary care physician or a neurologist about restless leg syndrome.

On January 8, 2018, Dr. Dudas completed a form so that the claimant could obtain a disability placard from the Secretary of State. In that document, Dr. Dudas indicated that the claimant: cannot walk without an assistive device or human assistance; is severely limited in her ability to walk due to an orthopedic condition; and cannot walk 200 feet without stopping to rest.

The claimant was next seen by Dr. Dudas on January 9, 2018. The doctor's notes of that visit state that the claimant was crying and that she stated that her "life is completely different." She complained of constant low back pain with left leg radiculitis. Dr. Dudas noted that the claimant was wearing a back brace and was taking Amlodipine for high blood pressure. Dr. Dudas again recorded a history of the claimant having moved large boxes at work and having experienced a sudden onset of back pain on December 2, 2017. Dr. Dudas noted that "Dr. Yang will not operate" and recommended that the claimant get a second opinion from Dr. Clay. He again placed the claimant on off-work status.

Dr. Yang's January 9, 2018 notes state that Dr. Dudas had expressed concern that the claimant was in so much pain. Dr. Yang called the claimant's daughter and advised her that he would issue a prescription for the claimant to receive an epidural injection at L4-5. He noted that, if an epidural injection failed, an L3 to L5 fusion could be considered, the odds of success being 50/50.

The claimant did not see Dr. Clay as recommended by Dr. Dudas; rather, on January 18, 2018, she saw Dr. Mark Sokolowski, an orthopedic surgeon. The notes of that visit reflect that the claimant gave a history of an onset of severe back and leg pain after picking up containers of soup and salad while working on

December 2, 2017. Dr. Sokolowski's notes state that the claimant reported that she screamed for her coworkers and was helped to a chair in the managers (*sic*) office. She told him that physical therapy had provided some relief, but she still experiences severe low back pain. The claimant also reported that she had low back surgery in 2015 after which her symptoms improved, and that she was able to work for nearly 2 years thereafter until December 2, 2017. According to Dr. Sokolowski's notes, the claimant had a history of hypertension. Dr. Sokolowski reviewed the radiologist's report of the claimant's MRI, noting that it revealed moderate stenosis at L3-4 and a large left L4-5 herniation with relative protrusion of the disc height. Dr. Sokolowski found that the claimant's pre and post 2015 MRI's showed interval resolution of the L4-5 disc herniation. He diagnosed the claimant as suffering from lumbar pain and radiculopathy. He also noted his belief that, since the claimant had no symptoms for two years after surgery and her MRI showed resolution of the disc post-surgery, the work accident rendered her L4-5 disc changes and foraminal stenosis symptomatic, precipitating the onset of lumbar pain and radiculopathy. Dr. Sokolowski prescribed 4 more weeks of physical therapy and a Medrol dosepak for the claimant and recommended that she remain off of work until February 20, 2018. He noted that, if the claimant showed no improvement, the claimant should have an epidural injection at L4-5.

At the request of Rich's, the claimant was examined on January 29, 2018, by Dr. Babak Lami, an orthopedic surgeon. He testified that the claimant reported that she was moving boxes while working when she experienced back pain. He also testified that the claimant reported repetitive lifting of boxes as the cause of her pain but did not report a specific incident, either verbally or in her intake form. Dr. Lami stated that the claimant complained of back pain, pain in her left leg below the knee, and numbness. She also reported having undergone back surgery in 2015 and that she had a history of hypertension. Dr. Lami testified that he reviewed the claimant's medical records and found his neurological exam of the claimant to be normal. He diagnosed the claimant as suffering from low back pain without radiculopathy and left ankle pain. He also noted some residual numbness in her distal left leg. According to Dr. Lami, the claimant's condition, both before and after her alleged accident, involved degenerative lumbar changes. He stated that the claimant's December 4, 2017 x-rays showed lumbar arthritis with no significant changes from her 2015 films. He stated that, even if the claimant had an acute lifting incident on December 2, 2017, it would have involved an acute back sprain, at most. Dr. Lami admitted that a lifting incident can aggravate a preexisting back condition but asserted that a strain and an aggravation of a preexisting condition are not the same. He acknowledged that Dr. Yang's post-surgical report of April 15, 2015, noted that the claimant reported no leg pain and only numbness on the left dorsal foot. However, he concluded that Dr. Yang's note of December 30, 2015, stating that he discussed the possibility of the claimant having a spinal fusion, suggested that her back condition had progressed post-surgery. Dr. Lami admitted that he found no records of any treatment for, or complaints of, back pain following the

claimant's August 18, 2015 visit with Dr. Yang until her December 4, 2017 visit with Dr. Dudas. He also admitted that he found no information reflecting that the claimant was unable to work during that time period but stated that because the claimant was able to work did not mean that she had no ongoing symptoms. Based upon his review of the claimant's post December 2, 2017 MRI, her subjective complaints, demeanor and behavior, Dr. Lami concluded that the claimant's complaints are out of proportion to her condition. He testified that: "I really didn't find an injury to her back given the amount of pain she reports, her objective findings on exam and her MRI." Dr. Lami testified that the claimant's December 2017 MRI did not indicate any acute findings. It did reveal degenerative changes from L3 to S1, moderate at L3-4, severe at L4-5, and mild at L5-S1. According to Dr. Lami, the claimant had no clinical condition related to an L3-4 herniation. Although Dr. Lami had not reviewed the actual films of the claimant's December 21, 2015 MRI, from the radiologist's report of that scan he found no difference from the results of the claimant's 2017 scans. Dr. Lami was of the opinion that the claimant was not a surgical candidate, she did not require further treatment as a result of the December 2, 2017 event, and she had reached maximum medical improvement.

The claimant next saw Dr. Sokolowski on February 20, 2018, and reported steady improvement in her symptoms with therapy. Dr. Sokolowski continued the claimant on off-work status through April 18, 2018, and advised her to continue with physical therapy to be followed by a work conditioning program.

Matt Morgan, a private investigator, testified that he was engaged to conduct surveillance of the claimant. He stated that, on February 23, 2018, he videotaped the claimant. That video shows the claimant backing her car out of her garage at 11:19 a.m. and driving to a hair salon, arriving at 11:28 a.m. The video depicts the claimant walking unassisted and with no discernable limp from her car to the salon; a distance of approximately 83 feet. Morgan acknowledged that he did not observe the claimant while she was in the salon. At approximately 12:30 p.m., the claimant is seen exiting the salon and walking back to her car. The claimant then drove to Quest Physical Therapy (Quest), arriving at 12:41 p.m. She is seen exiting her car and walking into the facility unassisted and with no discernable limp. Morgan testified that he did not observe the claimant while she was in Quest. At approximately 1:51 p.m., the claimant exited Quest and drove to a TJ Maxx store. She parked her car and walked approximately 310 feet to the store. The claimant was in that store from 2:27 p.m. until 3:20 p.m. Morgan stated that he did not observe the claimant while she was in the store. The claimant admitted that, while she was in the store, she was either walking or standing. Upon exiting the store, the claimant returned to her car and is seen opening both doors on the passenger side of the vehicle and then leaning into the rear seat while standing on only her right leg. Morgan testified that, during the time that he observed the claimant, she did not appear to have any physical difficulties. He admitted that he could not always see the claimant's face or whether she was grimacing.

In a note dated March 13, 2018, Dr. Sokolowski wrote that the claimant had called requesting an urgent appointment due to increased back and leg pain. He advised the claimant not to begin work conditioning and prescribed a left L4-5 epidural injection.

On April 11, 2018, the claimant reported to Dr. Sokolowski that she continued to experience back pain, and he again recommended that she receive an epidural injection. Dr. Sokolowski's notes of that date indicate that he continued the claimant on off work status and ordered a functional capacity evaluation.

The claimant next saw Dr. Sokolowski on May 10, 2018, complaining of back and leg pain. According to Dr. Sokolowski's notes of that visit, the claimant had an antalgic gait and a positive left straight leg raise. He also noted that the epidural injection he recommended had not yet been authorized by Rich's insurance carrier. Dr. Sokolowski continued the claimant on off duty status, again recommended an epidural injection, and prescribed Tramadol. The claimant testified that Dr. Sokolowski also referred her to a pain specialist, Dr. Kurzydlowski.

Eric Flanagan testified that he is a vocational consultant and that he was retained to prepare a video job analysis of the claimant's job duties as a soup labeler and the tasks involved in moving soup from the cooler. He identified the video that he prepared. According to Flanagan, the buffet position at Rich's falls into the light physical demand category. He testified that he determined that a soup worker would lift crates 30 to 50 times during an 8-hour shift. He stated that the crates containing 15 soups weighed approximately 18 pounds. He admitted that he was not aware of any products other than soup being moved and did not weigh any other products at the store.

The claimant testified that her pain level fluctuates. She stated that she takes painkillers when needed, but that there are days when she does not require medication. *Parys v. Ill. Workers' Comp. Comm'n*, 2021 IL App (1st) 210601WC-U, P4-P34, 2021 Ill. App. Unpub. LEXIS 1955, ¶ 2-25

The Appellate Court further notes that Petitioner "was treated for lumbar pain and radiculopathy from December 4, 2017, through May 10, 2018, by Drs. Dudas, Yang, and Sokolowski, and the xrays taken of the claimant's spine on December 4, 2017, and the MRI scan of her spine taken on December 29, 2017, both reflect that she suffers from a condition of low-back ill-being. Further, Dr. Sokolowski opined that the claimant's work accident rendered her L4-5 disc changes and foraminal stenosis symptomatic, precipitating the onset of lumbar pain and radiculopathy." *Parys*, 2021 IL App (1st) 210601WC-U P41.

Finally, the Court notes, "[c[learly, there are inconsistencies in the claimant's testimony relating to her hypertension and there are unresolved issues relating to the nature and extent of her condition of low-back-ill-being, whether the claimant's current condition of low-back-ill-being is causally related to her alleged work-related accident of December 2, 2017, and notice." *Parys*, 2021 IL App (1st) 210601WC-U P42.

Notice

The Request for Hearing reflecting the parties' trial stipulations was entered into evidence as Arbitrator's Exhibit 1 (ArbX1). Petitioner claimed and Respondent agreed that notice was given of the accident within the time limits stated in the Act thus stipulating that Notice was not disputed by Respondent. (ArbX1)

Petitioner's Credibility

As the Appellate Court noted, there were inconsistencies in the Petitioner's testimony relating to her hypertension, however, there were other inconsistencies that also taint Petitioner's credibility. For instance, the surveillance video taken on February 23, 2018, shows Petitioner went to a hair salon, followed by therapy and then walking and shopping in a store for just short of an hour. The Commission notes that the investigator, Morgan, conceded he did not observe Petitioner in the store, however, Petitioner conceded that, while she was in the store, she was either walking or standing. Upon exiting the store, the claimant returned to her car and is seen opening both doors on the passenger side of the vehicle and then leaning into the rear seat while standing on only her right leg. Morgan testified that, during the time that he observed the claimant, she did not appear to have any physical difficulties. He admitted that he could not always see the claimant's face or whether she was grimacing. Nonetheless, the Commission finds that while the surveillance video is limited, the several hours of video also belies Petitioner's testimony regarding her condition.

The Commission finds that the surveillance activity does not comport with what Petitioner was telling her treating physician, Dr. Sokolowski, at that time. Further, at the time of trial the Arbitrator noted Petitioner was unable to ambulate without physical assistance, and testified to debilitating pain. On January 8, 2018, Dr. Dudas provided Petitioner with a Certification for Parking Placard/License Plates to be submitted to the Secretary of State that represented that Petitioner could not walk more than 200 feet unassisted for a period of six months. The surveillance video impugns the medical records especially Dr. Dudas's certification.

Petitioner also testified to wearing a back brace as a result of her condition, and testified that it was provided by physical therapy yet there is no mention in the therapy records of a back brace being provided. (PX5) Petitioner did not wear the brace at either of the hearings. (T. 102) Petitioner told Dr. Dudas on January 9, 2018, that the brace was from therapy and reported to Dr. Dudas Dr. Yang would not operate. (PX2) Dr. Dudas referred Petitioner to Dr. Clay, yet Petitioner did not consult Dr. Clay.

Causal Connection

After her lumbar spine surgery in March 2015, Dr. Yang noted at his April 15, 2015, office visit that Petitioner recovered almost complete motor function in the left foot and her left leg pain had resolved. Dr. Yang documented that he told Petitioner numbness takes a much longer period

to resolve and may be permanent if there is sufficient nerve damage prior to surgery. On August 19, 2015, Petitioner reported to Dr. Yang she also started to feel pain extending down her left leg which occurred when she flexes to put on socks, and sometimes with episodic numbness which recovers. (PX3) When Petitioner saw Dr. Yang on January 5, 2018, he conducted a physical exam. Dr. Yang's "Plan" documented that Petitioner had no radicular pain at that time and he did not recommend spinal fusion for axial back pain typically at that time. (PX3)

When Dr. Lami examined Petitioner on January 29, 2018, he found she had low back pain without any radiculopathy or any symptoms corresponding to known dermatomes. (RX11, 17, 18) Dr. Lami testified that Petitioner reported "some symptoms which involved the distal left leg. That's below the knee on the left side. She described pins and needles on the outside of the left leg, which is the lateral aspect of the knee, to the ankle, and aching which involved her ankle and her toes on the left side. She did not have any symptoms or pain from her left buttock to the knee." (RX11, 11-12)

Dr. Lami testified that he reviewed Petitioner's March 24, 2015, lumbar spine MRI, MRI for the lumbar spine from December 21, 2015, December 4, 2017 x-rays and images and the report from the lumbar spine MRI from December 29, 2017. (RX11, 13-14, 21) Dr. Lami reviewed the December 2015 lumbar spine radiology report. Dr. Lami explained from the previous surgery she had some residual numbness in her distal left leg. (RX11, 18) He went on to explain the purpose of an epidural steroid injection is to help radicular symptoms, whereas Petitioner has mostly central axial back pain. (RX11, 19) Dr. Lami would not operate on her, and opined that her condition is not amenable to surgical correction. Assuming that her job requires her to lift up to 20 pounds, there would be no reason Petitioner would not be able to perform that job based upon his examination of her. Dr. Lami opined that at the time he saw her, she did not require any further treatment. (RX11, 20) Dr. Lami further opined Petitioner reached a state of maximum medical improvement as it relates to December 2017. (RX11, 21)

Dr. Lami also testified that he did not find an injury to her back given the amount of pain she reports, her objective findings on exam and her MRI. (RX11, 21) Dr. Lami found no acute findings, however, similar to the radiologist, he found the December 29, 2017, lumbar spine MRI showed degenerative changes mainly at L3-4 and L4-5. At L4-5 were severe degenerative changes, L3-4 were moderate, and mild degenerative changes at L5-S1. He did not find a herniated disc as "like an acute finding, rather degenerative changes, with discs that protrude and herniate" and Dr. Lami opined Petitioner did not ever have clinical symptoms from a herniation at L3-4, neither verbalized to him nor any other doctor at the time of his exam. (RX11, 22)

Dr. Lami clarified that he relied on the radiologist's interpretation of the 2015 MRI and did not review the actual images. Dr. Lami opined "the description written by radiology appears to be similar to what we –what we see in 2017." (RX11, 23)

On cross examination, Dr. Lami opined that his review of a medical record from February 20, 2015, is relevant to his opinion because the 2015 note documents that a podiatrist diagnosed

Petitioner with "RSD on the left side." Dr. Lami opined in 2018, she is complaining about left leg pain that could be RSD. (RX11, 40.) When asked what contradicts the claim that Petitioner did well after her 2015 surgery, Dr. Lami testified that it was not the visits, it was the repeat MRI after surgery that is not a sign of someone doing well. The MRI was on December 21, 2015, and then on December 30th, she saw Dr. Yang. Dr. Lami opined that "someone being offered a possible L3-4, L4-5 fusion is not a sign of someone who is doing really well." And although Dr. Lami was not aware of any records after that visit, he opined that "symptoms do not spontaneously go away the next day." (RX11, 49) Dr. Lami acknowledged that he knew she worked and he conceded that he had no records that she was unable to work between December 2015 and December 2017. Dr. Lami opined it was not necessarily true that you could assume she was asymptomatic. (RX11, 50) The fact that there would be no records was not unusual, since Petitioner did not want the fusion surgery Dr. Yang had suggested in December 2015, and he saw no reason Petitioner would continue to treat thereafter, and no reason to not work even if she had symptoms. (RX11, 51,68)

Dr. Lami testified that Petitioner's diagnosis after the December 2, 2017, accident was a back sprain. (RX11, 55, 57)

On redirect examination, regarding the x-ray of December 4, 2017, Dr. Lami opined his interpretation of that report was that Petitioner had stable moderate degenerative narrowing at L4-5 and disc space narrowing at L3-4 and L5-S1, similar and unchanged from the previous MRI from December 2015. (RX11, 64, 65) Dr. Lami reviewed the December 30, 2015, MRI report and noted Dr. Yang ordered the MRI. He agreed that between August 19, 2015, and December 30, 2015, Dr. Yang felt the Petitioner needed an MRI of her lumbar spine. Dr. Lami agreed that on December 30, 2015, Dr. Yang discussed the possibility of a posterior interbody fusion at L3-L4 and L4-L5. The notes from Dr.Yang's office visit dated January 9, 2018, document that there was a discussion of interbody fusion at L3-4 and L4-5, the same procedure discussed two years prior. (RX11, 68-69)

Dr. Lami opined that a physician treats the patient based on the MRI findings, physical exam findings and subjective complaints to improve their status. Based on the multiple mechanisms of injury provided to him he diagnosed Petitioner with a back sprain and that she is not surgical candidate. (RX11, 71)

"Dr. Sokolowski opined that the claimant's work accident rendered her L4-5 disc changes and foraminal stenosis symptomatic, precipitating the onset of lumbar pain and radiculopathy." *Parys*, 2021 IL App (1st) 210601WC-U, P41. Dr. Sokolowski did not testify and offered his opinion solely through his treating records. Although Dr. Sokolowski's initial office notes reveal that he reviewed Petitioner's December 21, 2015 MRI report, he did not review the actual image as he did of her pre-surgical lumbar MRI dated March 24, 2015, and the December 29, 2017, lumbar spine MRI. (PX6, 13) He also reviewed only the report of the December 4, 2017, lumbar x-ray, not the images. (PX6, 12)

On February 20, 2018, Dr. Sokolowski noted with improvement in her radiculopathy with therapy that no injection was recommended. Dr. Sokolowski ordered an FCE on April 11, 2018, to "delineate her capabilities." (PX6) Finally, On May 10, 2018, Dr. Sokolowski referred Petitioner to a pain specialist. (PX6)

The Quest Physical Therapy notes from December 13, 2017 through March 9, 2018, reflect Petitioner's number one diagnosis is lumbar sprain/strain and number two diagnosis is muscle spasm of back. On December 13, 2017, the notes reflect left leg pain, however, Petitioner denied numbness or tingling of bilateral legs. On March 19, 2018, the Quest Physical Therapy typed notes reflect Petitioner reported lumbar pain and left leg radiculopathy to the left foot, however, when describing, she notes tingling and numbness sensation below knee and in her left foot. Petitioner also reported having pain increase after one block walking and at that time per the doctor's order, Petitioner was to stop therapy. All the notes under Functional Assessment appear to be "cut and pasted" since the re-evaluation note of January 17, 2018. (PX5)

The Commission finds Dr. Lami is more credible than Dr. Sokolowski based on the fact that Dr. Lami's opinions comport with those of Dr. Yang, Petitioner's treating orthopedic surgeon in 2015, who initially treated Petitioner after the December 2, 2017 accident. Shortly after the accident, on December 6, 2017, Dr. Yang's first impression after examining the Petitioner was that she had a muscle sprain. On January 5, 2018, Dr. Yang's notes, in the section "History of Present Illness" document that Petitioner had pain in her low back with a little radiation to the right side, however, under his "Plan" he notes she has no radicular pain at this time. He continued to suspect her back pain "is likely muscular in origin" and noted he "did not recommend spinal fusion for axial back pain typically." (PX3, 1, 3) The Commission acknowledges that in a subsequent note of telephone encounter with Petitioner's daughter, Dr. Yang recommended Petitioner could be referred to try epidural steroid injection and if injections fail, a spinal fusion from L3-L5, although he emphasized the success rate would be in the 50% range. This was the same surgery he recommended in 2015.

Petitioner returned to her PCP, Dr. Dudas and reported that Dr. Yang would not operate, and although Dr. Dudas referred her to Dr. Clay, Petitioner instead chose to treat with Dr. Sokolowski. Dr. Lami's opinions, specifically that Petitioner had no radiculopathy and that Petitioner is not a surgical candidate, comport with Dr. Yang's notes. Dr. Lami opined that an epidural steroid injection would not be beneficial for Petitioner's symptoms of central axial back pain, and are not prescribed for radicular pain. (RX11, 19) The Commission finds these opinions more reliable than Dr. Sokolowski who was consulted only after Dr. Yang opined that Petitioner had a muscle sprain. His notes indicate he relied solely on Petitioner's self-reported medical history with no documentation regarding her prior left leg and ankle complaints or diagnosis of RSD. (PX6) The Commission finds Dr. Sokolowski's causation opinion is, therefore, not as credible as Dr. Lami's who benefited from review of Petitioner's pre-accident medical records. (RX11, 13) Therefore, Dr. Sokolowski's opinion is entitled to little weight. *See*, *e.g.*, S*unny Hill of Will County v. Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 130028WC, 14 N.E.3d 16, 383 Ill. Dec. 184 (Expert opinions must be supported by facts and are only as valid as the facts underlying them.)

Medical Bills

Petitioner attached to the Request for Hearing a summary of those outstanding medical bills purported to be related to Petitioner's injuries sustained as a result of the accident of December 2, 2017. (ArbX1) Petitioner also submitted into evidence Petitioner's Exhibit 8, documents to support the summary of unpaid medical bills attached to the Request for Hearing. Respondent had no objection regarding the amount of bills listed as unpaid charges per the Illinois Workers' Compensation Fee Schedule, however, disputed liability for those bills based upon a causation dispute.

Petitioner was seen by Dr. Babik Lami on January 29, 2018, pursuant to §12 of the Act and based upon Dr. Lami's opinion that Petitioner was at MMI at that time, the Commission finds that Respondent is liable for the medical bills listed in the attachment to the Request for Hearing (ArbX1) and supported by the records in Petitioner's Exhibit 8, for treatment related to Petitioner's lumbar back strain from December 2, 2017, through January 29, 2018.

Temporary Total Disability

Petitioner was seen by Dr. Babik Lami on January 29, 2018, pursuant to §12 of the Act and based upon Dr. Lami's credible opinion Petitioner was at MMI at that time. That opinion was bolstered by the video surveillance from February 2018, in contrast to the contemporaneous records of Dr. Sokolowski. Therefore, the Commission finds that Petitioner has sustained her burden of proving that she is entitled to temporary total disability for the period commencing December 3, 2017, through January 29, 2018, representing 8 2/7 weeks, at a rate of $320.02 per week.

Nature and Extent

According to Section 8.1b(b) of the Act, for injuries that occur after September 1, 2011, in determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

(i) The reported level of impairment pursuant to AMA guidelines;
(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.

In considering the degree to which Petitioner is permanently partially disabled as a result of the work-related accident, the Commission weigh the five factors in Section 8.1b(b) of the Act as follows:

(i) No AMA permanent partial disability impairment rating was submitted into evidence by either party, so this factor is given no weight.
(ii) With regard to subsection (ii) of §8.1b(b), the occupation of the Petitioner, the

Commission notes that Petitioner was employed as a grocery store buffet worker. She is required to be on her feet throughout the workday serving customers, weighing meal/grocery products, preparing lunches and performing work as a cashier which could involve doing some lifting depending on the assignment. Thus, this factor is assigned greater weight.

(iii) Petitioner was 50 years old at the time of the accident. Because she can be expected to have approximately 15-20 years of work life remaining until retirement, this factor is assigned greater weight.

(iv) There is no evidence of reduced future earning capacity in the record thus this factor is assigned no weight.

(v) Regarding evidence of disability corroborated by the treating medical records, as a result of the work-related accident of December 2, 2017, Petitioner testified at Arbitration, "that her pain level fluctuates. She stated that she takes painkillers when needed, but that there are days when she does not require medication." *Parys,,* 2021 IL App (1st) 210601WC-U, P34. Petitioner also testified that she can walk, but if she walks for a long time, she feels pressure in her leg and her leg hurts although she could not quantify "a long time" testifying she "never measured that." (T. 90) Petitioner testified she can walk more than 10 minutes, did not know if she could walk 20 minutes, but reiterated, "I can walk." (T. 91) Petitioner was treated for "lumbar pain and radiculopathy from December 4, 2017, through May 10, 2018, by Drs. Dudas, Yang, and Sokolowski.*** Further, Dr. Sokolowski opined that the claimant's work accident rendered her L4-5 disc changes and foraminal stenosis symptomatic, precipitating the onset of lumbar pain and radiculopathy." *Parys*, 2021 IL App (1st) 210601WC-U, P41. She was prescribed physical therapy and referred intermittently for epidural steroid injection. On January 5, 2018, Dr. Yang reported Petitioner had no radiculopathy. (PX3) Dr. Lami found no radiculopathy when he examined Petitioner on January 29, 2018. (RX11) Further, the surveillance from February 2018 does not comport with Dr. Dudas's description when filling out the application for Petitioner to have a parking disability placard. Petitioner was off work 8-2/7 weeks, from December 3, 2017, through January 29, 2018, at which time Dr. Lami opined that she was at MMI. Petitioner remained off work at the time of the Arbitration hearing.

Based on the foregoing factors, the Commission finds Petitioner sustained 2.5% loss of use of a person for injuries sustained under §8(d)2 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission's prior Decision on Review is reversed on the issue of accident and modified as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $320.02 per week for a period of 8-2/7 weeks, commencing from December 3, 2017, through January 29, 2018, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay for reasonable, related and necessary low back medical expenses under §8(a) and §8.2 of the Act as itemized in Petitioner's Exhibit 8 from December 3, 2017, through January 29, 2018.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is entitled to have and receive from Respondent the sum of $288.00 per week for a further period of 12.5 weeks, as provided in §8(d)2 of the Act, because the injuries sustained caused 2.5% loss of use of a person.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the Petitioner compensation that has accrued and shall pay Petitioner the remainder, if any, in weekly payments.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $9,100.00. The party commencing the proceeding in the Circuit Court shell file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 27, 2022
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/s/*Kathryn A. Doerries*
Kathryn A. Doerries

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC016942
Case Name	Robert Danley Jr v. City of Chicago
Consolidated Cases	
Proceeding Type	Petition for Review Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0368
Number of Pages of Decision	3
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Michael Youkhana
Respondent Attorney	Matthew Novak

DATE FILED: 9/27/2022

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT DANLEY, JR.,

Petitioner,

vs. NO: 18 WC 16942

CITY OF CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent and notice given to all parties, the Commission, after considering all issues and being advised of the facts and law, finds that the Order drafted by Arbitrator Elaine Llerena on February 25, 2022 is interlocutory, and therefore, the Commission lacks jurisdiction to review said Order. For this reason, the Commission must dismiss Respondent's Petition for Review.

In the Order dated February 25, 2022, Arbitrator Llerena denied Respondent's motion to strike Petitioner's request for a §19(b) hearing and found that the law of the case doctrine did not bar Petitioner from pursuing a second §19(b) hearing regarding his alleged right shoulder condition. Respondent thereafter filed a Petition for Review asking the Commission to review the February 25, 2022 Order.

However, after careful review, the Commission finds that the Order at issue is interlocutory, because it did not decide the case before it on the merits. Illinois courts have long held that "only final judgments or orders are appealable [as of right] unless the particular order falls within one of the…specified exceptions enumerated by Illinois Supreme Court Rule 307." *See Mund v. Brown*, 393 Ill. App. 3d 994, 996 (5th Dist. 2009) (quoting *Rogers v. Tyson Foods, Inc.*, 385 Ill. App. 3d 287, 288 (2008)). "A judgment is final if it determines the litigation on the merits, and it is not final if the order leaves a case pending and undecided." *Supreme Catering v. Ill. Workers' Comp. Comm'n*, 2012 IL App (1st) 111220WC, ¶ 8. Thus, the denial of a motion to dismiss is not a final and appealable order. *See e.g.*, *Mund*, 393 Ill. App. 3d 994.

Pursuant to the relevant case law, the Commission finds the February 25, 2022 Order is not final and appealable. This Order ruled only on Respondent's motion to strike without contemplating or deciding the merits of the case. Since this Order is interlocutory and not appealable, the Commission must dismiss the Petition for Review before it and remand the matter to the Arbitrator for a further hearing on all pending issues.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent's Petition for Review is hereby dismissed, as the Commission lacks jurisdiction to review the interlocutory Order at issue.

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

September 27, 2022

DLS/met
O-8/10/22
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/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	19WC013384
Case Name	Steven Poteete v. JB Hunt Transport
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0369
Number of Pages of Decision	31
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Michael Jasper

DATE FILED: 9/28/2022

/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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Steven Poteete,

Petitioner,

vs. No. 19 WC 013384

JB Hunt Transport,

Respondent.

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

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, temporary disability and prospective medical care, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission,* 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Arbitrator found all medical care Petitioner received was reasonable, necessary and causally related to his accident. The Arbitrator noted that many if not all of Petitioner's bills through June 11, 2019 were processed and paid pursuant to the fee schedule. The Arbitrator acknowledged that, "no medical bills have been introduced into evidence at this hearing and, therefore, [the Arbitrator] does not address this issue at this time." Notwithstanding this language, the Arbitrator awarded Petitioner the remaining unpaid balances, if any, on Petitioner's medical bills.

The Commission views the evidence differently than the Arbitrator. Because no medical bills were offered or admitted into evidence, there was an insufficient basis to award Petitioner the balances remaining on any such bills. The Commission therefore vacates that portion of the Arbitrator's decision which awards Petitioner the unpaid balances of his causally related medical bills.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 12, 2022, is hereby modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of the unpaid balances of Petitioner's medical bills is vacated.

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.

September 28, 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	19WC013384
Case Name	POTEETE, STEVEN v. JB HUNT TRANSPORT
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	28
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Michael Jasper

DATE FILED: 1/12/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 11, 2022 0.27%

/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)/8(a)

STEVEN POTEETE
Employee/Petitioner

v.

JB HUNT TRANSPORT
Employer/Respondent

Case # **19 WC 013384**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Joseph Amarilio, Arbitrator of the Commission, in the city of Chicago, on 11/16/2021. 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, **6/8/18**, 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 $**86,736.00**; the average weekly wage was $**1,668.00**.

On the date of accident, Petitioner was 59 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 $**29,076.58** for TTD, $**21,953.50** for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of $51,030.80.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $1,112.00 per week for 153-3/7 weeks, commencing 6/9/2018 through 11/18/2018 and from 5/19/2019 through 11/16/2021, as provided in Section 8(a) of the Act. The Parties have stipulated that all temporary partial disability benefits (TPD) benefits have been paid for the period of 11/19/2018 through 5/18/2019 representing 25-6/7 weeks and that none are due and owing.

Respondent shall authorize and pay for the surgery and related treatment recommended by Dr. Darwish.

Respondent shall pay to Petitioner penalties of $**0**, as provided in Section 16 of the Act; $**0**, as provided in Section 19(k) of the Act; and $**0**, as provided in Section 19(l) of the Act as penalties and fees are denied.

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

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

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

/s/ *Joseph D. Amarilio*

_____

Signature of Arbitrator Joseph D. Amarilio

JANUARY 12, 2022

BEFORE THE WORKERS' COMPENSATION COMMISSION OF ILLINOIS
ATTACHMENT TO 19(b)/8(a) ARBITRATION DECISION

STEVEN POTEETE,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No.: **19 WC 013384**
	)	
JB HUNT TRANSPORT,	)	
	)	
Respondent.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROCEDURAL HISTORY

Mr. Steven Poteete (Petitioner), by and through his attorney, filed an Application for Adjustment of Claim for benefits under the Illinois Workers' Compensation Act. Petitioner alleged that he sustained an accidental injury on June 8, 2018 while working in his capacity as a truck driver for JB Hunt Transport. (Respondent).

This matter was heard on November 16, 2021 before the Arbitrator in the City of Chicago and County of Cook pursuant to Section 19(b) and Section 8(a) of the Act. Petitioner testified in support of his claim for benefits. Additionally, Petitioner's treating orthopedic surgeon and Respondent's two Section 12 examiners testified by evidence deposition. The submitted exhibits and the trial transcript of the hearing were examined by the Arbitrator.

The parties proceeded to hearing on six (6) disputed issues: (1) whether Petitioner's current claimed conditions of ill-being to his neck and back are causally connected to the work accident; (2) whether Respondent is liable for medical treatment and medical bills incurred; (3) whether Petitioner is entitled to temporary disability

benefits, and if so for what time period; (4) whether Petitioner is entitled to prospective medical care; (5) whether Petitioner is entitled to penalties and attorney fees under § 19(k), § 19(l) and § 16 of the Act; and, (6) whether Respondent is entitled to credit for temporary total and temporary partial disability benefits. (Arb. Ex. 1)

II. FINDINGS OF FACT

Petitioner testified he had been employed as a local truck driver and spotter for the Respondent for about 27 years or 30 years as of the time of the hearing as he is "still on the books." (T. 11) On June 8, 2018, he was driving a semitruck for Respondent when the top of his truck collided with an overpass bridge. The impact caused his truck to suddenly stop – the truck's speed dropping from 25 mph to 0 mph within 10 or 15 feet. (T.12) Petitioner's body was jolted by the collision, and he struck his head on a storage compartment positioned at the top of his windshield, even though he was belted. (T.12) He sustained injuries to his head, back and neck. (T.13) He testified that he never had problems, symptoms, pain or numbness in the neck before this accident or his upper extremities. (T.13) He had also not had any problems or symptoms in the lower extremities before this accident. (T.13)

A City of Chicago Fire Department ambulance was dispatched and came to the scene of accident at the intersection of Bishop Ford and 130th Street. Petitioner was found by the paramedics to be seated in the cab and belted with lap and shoulder seatbelts. He also found to awake, alert, and oriented. Petitioner complained of neck pain and back pain radiating to his flank. (PX4 p.4) Petitioner was fitted with a cervical collar and transported on a spine board to the emergency department of MetroSouth Hospital. (PX4., p. 5; T.13)

Respondent introduced the relevant pages of the notes from MetroSouth Hospital Emergency Room. (RX5) The records reflect that Petitioner arrived on a backboard.

(RX5 p.12 of 82) Benjamin Garcia, D.O. authored an assessment in the notes at 11:19 a.m., documenting that the impact with the bridge jolted Petitioner, leading him to strike his head on the steering wheel. (RX5 p.12 of 82) No loss of consciousness was reported. Dr. Garcia also reported Petitioner's complaints of forehead and lateral neck pain. No complaints were documented of dizziness, blurry vision, midline neck pain, chest pain, contusion, abrasion, abdominal pain, back pain, numbness or weakness. Dr. Garcia's examination revealed lateral cervical paraspinal tenderness to palpation. (RX5 p.13 of 82) The differential diagnosis was a head injury and cervical spine injury. (RX5 p.13 of 82) Dr. Garcia sent Petitioner for a brain and cervical CT , both of which were unremarkable. (RX5 .13-82) At 11:37 am, the triage nurse documented chief complaints including pain to neck and back. (RX5 p.17 of 82) A pain assessment from the triage nurse also documented both back and neck pain. (RX5 p.18 of 82) Dr. Syamkumar Reddy also contributed notes at 2:01 pm, documenting lateral neck pain and frontal headaches. (RX5 p.16 of 82) Petitioner was given Norco, Valium and ibuprofen at discharge and told to follow up with a clinic. (RX5 p.20-21 of 82)

On June 12, 2018, Petitioner went to Advocate Medical Group and was seen by Khalid Baig MD. Petitioner reported the accident and his neck and back pain from the impact. (PX6 p.22) Petitioner reported that his neck and radiating back pain were improving. (PX6 p.23) The examination of the neck revealed continuing soreness. (PX6 p.23) The neck and low back were also documented as being painful with movement. (PX6 p.23) Petitioner was given a muscle relaxer (Cyclobenzaprine), a steroid Dosepak and Tramadol. (PX6 p.24) He was told to apply cool compresses on the neck and lower back. (PX6 p.24)

On June 18, 2018, Petitioner returned to Dr. Baig after completing his steroid Dosepak. (PX6 p.18) He reported some improvement of neck pain with the steroids and Flexeril. (PX6 p.19) The neck examination revealed pain with movement and a restriction of motion. (PX6 p.20) Some improvement was noted for the back pain.

(PX6 p.20) Diclofenac, Tramadol and cool compresses were prescribed. (PX6 p.21) Petitioner was advised to remain off work. (PX6 p.21)

By the July 2, 2018 visit with Dr. Baig, Petitioner's neck was slightly sore, an x-ray of his lumber spine was ordered to assess the back pain and radiation of pain into the right lower extremity, and Petitioner was referred for therapy. (PX6 p.16-18)

Petitioner returned to Dr. Baig on June 16, 2018 reporting some improvement with therapy. He had continuing pain in the right side of the neck with tingling and numbness of the right upper extremity. (PX6 p.13) Dr. Baig ordered a cervical MRI to assess the neck and a lumbar MRI for the back. (PX6 p.15) Respondent's nurse case manager attended the visit. (PX6 p.13) Dr. Baig noted in his musculoskeletal examination section that Petitioner still was not able to return to work. (PX6 p.15) Medications were continued. (PX6 p.15)

Neck and back MRIs were done in open MRI machine two days later. (PX6 p.4, 7)

Dr. Baig read the MRI scans at his July 24, 2018 visit, describing them as degenerative findings. (PX6 p.10) Petitioner still experienced tingling in his right hand and occasional tingling in the right leg. (PX6 p.10) Dr. Baig referred Petitioner for orthopedic and pain management treatment, continued the medications and therapy and kept him off of work. (PX6 p.12)

Therapy at Athletico ran from July 9, 2018 through August 20, 2018. (PX8) The initial couple of therapy visits focused on the thoracic and lower back even though the neck was also mentioned as being injured in the accident. (PX8 p.53) The therapist began focusing on the neck by the July 16, 2018 visit. (PX8 p.42) Numbness and tingling were documented coming down the right upper extremity, along with stiffness in the right side of the neck. (PX8 p.39) Those same complaints were documented in the rest of the visits. The July 23, 2018 visit noted increased radicular

complaints in the right lower extremity and right upper extremity. (PX8 p.31) The July 30, 2018 note indicated that therapy is not providing relief. (PX8 p.24) The August 1, 2018 note reports that he was soon going to see the pain specialist. (PX8 p.21) Therapy ended on August 20, 2018 with no improvement of his condition.

Petitioner next saw Dr. Howard Robinson on August 22, 2018 for pain management, complaining of significant low back pain with greater symptoms on the right side, and neck pain with greater symptoms on the right side. (PX2 p.16) At this point the back pain was worse than the neck pain, although he now had tingling in both hands which was worse when he extended his neck. (PX2 p.16) His symptoms were severe, shooting, stabbing and of a deep aching quality. (PX2 p.16) The numbness and tingling in the hands was constant and he had stiffness in the neck and the back. (PX2 p.16) Petitioner was currently off work and noted he was not able to do the physical requirements of his job. (PX2 p.16) Dr. Robinson read the cervical MRI as showing a C5-6 bulge with bilateral foraminal narrowing. (PX2 p.16) The lumbar MRI showed bulges at L4-5 and L5-S1 with narrowing at both levels. (PX2 p.16) The neck examination revealed a positive bilateral Spurling's maneuver result. (PX2 p.19) The low back exam revealed a positive Dural stretch test result. (PX2 p.19) Dr. Robinson's diagnosis for the back was a herniated lumbar disc. (PX2 p.20) He placed a hold on therapy, substituted Tizanidine for Cyclobenzaprine, and planned for epidural steroid injections. (PX2 p.20) He diagnosed the neck condition as a herniated cervical disc. (PX2 p.20)

Dr. Robinson performed the transforaminal epidural steroid injections on the right side at L4 and L5 on 9/5/18. (PX3 p.21)

Petitioner returned to Dr. Robinson on October 2, 2018, reporting significant relief of the back pain from the steroid injections. (PX2 p.9) However, the pain relief had started to fade and it was only 20% relief by that visit. (PX2 p.9) He remained off work. (PX2 p.9) He was also reporting 8/10 sharp shooting pain in the neck. (PX2

p.11) The low back pain was shooting down his legs, he had numbness in the right leg and weakness in the back when bending over and trying to stand back up. (PX2 p.11) He had neck pain and numbness and tingling into the arms. (PX2 p.11) He was having trouble sleeping. (PX2 p.11) Examination found a positive Dural stretch result and a positive Spurling's maneuver result. (PX2 p.12) Dr. Robinson assessed the cervical herniation as being at 20% improvement at this point, therapy had not worked, he was on light duty and using medication. (PX2 p.12) The back was improved, but Dr. Robinson still recommended repeat epidural steroid injections for the L4 and L5 levels. (PX2 p.12)

Dr. Robinson performed the second set of transforaminal epidural steroid injections on the right side at L4 and L5 on October 25, 2018. (PX3 p.66)

At the November 8, 2018 visit with Dr. Robinson, Petitioner reported a temporary improvement with the last set of epidural injections, followed by a return of his pain to the baseline levels. (PX2 p.2) He reported constant low back pain shooting down his right leg and numbness and tingling it the toes of the left foot. (PX2 p.4) The pain increased with standing, walking and bending. (PX2 p.4) While lying down, Tramadol and muscle relaxers improved the pain. (PX2 p.4) The same positive provocative tests results were found for the neck and back. (PX2 p.5) Dr. Robinson sent Petitioner for a surgical consultation for the lumbar spine and provided a light duty restriction. (PX2 p.5)

Petitioner started light duty work on November 19, 2018 and did this work for six months. (T.14) Respondent allowed only six months of light duty work for injured workers. (T.28) His complaints and condition did not change during this period. (T.13-15) His back was still numb, he had shooting pains to his lower back, and he still had all the neck complaints, including numbness, tingling into the fingers, hands and his neck. (T.15) The right upper extremity was more symptomatic, but the symptoms also went over to the left side. (T.15)

Petitioner saw Dr. George Miz on November 20, 2018, documenting 6/10 pain levels on the patient intake sheet. (PX7 p.6) Dr. Robinson was the referral source. Petitioner reported cervical spine pain radiating down both arms into his hands. (PX7 p.7) He had numbness and tingling into both arms and hands and aching in the neck along with headaches. (PX7 p.7) The cervical symptoms radiated from the neck down to the dorsum and radial sides of both hands with numbness and paresthesias in the same distribution. (PX7 p.7) The cervical symptoms had progressively worsened since the accident and he had no prior instances of cervical problems. (PX7 p.7) Dr. Miz thought the C5-6 level on the MRI corresponded well with his clinical picture. (PX7 p.9) Dr. Miz recommended that Petitioner have an anterior decompression and fusion at C5-6. (PX7 p.9) Tramadol and Tizanidine were continued as were the light duty restrictions which Robinson placed on him. (PX7 p.9, 12) Respondent did not approve the surgery.

Rather than approving the surgery, Respondent sent Petitioner to Dr. Wellington Hsu for a Section 12 examination on January 24, 2019. (RX2) Dr. Hsu diagnosed Petitioner with a cervical strain and spondylosis. (RX2 p.5) The strain was caused by the work accident. (RX2 p.6) Petitioner was still suffering from the strain and required treatment. (RX2 p.6) Dr. Hsu felt that Petitioner should engage in work hardening to help him reach maximum medical improvement. (RX2 p.7) He also thought Petitioner should be restricted from lifting more than 50 lbs., and bending, crouching and stooping on an occasional basis. (RX2 p.8)

Athletico discharged Petitioner from therapy on January 28, 2019, even though he had not been there since August 2018. (PX8 p.3)

Petitioner returned to Dr. Miz on June 11, 2019 for the low back component of the injury. (PX7 p.13) Dr. Miz noted they were still waiting for approval of the cervical surgery. (PX7 p.13) As to his back, Petitioner reported 6-9/10 pain levels of shooting,

stinging, burning and aching pain. (PX7 p.13) Prolonged sitting and positional changes made the pain worse and medication temporarily relieved the pain. (PX7 p.13) Dr. Miz noted that Petitioner's light duty had run out and he was no longer working. (PX7 p.13) Dr. Miz thought the open MRI was of suboptimal quality given the low magnet strength but he saw hydration loss in the lumbar spine, increased signal intensity in the facet joints at L3-4 and no obvious disc herniation or spinal stenosis. (PX7 p.15) Dr. Miz assessed the injury as involving lumbago with sciatica. (PX7 p.15) Dr. Miz noted that given his assessment, surgery was not the solution for the lumbar spine. (PX7 p.16) That assessment might change if he had a better-quality MRI which showed some problem. (PX7 p.16) Petitioner was released to return to work at a sedentary level, with restrictions against lifting more than 10 lbs. and no bending or stooping. (PX7 p.16)

Petitioner went for his DOT physical which he failed. Respondent terminated him effective June 24, 2019.

Respondent sent Petitioner for an independent medical examination with Harel Deutsch MD on May 10, 2019. Dr. Deutsch also agreed that Petitioner suffered a cervical strain from the accident but opined that he had no disability related to the injury and had positive Waddell responses. (RX1 p.5) Given the minimal cervical MRI findings and Waddell results, Dr. Deutsch did not see a reason for cervical surgery. (RX1 p.5) Nor did Petitioner need any other treatment for his neck pain. (RX1 p.5) Dr. Deutsch thought that Petitioner could return to work without restriction and that he suffered no permanent disability. (RX1 p.6)

On May 4, 2021, Petitioner went for a second opinion to Ashrat Darwish, M.D. at Hinsdale Orthopedic Associates. (PX5) Petitioner reported right sided neck pain and numbness and tingling into the right fingertips. (PX5 p.3) The symptoms were worse at night. (PX5 p.3) He also reported low back pain with occasional buttock and right lower extremity pain, although that was better following the steroid injections. (PX5

p.3) Dr. Darwish noted that the cervical MRI was of poor quality and sent Petitioner for better scans. (PX5 p.6) He also restricted Petitioner from work. (PX5 p.7) An updated cervical MRI was done on May 24, 2021. (PX5 p.8)

Dr. Darwish read the MRI at the June 22, 2021, visit and documented findings of a C3-4 right disc protrusion and a disc/osteophyte complex with moderately severe right foraminal narrowing. (PX5 p.11) At C5-6, the disc bulged to the right and left causing moderate right and left foraminal narrowing. (PX5 p.11) Dr. Darwish agreed with Dr. Miz that Petitioner was a candidate for a C5-6 anterior cervical discectomy and fusion due to the work accident. (PX5 p.11) Dr. Darwish continued restricting Petitioner from work. (PX5 p.11) Respondent again refused to approve the surgery. (PX5 p.13)

Dr. Darwish sat for his deposition on August 27, 2021. (PX1) Dr. Darwish is a board-certified orthopedic surgeon specializing in spinal surgery. (PX1 dep.ex.1) Dr. Darwish had reviewed Petitioner's prior medical treatment as well as the Section 12 reports. (PX1 p.8) His examination revealed a decreased range of motion in the cervical spine and tenderness to palpation of the neck muscles. (PX1 p.9) The MRIs from 2018 were of poor quality so he sent Petitioner for better scans. (PX1 p.10) The updated MRI was a closed MRI machine which was so much better quality than the 2018 scan. (PX1 p.11) The MRI revealed a disk bulge at C5-6, more toward the right side, causing moderate narrowing or impingement of the nerves at that level. (PX1 p.11) Dr. Dr. Darwish thought Petitioner suffered from cervical radiculopathy from the disk herniation and he recommended surgery. (PX1 p.12) Conservative management would no longer work this far out from the accident. (PX1 p.13) Dr. Darwish also causally related the diagnosis and need for treatment to the work accident from 2018. (PX1 p.13-14) His work restrictions were also needed and related to the accident. (PX1 p.15) Respondent challenged Darwish on his understanding of the timeline and specifically when the symptoms started in the upper extremities. Dr. Darwish had documented that the Petitioner had immediate neck and back pain

and his radicular symptoms came on after that. (PX1 p.19) He had personally looked at the 2018 MRI and read the radiologists report, but noted the scan was of such poor quality that it was difficult to plan out treatment based on that scan. (PX1 p.20) The updated MRI was dramatically better quality. (PX1 p.20) Even the poor scan from 2018 showed something relevant at C5-6. (PX1 p.21) Dr. Darwish was asked why the 2019 visit with Dr. Miz mostly talked about the lumbar spine issue. (PX1 p.30) Dr. Darwish admitted he was not familiar with Miz's practices, but that certain orthopedic doctors see patients for a single condition at a given visit. (PX1 p.30) That would explain why Dr. Miz was talking about the cervical spine at his first visit and the lumbar spine at his second. (PX1 p.30)

On February 5, 2020, Harel Deutsch MD gave his deposition (RX1) Dr. Deutsch is a board-certified neurosurgeon. (RX1 p.5) He examined Petitioner on May 10, 2019. (RX1 p.6) Dr. Deutsch opined that Petitioner presented with complaints of hand numbness, tenderness in the neck and he triggered 5 out of 5 Waddell tests. (RX1 p.7) Otherwise his neurological examination was normal. (RX1 p.7) Dr. Deutsch claimed the Waddell testing suggests some degree of symptom magnification. (RX1 p.8) Dr. Deutsch thought Petitioner had lumbar and cervical strains from the impact. (RX1 p.8) Petitioner did not require any more treatment and could return to work without restrictions. (RX1 p.8-9) Dr. Deutsch denied there was a need for neck surgery as all the MRI showed were degenerative changes and clinically there was no evidence for radiculopathy. (RX1 p.9) On cross, Dr. Deutsch admitted his Section 12 examination work was almost exclusively defense side. (RX1 p.11) On the back, the imaging studies did not explain his continuing complaints of back pain and his Waddell testing suggested exaggeration. (RX1 p.15) He thought the neck strain would have resolved within three months of the accident as that was what strains do. (RX1 p.16-17) Dr. Deutsch admitted that injuries to cervical discs could be symptomatic beyond the three-month limit. (RX1 p.17) He admitted that Petitioner's complaints did not go away after three months. (RX1 p.17) But, Petitioner's continuing cervical complaints that did not lead him to conclude he made the wrong diagnosis. (RX1 p.17)

He testified that he had not seen research on whether Waddell testing was valid or probative. (RX1 p.18) Dr. Deutsch had not done any research of his own as to whether Waddell testing had any validity. The MRIs he looked at came from an open MRI facility. (RX1 p.23) Dr. Deutsch initially admitted the cervical MRI was of very poor quality, later saying it was intermediate quality. (RX1 p.23) The lumbar MRI was of very poor quality. (RX1 p.24) He opined that striking a bridge could cause a cervical injury. (RX1 p.28) If it was a significant crash, it could cause a lumbar injury. (RX1 p.28) Dr. Deutsch's default diagnosis of a strain limits the amount of time Petitioner should be off from work as well as the amount of disability he should have from the injury. (RX1 p.32) In the event the pain last beyond three months, he would have to look at other diagnoses, such as chronic pain. (RX1 p.32) When asked how chronic pain complaints start, Deutsch did not think they would be related to an accident. Rather, they are related to having chronic pain complaints. (RX1 p.33) Dr. Deutsch did not believe Petitioner had pre-existing issues in the spine which would have been aggravated in the accident. (RX1 p.33)

Dr. Deutsch was then asked about the probability standard he applied to the case, admitting he applied a 100% probability level to his analysis. (RX1 p.34) Petitioner moved to strike Dr. Deutsch's testimony as he applied the standard of proof which applied to workers compensation cases. (RX1 p.35) Respondent's counsel had Dr. Deutsch explain that obesity would have the tendency to lead to lumbar pain. (RX1 p.36) On recross, Dr. Deutsch denied that he was blaming the obesity for Petitioner's continuing pain complaints. (RX1 p.38) With further questioning, Dr. Deutsch admitted that the obesity predisposed him to back pain, but it was difficult to determine that for certain. (RX1 p.39) He had no explanation as to why Petitioner was pain free in the back and neck for 58 years of life until he hit the bridge with his truck, other than to again accuse him of symptom exaggeration(RX1 p.40)

Dr. Wellington Hsu MD was called to testify by Respondent. (RX2) He is a board-certified orthopedic surgeon. (RX2 p.5) He examined Petitioner on January 24, 2019

at Respondent's request pursuant to Section 12 of the Act. (RX2 p.6) His examination revealed decreased range of motion to the lumbar spine, and a decreased range of motion of the cervical spine. (RX2 p.8) Petitioner was slightly weak overall in his bilateral upper and lower extremities, with 4 out of 5 strength. (RX2 p.8) He opined that the cervical MRI demonstrated C5-6 moderate degenerative disc disease with spondylosis and without stenosis. (RX2 p.8) The lumbar spine demonstrated degenerative disc disease from L2 to S1 with no focal stenosis or herniation or nerve root compression. (RX2 p.9) Dr. Hsu's diagnosis was cervical strain and cervical spondylosis. (RX2 p.9) He did believe Petitioner suffered a cervical strain as a result of the work accident since he had immediate neck pain and the accident mechanism was consistent with a soft tissue injury to the neck. (RX2 p.9-10) Dr. Hsu thought Petitioner had not reached MMI and he still needed a course of work hardening. (RX2 p.10) He also thought that Petitioner needed work restrictions against lifting beyond 50 lbs, and allowing bending, crouching and stooping on an occasional basis. (RX2 p.10) He did not believe that the accident involved an aggravation of a pre-existing condition. (RX2 p.11) Dr. Hsu did not think the proposed fusion would improve the axial neck pain. (RX2 p.12) He thought Petitioner would be able to return to full duty after work hardening. (RX2 p.13) On cross examination, Dr. Hsu told us the work hardening was required to rehabilitate his cervical strain. (RX2 p.14) Dr. Hsu admitted Petitioner's pain was disabling for him when he saw him in January. (RX2 p.14) He thought the prognosis would be good even if he didn't get the work hardening because he thought it was a soft tissue injury. (RX2 p.15) Dr. Hsu noted soft tissue injuries can last up to 6 months. (RX2 p.15) But nearly seven months had passed since his accident. (RX2 p.16) Dr. Hsu admitted that Petitioner had not resolved within the 6 months he would expect a soft tissue injury to resolve. (RX2 p.16) If Petitioner did not get the work hardening, he might suffer some level of continuing disability from this injury. (RX2 p.16-17) Dr. Hsu was asked how he would treat the continuing symptoms if he was treating Petitioner. (RX2 p.18) Dr. Hsu responded that he would want work hardening, but cervical injections could also be attempted. (RX2 p.19) He opined that the injections could decrease the inflammation in the soft

tissues or joints of the spine, reducing his pain. (RX2 p.19) In the event the injections did not work, he would look at other treatments, but would not do surgery. (RX2 p.19-20) He recognized that Dr. Miz was planning on using and stabilizing that segment of the cervical spine. (RX2 p.20) That type of surgery might help arm pain, but he did not think it would address axial pain. (RX2 p.20) Dr. Hsu did not detect focal sensory deficits in the arms, just general weakness. (RX2 p.21) Dr. Hsu administered Waddell testing on Petitioner, finding nothing of significance. (RX2 p.22) Dr. Hsu was asked what his prognosis would be if the man's condition had not materially changed since he saw him in January of 2019. (RX2 p.24) Dr. Hsu could not explain the problem without doing an updated evaluation. (RX2 p.25) Dr. Hsu would need another examination to figure out what was happening. (RX2 p.26) Dr. Hsu admitted that the pain symptoms started with the accident. (RX2 p.28) Sometimes the symptoms from aggravations of the pre-existing arthritis get better, sometimes they do not. (RX2 p.29)

By the time of the hearing, Petitioner still had back symptoms, but no one was recommending surgery or other treatment for the back. (T.16-17) He experienced symptoms in the back each day and took Tylenol. (T.17) He could not lift much and needed to get up and move around or take weight off the back by reclining. (T.17-18) Petitioner periodically experienced symptoms running down the right leg. (T.18) He had none of these problems before the accident and has not reinjured the back since the accident, although he did experience occasional flareups. (T.19)

For the neck, Petitioner had symptoms all day long, including numbness and tingling and pain in the neck. (T.20) Neck pain woke him up when he was trying to sleep. (T.20) His arm would also go numb. He would roll over and the other arm would go numb. (T.20) He had none of these problems before the accident. (T.20) His headaches started when he hit the console and he was still getting the headaches. (T.26-27) Petitioner wanted the surgery Dr. Miz had recommended for the neck. (T.22) Treatment came to a halt after Dr. Deutsch's examination. (T.23) He was not

aware that Dr. Hsu had recommended work hardening, but neither of his doctors made that recommendation. (T.23-24) More recently he consulted with Dr. Darwish who ordered a new MRI in a closed MRI machine. (T.24) Dr. Darwish agreed with the surgical prescription when he saw the MRI scan. No physician other than Deutsch had released him to work after his light duty assignment ran out and he had not worked since ending light duty. (T.25-26) He wanted the surgery because he was tired of the numbness and tingling and he wanted to return to a more normal situation. He wants the surgery because the pain prevents him from a good night sleep. The lack of sleep causes him to be tired. (T.28)

On cross examination, Petitioner was challenged over whether he reported a loss of consciousness to the ER personnel. (T.31) He thought he told them he may have lost consciousness for a second or two. (T.31) He was shown the records from the visit, documenting forehead and neck pain. (T.33) The section counsel showed him said no LOC. (T.34) Counsel also asked him whether he denied back pain as was noted on that note. (T.35) Petitioner did not recall them examining him, but they sent him for a CT scan and gave him pain medication. (T.35) When pressed on the exam, he admitted he could not remember what they did. (T.36) When he went to Dr. Baig on 6/21/18, he had some neck pain and low back pain radiating to the buttock. (T.37) Petitioner agreed that his condition changed during the course of treatment, in that it got worse. (T.39) When he started therapy, insurance first authorized treatment for the back. Zurich then approved treatment for the neck. (T.40) The July 11, 2019 visit with Dr. Miz was for the low back. (T.44) Miz had already seen him for the neck and Miz only addressed one body part per visit. (T.44)

On redirect, Petitioner noted that he reported his neck stiffness and pain, back pain and head pain to the ambulance personnel. (T.51) He had no idea what the MetroSouth people put in their records as he had not seen them. (T.52) The triage notes from the MetroSouth visit documented "pain to neck and back." (RX5- p.17 of 82) Pain levels were at a 8 out of 10 level. Petitioner was asked why he did not go

in for treatment while he worked light duty. (T.53) The reason he did not go in for treatment was that everything was still the same. (T.53-54) Dr. Miz had already recommended neck surgery and nothing had changed in his condition. Surgery had not been authorized (T.54) He was still in that same condition by the time of the hearing. (T.54) He still wants the surgery to obtain pain relief, and because he was only sleeping two hours a stretch, broken into several segments a night, due to pain (T.54) The sleep him tired and sluggish. (T.55) He had none of these problems before the accident. (T.55)

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). 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 of Petitioner: 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 his 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. He does appear to be an unsophisticated individual and any inconsistencies in his testimony are not attributed to an attempt to deceive the finder of fact.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

It is well settled under the law 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. *International Harvester v Illinois Worker's Compensation Commission* 93 Ill. 2d 59 (1982). 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 Commission*, 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 to the neck and back are causally related to the work accident of June 8, 2018. The Arbitrator further finds the head injury has resolved and that his low back injury has stabilized.

Petitioner testified that, prior to the accident on June 8, 2018, he was not having problems with his head, neck and back. Immediately after his truck accident, he noticed pain his head, neck and back. His complaints were documented by the paramedics who arrived shortly after the accident, by the emergency room medical providers and by Petitioner's treating physicians.

Respondent's Section 12 examiners acknowledged that he sustained injuries to his neck and back, but claim he merely sustained a temporary. Respondent' s examiners failed to persuasively explain why his neck and back pain persists. The Arbitrator finds no credible evidence of an intervening event that would break the chain of events.

The Arbitrator has had the opportunity to review the medical evidence and the credible testimony of the Petitioner. The Arbitrator finds a causal connection between Petitioner's present condition of ill-being to his neck and back and the work accident of June 8, 2018.

Petitioner has proven a causal relationship between his 6/8/18 accident and condition of ill-being in the cervical and lumbar spine. The timeline supports causation. Petitioner had no prior injuries or complaints involving the neck or the upper extremities. The accident resulted in immediate neck symptoms, a relatively prompt onset of radicular symptoms from the neck, and a lesion identified on the MRIs which is amenable to surgery. Surgery was recommended by Dr. Miz on November 20, 2018. (PX7 p.9) The neck and upper extremity complaints did wax and waned at times but overall persisted and worsened through the time of the hearing. Dr. Darwish explained that he expected Petitioner's condition to wax and wane and yet persist

over time. Dr. Darwish took new scans and agreed with that surgical plan on June 22, 2021. (PX5 p.11) Petitioner suffered no new accidents to the cervical spine after the June 8, 2018. No evidence was introduced to establish an intervening cause to Petitioner's current cervical spine condition. Thus, the evidence supports a causal relationship between the June 8, 2018 accident and his current condition of ill-being in the cervical spine.

The credible medical testimony also supports causation. Dr. Miz related the C5-6 problem to the work accident and first recommended the surgery on November 20, 2018. (PX7 p.9) So did Dr. Darwish. Dr. Darwish had the benefit of quality MRIs done in 2021 and renewed the recommendation for the same surgery. (PX5 p.11) In the interim, Dr. Hsu examined Petitioner on January 24, 2019. He diagnosed Petitioner with a cervical strain from the work accident and spondylosis. (RX2 p.5-6) Dr. Hsu opined that Petitioner still required treatment and needed work restrictions. (RX2 p.6) Dr. Hsu also tested for and detected no Waddell findings. (RX2 p.22) Respondent never provided the work hardening, but Petitioner returned to light duty work for Respondent for a period of six months. Dr. Robinson also related the ongoing neck and lumbar problems to the June 8, 2018 accident and rendered a diagnosis inconsistent with Dr. Deutsch. Dr. Robinson's diagnosis for the back was a herniated lumbar disc. (PX2 p.20) He diagnosed the neck condition as a herniated cervical disc. (PX2 p.20) None of these doctors indicated or suspected Petitioner of exaggerating his complaints and all connected their findings to the accident.

Dr. Deutsch also conceded that Petitioner suffered a cervical strain in the accident. However, Dr. Deutsch opined Petitioner was perfectly fine to go back to unrestricted work without any further treatment. Dr. Deutsch was the only physician who made that claim and his opinions are suspect. The Arbitrator is mindful that Dr. Deutsch performs Section 12 examinations almost exclusively for the defense but that alone is not a basis to doubt his opinions. He is, however, the only physician who claimed Petitioner triggered positive Waddell findings and used that claim to support his

opinions. Four months earlier, Respondent's first Section 12 examiner, Dr. Hsu, found Petitioner triggering no Waddell findings. Unlike Dr. Deutsch, Dr. Hsu did not find any overt malingering or manipulation of the examination by Petitioner. (RX 2, p. 27) And none of the treaters ever claimed or implied that Petitioner was exaggerating complaints or noted any Waddell findings. During cross examination in his evidence deposition testimony, Dr. Deutsch was challenged about his possible misuse of Waddell testing in a Section 12 examination context. He testified he had not seen the research refuting what he claimed Waddell testing revealed, nor was he of aware of Dr. Waddell stating that his physical signs have been misinterpreted and misused both clinically and medico-legally. The Arbitrator is not addressing the truth of the matter asserted of Petitioner's attorney's interpretation of Fishbain's study or Dr. Waddell's findings. Rather the Arbitrator finds it difficult to believe that Dr. Deutsch, a frequent Section 12 examiner, is unfamiliar with either and, thus, finds his answers to be disingenuous.

Dr. Deutsch also initially claimed the 2018 cervical was very poor quality, but later changed that story to "intermediate" quality when he was challenged on how he could draw any competent conclusions from such poor-quality scans. He admitted that striking a bridge could cause a cervical injury. (RX1 p.28) If it was a significant crash, it could also cause a lumbar injury. The Arbitrator finds that Petitioner's was a significant crash. (RX1 p.28)

Dr. Deutsch's default diagnosis of a strain in effect limited the amount of time Petitioner should have been off work as well as the amount of disability he would have from the injury. (RX1 p.32) If that person's pain lasted beyond three months, Dr. Deutsch testified that he would have to look at other diagnoses, such as chronic pain. (RX1 p.32) When asked how chronic pain complaints start, Dr. Deutsch did not think Petitioner's chronic pain to his neck and back are related to the accident but failed provide an etiological explanation.

Dr. Deutsch opined that Petitioner's symptoms were related to Petitioner having chronic pain complaints. (RX1 p.33) Dr. Deutsch's explanation is a tautologically redundant and a repetitive use of language. A use of language which the philosopher Ludwig Wittgenstein applied to redundancies of propositional logic in his 1921 treatise *Tractatus Logico-Philosophicus*. Dr. Deutsch is saying, as the colloquial saying goes, it is what it is. Petitioner's chronic pain is what it is. Therefore, the Arbitrator finds Dr. Deutsch's opinion to be unpersuasive.

Dr. Deutsch opined that Petitioner did not have pre-existing issues in the spine which would have been aggravated in the accident. (RX1 p.33) Dr. Deutsch was then asked about the probability standard he was applying to the case, admitting he applied a 100% probability level to his analysis. (RX1 p.34) Petitioner moved to strike Dr. Deutsch's testimony as he applied the standard of proof which has no application to workers compensation cases. (RX1 p.35)

Respondent's counsel on redirect had Dr. Deutsch explain that obesity would have the tendency to lead to lumbar pain. (RX1 p.36) On recross, Dr. Deutsch denied that he was attributing Petitioner's obesity for his continuing pain complaints. (RX1 p.38) With further questioning, Dr. Deutsch clarified that the obesity predisposed Petitioner to back pain, but it was difficult for Dr. Deutsch to determine that for certain. (RX1 p.39) Dr. Deutsch had no explanation why Petitioner was pain free in the back and neck for 58 years of life until he struck the bridge with his truck, other than to again accuse him of symptom exaggeration. (RX1 p.40) In conclusion, Dr. Deutsch's opinions are not persuasive in this case. Moreover, his opinions are inconsistent with the legal-medical standard of proof and deserve no consideration.

Petitioner has proven a causal relationship between his June 8, 2018 accident and the cervical injury and need for surgery. Petitioner also injured his low back in the accident, although that condition seems to have stabilized and, thus, the Arbitrator finds that the Petitioner has reached maximum medical improvement as to the

lumbar spine condition of ill-being. A permanent disability evaluation for the low back injury is reserved for a future determination.

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:

Respondent does not dispute the causality, reasonableness, and necessity of the medical care prior June 11, 2019. Respondent does dispute the medical care after said date as being reasonable, necessary, and causally related. Considering the above, the Arbitrator finds that all medical care, including medical care after June 11, 2019, to be reasonable, necessary and causally related to the accident of June 8, 2018. The Arbitrator notes that many if not all the bills through June 11, 2019 were processed and paid pursuant to the fee schedule as outlined in Respondent's exhibit 4. To the extent there remains balances on medical care, they are awarded pursuant to and as provided in Sections 8(a) and 8.2 of the Act. The Arbitrator notes that no medical bills have been introduced into evidence at this hearing and, therefore, does not address this issue at this time.

The Arbitrator finds that Petitioner has satisfied his burden of proof by a preponderance of the evidence that the treatment he received was reasonable, necessary and causally related the work accident. Respondent has not offered any persuasive medical opinion contradicting the reasonableness or necessity of any of the treatment. The Arbitrator therefore finds all the medical treatment to be reasonable and necessary.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

Given the Arbitrator's findings that Petitioner's current condition of ill-being to his neck is causally related his work accident of June 8, 2018, the Arbitrator finds that Petitioner is entitled to the C5-6 anterior cervical discectomy and fusion due to the work accident prescribed by both Dr. Miz and Dr. Darwish. The Arbitrator concludes that the surgery is reasonable and necessary to cure or relieve the Petitioner of the effects of his accidental work injury. This conclusion is based on the Arbitrator's finding that the findings and opinions of Dr. Robinson, Dr. Miz and Dr. Darwish are more persuasive that those of Dr. Hsu and Dr. Deutsch. Even Dr. Hsu opined that surgery is warranted if Petitioner has radicular arm pain. Pain endorsed by the Petitioner.

The Arbitrator is mindful that a gap exists between when the surgery was recommended by Dr. Miz and when the Petitioner was seen by Dr. Darwish who agreed with Dr. Miz that surgery was warranted. The Arbitrator is also mindful that Respondent's refusal to authorize surgery contributed to the delay in obtaining surgery. The delay is also understandable considering that Petitioner understood that health insurance would not pay for surgery alleged to be work related. Evidence was not introduced one way or another to support or refute Petitioner's understanding on coverage. However, Petitioner did appear to be sincere and truthful as to his state of mind regarding insurance coverage issues.

The Arbitrator finds that Petitioner's cervical condition of ill-being has not improved with conservative care nor with the passage of time. The Arbitrator notes that the surgery is elective, and that COVID-19 barriers have also contributed to the delay. Further, the Arbitrator is not aware of time limit being imposed under the law. The standard is one of reasonableness. Considering the facts and circumstances in this

matter, the Arbitrator finds the Petitioner decision to proceed with surgery to be reasonable.

The pivotal issue is whether surgery will cure or relive him of the effects of his injury. The Arbitrator is persuaded by Dr. Miz and Dr. Darwish that it will. Petitioner deserves that chance to obtain relief from the effects of his injury. Accordingly, Respondent should authorize and pay for the cervical surgery recommended by both Drs. Miz and Darwish as well as the related treatment pursuant to and as provided in Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner claims to be entitled to TTD and TPD for the period of June 9, 2018 through November 16, 2019. Respondent asserts that Petitioner is entitled to TTD and TPD benefits from June 11, 2018 through June 8, 2019. Therefore, the disputed period is from June 9, 2019 through November 16, 2021, the date of hearing.

The parties agreed that he entitled and received TPD for the period of November 19, 2018 through May 18, 2019 representing 25-6/7th weeks. Petitioner claims to be entitled additional TTD from May 19, 2019 through November 16, 2021, represent ting 130-3/7th weeks of disputed benefits.

Respondent paid TTD from June 11, 2018 through November 18, 2018 and TPD benefits from November 19, 2018 through April 6, 2019, then TTD from April 7, 2019 through April 13, 2019, then resumed TPD from April 14, 2019 through May 18, 2019 and then TTD from May 19, 2019 through June 8, 2019. (RX 3)

In summary, Respondent paid TTD and PPD at the TTD rate from June 11, 2018 through June 8, 2019 as exhibited by Respondent's Exhibit 3 with the last 3 weeks of benefits paid being TTD. Therefore, the record reflects that while Petitioner was working light duty, Respondent appropriately paid TPD at the TTD rate.

Temporary Total Disability - Petitioner has proven by a preponderance of the evidence that he was temporarily and totally disabled from June 9, 2018 through November 18, 2018 and again from May 19, 2019 through November 16, 2021, for a total of 153-3/7 weeks. In between the two TTD periods, the parties stipulated that Petitioner was temporarily partially disabled from November 19, 2018 through May 18, 2019. During this period, the treating physicians and Respondent's first Section 12 examiner all recognized that Petitioner required work restrictions, or they restricted him from work entirely. (T.24, PX5 p.11) The details are outlined in the Findings of Fact section. Only Dr. Deutsch opined that Petitioner should have been able to return to full unrestricted duties, and the Arbitrator does not find the opinions of Dr. Deutsch persuasive.

Temporary Partial Disability – Pursuant to company policy, Respondent offered Petitioner a six-month period of accommodative work, running from November 19, 2018 through May 18, 2019, for a total of 25-6/7 weeks. Respondent placed the six-month limit on the light duty availability (T.28) and Petitioner had not worked other than the six-month light duty assignment. (T.26) Thus, Respondent is responsible for TPD for this period. Dr. Deutsch is not a persuasive source for Petitioner's work capacity, nor is his opinion worthy of consideration given the inapplicable proof demands he required in his analysis.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES BE IMPOSED UPON THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Although this Arbitrator found for the Petitioner on all disputed issues by the preponderance of the evidence, the Arbitrator finds that issues existed regarding causal connection to current condition of ill-being based on the opinions of Dr. Hsu and the gap in time between surgical recommendations. Respondent is entitled to have Petitioner prove his case which the Petitioner did persuasively. As such, Petitioner's request for imposition of penalties and attorney's fees is denied but the Arbitrator finds the denial of penalties and attorney fees to be a close call.

WITH RESPECT TO ISSUE (N), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

Respondent is entitled to credit for TTD, TPD and medical benefits paid. Respondent is entitled to a credit for the TTD it paid in the amount $29,076.58. (RX 3) Respondent is entitled to credit for the TPD it paid in the amount $21,953.50. (RX 3) Respondent is entitled to credit in the amount of $17,157.58 for the medical bills it paid. (RX 4)

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC029909
Case Name	David Posadas v. Central Transport
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0370
Number of Pages of Decision	8
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	DAVID BARISH
Respondent Attorney	Lauren Kus

DATE FILED: 9/30/2022

/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

David Posadas,

Petitioner,

vs. NO. 14WC 29909

Central Transport,

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 26, 2022, is hereby affirmed and adopted.

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

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

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

September 30, 2022
SJM/sj
o-9/14/2022
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	14WC029909
Case Name	POSADAS, DAVID v. CENTRAL TRANSPORT
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	5
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	David Barish
Respondent Attorney	Lauren Kus

DATE FILED: 1/26/2022

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

/s/ Jeffrey Huebsch, Arbitrator

Signature

D. Posades v. Central Transport, 14 WC 029909

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

David Posadas
Employee/Petitioner
v.
Central Transport
Employer/Respondent

Case # **14** WC **029909**

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 **6/11/2021 and 10/18/2021**. 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 **4-1-2014**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**50,464.96**; the average weekly wage was $**970.48**.

On the date of accident, Petitioner was **37** years of age, ***single*** 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 for all benefits previously paid.

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

ORDER

Petitioner's claim for medical expenses and TTD is denied, based upon the law-of-the-case doctrine.

Respondent shall pay Petitioner permanent partial disability benefits of $582.29/week for 12.5 weeks, because the injuries sustained caused Petitioner to suffer the 2-1/2% loss of use of a person as a whole, in accordance with 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.

Jeffrey Huebsch
Signature of Arbitrator

JANUARY 26, 2022

FINDINGS OF FACT

This matter was previously tried as a Section 19(b) matter by this Arbitrator in 2016. The Decision was entered on August 15, 2016 and was affirmed by the Workers' Compensation Commission in Case No. 17 IWCC 0211 on April 6, 2017. The law-of-the-case in this matter is established by the Commission's Decision in 17 IWCC 0211:

> **Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent on April 1, 2014 when the forklift that he was driving was struck by a forklift driven by a co-employee.**
>
> **Petitioner suffered a resolved lumbosacral strain and contusion as a result of the accident. Petitioner was at MMI as of March 2, 2015, capable of full duty work and no further treatment was needed. He was not in need of surgery.**
>
> **No TTD or medical expenses are due to Petitioner subsequent to August 15, 2016.** (RX 1)

The IWCC Decision in Case No. 17 IWCC 0211 was admitted into evidence as RX 1 and is made a part of the Findings of Fact herein.

Petitioner underwent low back surgery by Dr. Laich in April of 2016. After surgery, his back pain got better, but he still had dull back pain. He underwent pain management treatment by Dr. Shah. He eventually returned to work as a truck driver. His job at the time of the first accident was a truck driver/loader and he was a local driver, also loading and unloading his trailer. He is now employed as a regional driver and he does not touch freight. This is a physically much lighter occupation. He has continued complaints of low back discomfort/pain. It is a constant dull pain that is always there.

CONCLUSIONS OF LAW

As stated above, the Arbitrator's decision herein is bound by the law of the case. "Where an issue is once litigated and decided, that should be the end of the matter and the unreversed decision of a question of law or fact made during the course of the litigation settles that question for all subsequent stages of the suit." Irizarry v. Industrial Comm'n, 337 Ill. App. 3d 598, 606 (2003)

Causal Connection:

The law of the case establishes that Petitioner suffered a resolved lumbosacral strain and contusion as a result of the accident. No condition of Petitioner's low back subsequent to March 2, 2015 is causally related to the injury.

Medical Expenses and TTD:

Petitioner's claims for medical expenses and TTD are denied based upon the finding above on the issue of causation and the law-of-the-case doctrine.

Nature and Extent:

As the accident occurred after September 1, 2011, the Arbitrator must consider the 5 factors set forth in Section 8.1b(b) of the Act in determining PPD.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no opinion comporting with the specific requirements of §8.1b(a) was submitted into evidence. This factor is given no weight in determining PPD.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a driver/loader at the time of the accident and that he was able to return to work in his prior capacity as a result of said injury, per the persuasive opinion of Dr. Kornblatt and the law of the case. This factor is given appropriate weight in determining PPD.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 37 years old at the time of the accident. Because of his age, the Arbitrator gives some weight to this factor in determining PPD.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes Petitioner does not claim any wage loss. The Arbitrator therefore gives no weight to this factor in determining PPD.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that no records subsequent to March 2, 2015 are relevant to any finding on this issue. The Arbitrator therefore gives no weight to this factor in determining PPD. Petitioner suffered a resolved lumbosacral strain and contusion as a result of the accident. The Arbitrator gives great weight to this factor in determining PPD.

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 2-1/2% loss of use of the person as a whole, in accordance with Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC037305
Case Name	Ramatu Y Jones v. YRC Freight
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0371
Number of Pages of Decision	16
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Brian Teven
Respondent Attorney	Jason Kolecke

DATE FILED: 9/30/2022

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Ramatu Jones,

Petitioner,

vs. NO: 19 WC 37305

YRC Freight,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §§19(b)/8(a) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of temporary disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 9, 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 $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.

September 30, 2022
o9/14/22
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	19WC037305
Case Name	JONES, RAMATU Y v. YRC FREIGHT
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Jennifer Kelly
Respondent Attorney	Jason Kolecke

DATE FILED: 12/9/2021

THE INTEREST RATE FOR THE WEEK OF DECEMBER 7, 2021 0.10%

/s/ Paul Cellini, 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)/8(a)

RAMATU Y. JONES
Employee/Petitioner

v.

YRC FREIGHT
Employer/Respondent

Case # **19** WC **37305**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Cellini**, Arbitrator of the Commission, in the city of **Joliet**, 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, **December 4, 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 $**65,900.12**; the average weekly wage was $**1,267.31**.

On the date of accident, Petitioner was **35** years of age, ***single*** with **2** dependent children.

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

Respondent shall be given a credit of $**25,104.71** for TTD, $**6,374.06** for TPD, $**0** for maintenance, and $**4,725.12** for other benefits, for a total credit of $**36,203.89**.

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

ORDER

Petitioner has proven by the preponderance of the evidence that her ongoing cervical condition is causally related to the December 4, 2019 accident.

Respondent shall pay Petitioner temporary partial disability benefits of **$Unknown** per week for **12-4/7 weeks**, commencing **December 5, 2019 through March 2, 2020**, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of **$844.87 per week** for **86-3/7 weeks**, commencing **March 3, 2020 through October 28, 2021**, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of **$36,203.89** for temporary partial disability benefits, temporary total disability benefits and a permanent partial disability advance that have been paid.

Respondent shall pay reasonable and necessary medical expenses contained in Petitioner's Exhibit 7 which relate to treatment of the upper back/cervical spine, as provided in Sections 8(a) and 8.2 of the Act.

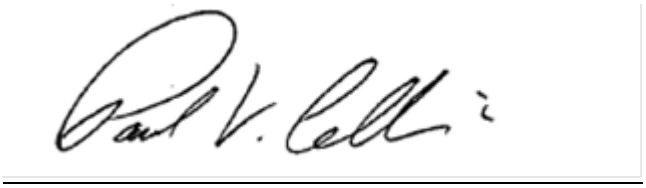
Respondent shall be given a credit for any awarded medical expenses that were paid by Respondent prior to the hearing, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall authorize the C5/6 disc replacement surgery recommended by Dr. Mekhail and Dr. Coleman.

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 9, 2021

STATEMENT OF FACTS

Petitioner began working for Respondent as a truck driver in June 2019, including loading/unloading and use of a forklift. Petitioner testified she was physically fine when she began working on 12/4/19. While unloading a trailer on that date she testified some of the freight boxes fell over and, as she was bending over to pick them up, she lifted a 40 pound box and felt something in her back and neck as she stood up. She continued to work but testified her pain worsened as the day went on, noting difficulty turning her neck to operate the forklift in reverse. Petitioner told her supervisor, Marco, that she was injured lifting freight and an accident report was prepared. Petitioner reported back to work on 12/5/19 and was referred by Respondent to Physicians Immediate Care (PIC). She testified that she initially asked for a trailer with items lower to the round level that didn't require use of a forklift.

At PIC on 12/5/19 the Petitioner reported injuring her upper back, shoulders and arms lifting boxes while unloading her trailer at work on 12/4/19, with pain at a 6 out of 10 (6/10) level. Another portion of the note states Petitioner was struggling to lift a box and had pain when she got up. Thoracic x-ray was normal but showed surgical clips in the right upper quadrant. Dr. Cyrkiel diagnosed neck and thoracic strains and prescribed Naproxen and biofreeze for upper back and shoulder and was advised on home exercises. She was restricted to light duty pending 12/9/19 follow up. There was no indication of lumbar complaints or exam findings. (Px1). Petitioner testified she returned to light duty on 12/5/19 and continued to work light duty for some time after this.

On 12/9/19, Petitioner reported no improvement. She was prescribed methocarbamol, prednisone and physical therapy, and was restricted to 10 pounds lifting and no lifting over the shoulder. The report notes "patient requests changing restrictions from 20 pounds to 10 as she does not feel she can lift 20 with out pain." (Px1).

Petitioner attended therapy at PIC from 12/5 to 12/16/19. The initial evaluation states Petitioner was lifting boxes and felt pulling to the bilateral upper traps with pain bilaterally, left greater than right. On 12/16/19 the Petitioner reported her neck was improving, from 7/10 to 5/10, but felt mid-back soreness. She continued to deny numbness or tingling. She was advised to continue therapy and the 12/9/19 work restrictions. (Px1).

Petitioner next sought treatment at Midwest Anesthesia and Pain Specialists (MAPS) on 12/18/19. She provided a consistent history of her work injury and reported pain in her neck and upper back (7/10) into the arms. Physician's Assistant William Hayduk noted loss of sensory light touch on the left at C6/C7. Cervical and thoracic strains were diagnosed. Physical therapy, medications, Lidocaine patches and a TENS unit for acute pain were prescribed and her light duty restrictions were maintained. (Px3).

Petitioner also began therapy at Advance Spine and Rehab Center ("ASRC") on 12/18/19. The initial evaluation states Petitioner had been loading and unloading 40 pound boxes for several hours when she started to feel sharp pain in her upper back that progressively worsened. She reported upper back pain that traveled to the mid and low back, headaches and sharp shooting pains in the bilateral arms. (Px2).

Petitioner followed up at MAPS on 1/15/20, complaining of neck and upper back pain intermittently radiating down the left arm. She was mildly improved at a 6/10 and was to continue with therapy, medication, TENS and work restrictions, and a cervical MRI was ordered by PA Hayduk. This report states: "I feel that the injuries reported in today's visit are due to the incident described in this visit and not due to a preexisting condition." The radiologist's impression from the 1/25/20 cervical MRI was a C5/6 broad-based central disc protrusion with moderate effacement of the thecal sac and mild central canal stenosis, otherwise unremarkable. (Px3).

Petitioner reported no improvement on 1/29/20. Therapy and medications were re-ordered, and a C6/7 cervical epidural was prescribed for radicular pain, along with a post-injection cryotherapy device. Light duty (sedentary duty, 10 pounds and no semi-truck driving) was continued. On 2/26/20, Petitioner reported feeling worse (8/10 level pain) despite 20 sessions of therapy. When her intermittent left arm pain occurred, she would have an achy sensation and hand numbness. The epidural was scheduled for 3/20/20 and PA Hayduk's report states Petitioner remained on work restrictions, however a "Patient Status Form" and an additional separate form indicate Petitioner was to be off work and would be reevaluated in 5 weeks. (Px3). Therapy at ASRC through this time reflected minimal improvement with mainly complaints of neck pain averaging between 5/10 and 7/10 levels with achiness or heaviness in her arms, particularly with activities. (Px2).

Petitioner testified that she had continued working light duty, receiving both wages and temporary partial disability (TPD), until 3/2/20, the last day she actually worked. Petitioner testified her treatment at this point had been delayed due to Covid, and on 3/25/20 her therapist noted therapy and the epidural had been put on hold due to the Covid pandemic. At that time the Petitioner reported worsening symptoms, including tingling in the left arm and she was continued off work. (Px3).

Cervical therapy continued at ASRC from 2/26/20 to 4/14/20. On 2/26/20, complaints of numbness and tingling down her left arm were documented. On 3/2/20, the therapist indicated her pain was down to 5/10 and that radicular arm symptoms were slowly improving. It is noted multiple times that Petitioner reported therapy was only providing temporary improvement. On 3/30/20, she had a "tele-therapy" visit due to Covid. She returned for in person treatments through 4/14/20. (Px2).

The recommended C6/7 cervical epidural injection was completed on 4/21/20 at the MAPS clinic. (Px3). Petitioner testified the injection relieved some of her left arm pain but not her neck pain, and that the other treatments received to date had not really helped.

Petitioner reported to PA Hayduk on 4/29/20 that she had increased pain after the injection for 5 days before returning to her baseline level. Radiating pain had not occurred since the injection but her neck pain continued. Sensation was normal on exam. Off work and medications were continued, and PA Hayduk prescribed bilateral medial branch blocks at C4 to C6, followed by an RFA procedure if she had good relief. (Px3). At follow up

visits at the MAPS clinic on 5/2/20 and 6/17/20 she reported ongoing sharp neck pain, worse with lifting and when turning her head side to side. The 5/20/20 visit noted the medial branch blocks were denied via utilization review, with Hayduk noting the UR concluded her pain was radicular/radiating despite his previous note indicating the radiating pain had improved and was no longer bothersome. Hayduk also states: "Also, UR states that she hasn't exhausted a reasonable amount of conservative care. The patient has completed 41 sessions over the course of 6 months but with continued pain! Reasonable conservative care is 12 sessions x 4-6 weeks." It was noted that Petitioner was not consistently compliant with oral medications, as she didn't like using them. An appeal was being sent to UR. On 6/17/20, Hayduk it was again noted that any radiating pain from the neck remained resolved since the epidural. Petitioner reported she was using an H-Wave machine with some relief and it helped her sleep. She was to continue therapy for neck pain, medications, TENS and was advised to remain off work. Cervical medical branch blocks were completed on 7/10/20. (Px3). Petitioner testified the blocks did not relieve her symptoms and she continued to have neck, upper back and left arm pain.

Petitioner continued therapy at ASRC through 7/22/20. At the initial post-epidural visit of 4/23/20, Petitioner reported she felt the injection helped some of the pain and pressure feeling on the left side, but that her right sided neck and arm pain had increased. Therapy would only provide temporary relief, as was the "ice machine" she was using. At a tele-therapy visit on 5/6/20, Petitioner reiterated she'd had a significant pain increase with the epidural but that her pain had returned to her baseline level of 5/10. She continued to report 5/10 to 8/10 pain through 7/7/20. On 6/3/20 she reported she recently developed numbness and tingling in her left hand. Following the nerve blocks, on 7/22/20, Petitioner reported she'd had an increase in pain but had returned to her baseline level. The therapist indicated Petitioner was being transitioned to a home exercise program with a fair prognosis and was to see an orthopedic surgeon. (Px2).

At a follow up visit at MAPS on 7/22/20, Petitioner reported no improvement with the injections and that her pain had actually worsened since. She'd undergone 57 therapy sessions and indicated it was not helping. She reported the prescribed medications just made her drowsy. PA Hayduk had nothing more to offer her from an interventional standpoint and referral to a spine surgeon was recommended. All medications were discontinued other than Lyrica and Petitioner remained on off work status pending surgical evaluation, though the report indicates she was to follow up in 4 weeks. (Px3).

Petitioner again followed up at MAPS on 8/26/20, PA Hayduk recorded neck and upper back complaints with intermittent radiation down the left arm and tingling in the bilateral hands. It was noted that a Dr. Dixon had recommended an EMG, and for the first time in several months it was noted that loss of sensation was indicated to light touch at C6/C7. Petitioner was to follow up with Dr. Dixon and return in 6 weeks. (Px3). The Arbitrator notes that Dr. Dixon's report and EMG recommendation was not located in the evidence presented. Petitioner testified to an initial visit with Dr. Dixon but that no one at his office would answer the phone when she would call to schedule a second visit.

Petitioner was evaluated by orthopedic surgeon Dr. Ghanayem on 8/31/20 at the request of the Respondent. A history of a 12/3/19 back injury involving lifting an approximate 15 to 20 pound box off the ground was noted: "She then related to me that in the same lifting episode, she hurt her neck and has neck pain with bilateral referral into the arms and left hand. The arms hurt in the bicep regions on both sides and the triceps on the left side. Her back no longer hurts." She denied any prior neck or back injuries. Examination of the neck and upper extremities was normal except for some soft tissue discomfort in the mid cervical region. Dr. Ghanayem's review of the January 2020 MRI showed a "really tiny disk ridge/degenerative bulge at C5/6" with no neurologic compression. He opined that Petitioner could have injured her back based on her mechanism of injury, but he saw no evidence of injuring her neck in how she described the incident to him. He further opined that any reasonable treatment related to this would involve no more than a month of physical therapy to get her

back to full duty. Any therapy conducted after December 2020 in his opinion was excessive. As to the cervical spine: "I see no evidence of how this would have been injured from the work incident that she described to me. Therefore, any treatment for the neck would be unrelated. Looking at her exam and cervical MRI scan, I see no reason why her arms would be hurting her given that the degenerative disk ridge is small and does not compress any neurologic structures. I cannot substantiate her subjective complaints based on objective MRI findings. Therefore, she is at MMI relative to her work injury." Diagnosis was a lumbar strain and he advised she could return to regular work duties. (Rx1).

On 10/1/20, PA Hayduk reviewed the report of Dr. Ghanayem, noting that Petitioner's arm pain relief with the epidural "prov(ed) that she does have neuroforaminal compromise", and that the lack of an objective finding of neurocompromise on MRI "is not uncommon." Hayduk indicated that the lack of improvement with nerve blocks also confirmed that her pain was coming from the disc. Hayduk indicated he was going to order the EMG "to disprove Dr. Ghanayem." He continued the Petitioner off work as a "liability for other civilians given that she is unable to fully rotate her head." He also again prescribed a gel to apply in lieu of oral medication due to Petitioner's desire not to take oral meds. (Px3).

Petitioner testified that Respondent advised that she had to return to work based on the opinions of Dr. Ghanayem, and she tried to do so on 10/1/20 despite PA Hayduk continuing her off work. She testified that she didn't drive on her first day back and she was okay, but the next day the Respondent wanted her to drive. When she attempted to do so she felt a strain to her right shoulder and neck. She reported this to the Respondent and was advised that if she couldn't do the job she should go home, which she did. Petitioner testified she did not return to work after 10/2/20 and that the Respondent has not offered her any further light duty positions.

The 10/22/20 EMG was normal with regard to any cervical radiculopathy, thoracic radiculopathy or median or ulnar neuropathies. (Px3; Rx2). On 12/8/20, PA Hayduk indicated that an additional epidural was unlikely to help given the negative EMG for radiculopathy and he recommended an evaluation with different spine specialist, continuing her off work. He also stated that "She does not follow up with Dr. Dixon nor does she have a scheduled appointment." (Px3).

Petitioner saw orthopedic surgeon Dr. Mekhail on 1/6/21 with complaints of neck pain radiating in a mostly radicular pattern down the left arm to the hand with numbness and tingling symptoms: "she will get numbness and tingling on the right as well." She also had right shoulder pain going down the upper arm. Petitioner reported the symptoms started on 12/4/19 with picking up boxes while emptying her trailer. Her pain was at a 4/10 to 10/10 level. Exam reflected neck pain with Spurling's on exam down the arm but not radicular in nature, and Dr. Mekhail noted the prior MRI showed a C5/6 broad based herniation. Dr. Mekhail recommended a right shoulder MRI "since she's had this for a long time", as well as an updated cervical MRI and a review of the EMG results. (Px4). The MRIs were performed on 1/19/21. The cervical MRI impression was a loss of cervical lordosis and a 2 to 3 mm central C5/6 disc herniation with mild canal stenosis. The right shoulder MRI impression was supraspinatus and infraspinatus tendinosis, moderate grade intrasubstance tear of the supraspinatus at the footprint insertion and mild to moderate subacromial/subdeltoid bursitis. (Px3; Px4).

Petitioner followed up with PA Hayduk on 1/27/21 with the same complaints as before. Based on the MRI showing C5/6 stenosis he recommended a repeat epidural injection and that she consult with a shoulder specialist based on the right shoulder MRI findings. Petitioner was continued off work in the meantime. (Px3).

Petitioner followed up with Dr. Mekhail on 2/4/21, reporting ongoing neck pain radiating into the left arm with numbness and tingling to mainly the radial arm and intermittently to the hand. Exam findings included positive Spurling's more distal than just the upper arm that went to the forearm and continued positive right

impingement sign. Noting the right shoulder MRI showed rotator cuff tendinosis and intrasubstance tear and that she had failed to improve with therapy, Dr. Mekhail injected the right shoulder and advised her to follow up with a shoulder specialist. As to the cervical condition, Dr. Mekhail noted Petitioner had failed an injection and physical therapy and she wanted to pursue a surgical option. Given her young age and that her only pathology was the herniated disc, he recommended a C5/6 disc replacement surgery. He did note the normal EMG. Petitioner's symptoms were at C5/6 and appeared to be more central and slightly left. (Px4).

Petitioner saw shoulder specialist Dr. Park on 3/25/21. The history indicates Petitioner complained of right shoulder and neck pain following a 12/4/19 work injury: "She was unloading a trailer, lifting boxes, when she felt neck and upper back pain. She felt pain and weakness in both shoulders right greater than left. She says that she had difficulty lifting her right arm/shoulder, she kept working, trying to work through the pain. Later that day she drove a forklift but had pain and difficulty rotating her head to look behind." She reported no lasting improvement with neck therapy or injections, and that she had continued right shoulder pain and weakness during neck therapy and difficulty with therapy exercises due to right shoulder weakness. After she eventually was evaluated for the right shoulder, she had an injection which helped for about 2 weeks before the pain returned. She denied any prior shoulder pain or problems. Dr. Park noted the MRI showed the intrasubstance supraspinatus tear and significant subacromial bursitis, which he believed was causing right shoulder pain and weakness. Noting her young age and lack of prior shoulder problems, Dr. Park opined the tear was related to the 12/4/19 accident as he otherwise would have expected her to have had preexisting symptoms. He diagnosed a traumatic incomplete right rotator cuff tear, subacromial bursitis and neck strain with cervical disc disease. Noting significant but temporary improvement with the prior injection, he prescribed shoulder-focused physical therapy. He did note the cervical condition was paramount given he saw a large cervical herniation when he reviewed the cervical MRI and surgery had been recommended. Noting Petitioner was being held off work by her spine specialist, Dr. Park recommended light duty restrictions regarding the right shoulder. (Px5).

On 4/14/21, PA Hayduk noted Petitioner had missed her last scheduled visit with Dr. Mekhail and was rescheduling. Petitioner reported 85% improvement with her shoulder injection and that she was following up with Dr. Park, while Dr. Mekhail wanted to proceed with cervical surgery, PA Hayduk continued Petitioner off work and he re-prescribed cervical physical therapy. (Px3).

The ASRC therapy records from 4/6 to 5/26/21 note treatment directed to the right shoulder and cervical spine. Petitioner initially indicated 6/10 pain, frequently stiff and achy, and increased shoulder pan with internal rotation of the right arm. (Px2). On 4/26/21, Petitioner reported no improvement with therapy and Dr. Park injected the right shoulder. (Px5). On 4/27/21, Petitioner told her therapist the shoulder injection decreased her pain and improved range of motion. Right shoulder pain was at 3/10 on 5/4/21, down to 1/10 at rest on 5/10/21. Pain increased with repetitive motions. On 5/20/21 her pain was more of a discomfort and intermittent, worse with overhead reaching, pushing, pulling and lifting. At the last visit it was noted she "is feeling better with mild to no pain of 1/10 at the shoulder." No specific discharge was indicated, just that Petitioner would be following up with Dr. Park and pain management. (Px2).

Petitioner testified she was advised that the Arbitrator had recommended an evaluation with a third spine surgeon.

Petitioner saw Dr. Coleman on 5/18/21, who noted a history of a lifting injury on 12/4/19 while loading trailers with onset of significant neck stiffness. Petitioner reported neck pain radiating up and occasionally into the left arm and hand, with hand pain and stiffness and numbness in the hand after prolonged driving: "The patient states that, initially, she was symptomatic in her bilateral arms, but after receiving 2 cortisone injections into her right shoulder, that has improved. She denies any previous issues with her neck." Petitioner noted no

improvement with conservative measures to date and that disc replacement surgery had been recommended. Exam was unremarkable other than some pain with cervical flexion and mild tenderness to cervical palpation. X-ray that day showed minimal degenerative changes and mild loss of lordosis. The MRI was reviewed and noted to show a C5/6 herniation with minimal stenosis. Dr. Coleman stated: "(Petitioner) is a pleasant patient with a work related injury to the neck, resulting in a disc herniation at C5/6." Noting she remained quite symptomatic despite extensive conservative treatment "from this disc herniation, which to the best of my knowledge, is a result of her December 2019 work-related injury. She was asymptomatic just before this injury and reports no history of previous neck or upper extremity issues." He opined that the disc replacement surgery was reasonable to provide stability and he recommended it. (Px6).

On 5/27/21, Dr. Park noted Petitioner's right shoulder was significantly improved following the injection and therapy and discharged her from care. He indicated her shoulder was pain free, she had full motion and strength and had reached maximum medical improvement. (Px5).

Respondent then sent Petitioner for reevaluation with Dr. Ghanayem on 7/12/21. Petitioner continued to complain of neck pain into the left arm to her palm and index and ring fingers. He reviewed the updated January 2021 cervical MRI, again noting a small disc ridge at C5/6 with no neurocompromise. Noting there also were no neurologic deficits on exam and a negative EMG, he opined that "Even absent issues of causation, she is not a candidate for any cervical spine surgery." Dr. Ghanayem reiterated his belief that the mechanism of injury as described would not cause an aggravation or injury to the cervical spine ("from the mechanistic standpoint, one could not sustain this type of cervical disk injury from the mechanism she described") and that Petitioner could return to full duty. He also stated: "I recognized others have articulated that (surgery would be reasonable), but I simply cannot agree with them because of the lack of compression and negative EMG." (Rx1).

On 6/9/21, PA Hayduk noted Dr. Park's discontinuation of therapy and a home exercise program for the right shoulder, as the injection had basically resolved her pain. Therapy was again prescribed for the neck pain, Lyrica and diclofenac gel prescriptions were continued and Petitioner was to remain off work. On 8/2/21, Petitioner reported to Hayduk that her right shoulder was doing very well but she had continued 7/10 neck pain. She was to follow up with Dr. Mekhail for pending surgery, continue Lyrica, remain off work and follow up in 6 weeks. (Px3).

On 8/24/21, Dr. Coleman reviewed Dr. Ghanayem's report, and he again recommended the disc replacement surgery despite Ghanayem's disagreement. He found that the updated 2021 MRI showed a "clear progression" of the C5/6 herniation since the 2020 films and was larger with high intensities at the disc annulus. Dr. Coleman found that Petitioner had decreased sensation and paresthesias in a C6 distribution, which correlated well with the herniation. He noted Petitioner said that Dr. Ghanayem spent no more than a few minutes with her. While he agreed with Dr. Ghanayem that the MRI showed minimal spinal and mild foraminal stenosis, Dr. Coleman opined the Petitioner's herniation was likely associated with a chemical neuritis versus early stage radiculopathy of C6. A separate 9/2/21 note of Dr. Coleman advises that Petitioner should be off work pending surgery. (Px6).

Petitioner testified that she has continued to follow up at MAPS, with medications including Lyrica. She has also continued PT at ASRC. Respondent has not authorized the recommended surgery. Currently, she testified her neck and left arm are worsening. Her pain is mainly early in the morning and at night, and she feels better through the day. The pain is mostly constant in the neck and upper back, noting the arm pain "comes and goes." She has difficulty bringing groceries up to her third floor unit and washing her hair. She had been performing her full work duties without a problem prior to 12/4/19 but was unable to do her job following the injury. She testified she has had no prior neck/cervical or right shoulder treatment. She wants to have the recommended surgery, as she wants to get better and back to normal, and back to work with no medications.

On cross-examination, Petitioner agreed that when she started therapy at PIC and started treating at MAPS and ASRC in December 2019, she did not tell the providers that light duty increased her pain. She was still working light duty in January 2020 when she saw PA Hayduk at MAPS on 1/15 and 1/29/20, and she did not tell him light duty increased her pain. He continued her on light duty at that time while her pain was at a 6/10 level, which she continued to perform. She agreed that through her 2/26/20 visit at MAPS she was continuing to work light duty and that her pain more or less had remained the same since the accident occurred. As to why Hayduk then took her off work at that time, Petitioner testified she told him when she would drive too far it would hurt her neck. She indicated that her light duty "work" with Respondent involved sitting in the cafeteria and doing nothing, but that driving back and forth was causing her discomfort. She could not say if that was the whole reason PA Hayduk took her off work or not. She also indicated her neck pain would increase with prolonged sitting, but agreed she was able to get up and walk around as needed, she just had to stay in the cafeteria area.

Petitioner hasn't returned to work since being taken off work completely, other than the two days she attempted to do so following her initial exam with Dr. Ghanayem. Petitioner testified that she has an epileptic child which sometimes means she has to drive for medical visits, and she visits her mother who lives in Indiana. She advised that she did report pain with turning her neck to both PA Hayduk and her physical therapist, noting that while she has full range of motion of her neck it still hurts with motion.

On redirect exam, Petitioner indicated she told MAPS many times that her pain got more constant throughout the day and reported that her pain increased when looking up and down. Prior to the work accident she had no pain with turning her neck or with driving. As to her non-work related driving, a lot of it has to do with her ill child, and his condition was less severe prior to the accident. As to being taken completely off work, Petitioner followed the 2/26/20 prescription of PA Hayduk, after which she last worked on 3/2/20, after she had undergone the cervical MRI and was advised she had a herniated disc. She has followed the instructions of her treating pain physician and surgeon not to return to work, other than the noted attempt to return per Dr. Ghanayem's recommendation, noting she had difficulty working at that time. On recross, Petitioner again acknowledged that she was not asked during light duty with Respondent to perform any activities that would increase her pain, and she agreed she could stand and stretch as needed. Respondent always was able to provide light duty for her while she was restricted to it. While driving increases her pain she does continue to drive on a personal basis.

CONCLUSIONS OF LAW

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator initially notes the parties stipulated prior to the hearing that any causation issues regarding the right shoulder condition are reserved for a later date and is not to be ruled on as part of the current decision.

Based upon a review of the entirety of the presented evidence, including Petitioner's trial testimony, the Arbitrator finds that the Petitioner has shown by the preponderance of the evidence that her current cervical spine condition of ill-being is causally related to the 2/4/19 work accident.

The Arbitrator first notes there is no dispute that Petitioner sustained a work-related injury on 12/4/19 and provided timely notice to Respondent. The crux of the dispute centers around causal connection, and the primary area of injury at issue is the cervical spine.

The medical records in evidence reflect a consistent history of Petitioner developing pain in the neck/upper back while lifting and moving freight boxes in her semi-trailer at work on 12/4/19. The medical records and testimony reflect that those complaints have never subsided, other than temporary improvement in pain radiating down the left arm with epidural injection, and Petitioner has remained under active medical treatment through the present time. The subjective complaints of cervical pain and left upper extremity radiating symptoms are substantiated by the physical examination findings of PA Hayduk, Dr. Mekhail and Dr. Coleman. All of these providers have determined that the MRI findings demonstrate a cervical C5/6 disc herniation, with Dr. Coleman indicating that the 2021 repeat MRI showed the disc had grown in size versus the initial films. The radiologist documented a C/6 disc protrusion. No one seems to disagree that there is no significant neural compression indicated in the films.

There is no evidence that Petitioner suffered from a pre-existing cervical condition or that she has undergone prior treatment involving the cervical spine. To the contrary, Petitioner testified that she never had cervical symptoms before the undisputed 12/4/19 accident and had been able to perform work activities that included driving a semi-truck and trailer, unloading and loading freight and using a forklift. The activities she was performing on 12/4/19 certainly provide good evidence that some portion of the loading/unloading was done by hand in addition to the use of a forklift.

The Arbitrator finds the opinions and reasoning of PA Hayduk, Dr. Mekhail and Dr. Coleman to be more persuasive on the whole than that of Dr. Ghanayem, regarding both causation and prospective medical treatment. While typically the opinion of a physician's assistant would not carry the same level of expertise as that of a Dr. Ghanayem, PA Hayduk's opinions are relatively consistent with those of both Dr. Coleman and Dr. Mekhail.

Dr. Mekhail's 1/6/21 exam noted neck pain with Spurling's on exam down her arm, though not radicular, and opined the cervical MRI showed a loss of cervical lordosis and a 2 to 3 mm central C5/6 disc herniation with mild canal stenosis. Dr. Mekhail on 2/4/21 noted a positive Spurling's more distal than just the upper arm that went to the forearm. While he injected the right shoulder and advised her to follow up with a shoulder specialist for that condition, Dr. Mekhail noted Petitioner had failed cervical injection and physical therapy and wanted long term relief. Given she only had a one level disc herniation, and despite the normal EMG, he recommended C5/6 disc replacement surgery.

Dr. Coleman on 5/18/21 noted symptoms of neck pain radiating up and occasionally into the left arm and hand with pain, stiffness and numbness in the hand after prolonged driving. He opined the MRI showed a C5/6 disc herniation with minimal stenosis. Noting she was asymptomatic prior to the accident, Dr. Coleman opined she sustained a disc herniation as a result of her December 2019 work-related injury. He believed that disc replacement surgery, at her young age, was reasonable to provide stability at that level. He also noted in a subsequent report that the 2021 cervical MRI showed a clear progression of the C5/6 herniation since the 2020 films. He found decreased sensation and paresthesias in a C6 distribution on exam, which correlated with the herniation. He agreed films showed minimal spinal or foraminal stenosis, but opined the herniation was likely associated with a chemical neuritis resulting in the radicular symptoms versus early stage radiculopathy of C6.

Dr. Ghanayem's opinions in this case are not particularly strong in the face of those of Drs. Mekhail and Coleman. Petitioner reported the work injury hurt her neck with referred pain into the shoulders and upper arms. She had soft tissue discomfort at the mid-cervical level, which is in the area of C5/6. It was his opinion that while Petitioner could have injured her back based on her described mechanism of injury, he did not believe she could have injured or aggravated her neck based on that mechanism. He stated: "I see no evidence of how this would have been injured from the work incident that she described to me. Therefore, any treatment for the neck

would be unrelated. Looking at her exam and cervical MRI scan, I see no reason why her arms would be hurting her given that the degenerative disk ridge is small and does not compress any neurologic structures. I cannot substantiate her subjective complaints based on objective MRI findings. Therefore, she is at MMI relative to her work injury." Diagnosis was a lumbar strain and he advised she could return to regular work duties.

First, the facts support that Petitioner has reported neck/upper back complaints starting from the time of the accident. Dr. Ghanayem's belief that the Petitioner's described mechanism of injury could not injure Petitioner's neck is belied by her consistent complaints of pain in that area. While Dr. Ghanayem describes a "really tiny disk ridge/degenerative bulge at C5/6" with no nerve compression, which differs from the readings of Drs. Mekhail and Coleman that the disc was herniated, Coleman as noted opining that it had grown between 2020 and 2021 films. While the negative EMG is certainly relevant to the Arbitrator, the two surgeons recommending cervical surgery have done so despite clear evidence in their records that they were aware of the negative result.

One of the key difficulties for the Arbitrator in this case are the findings at times by the treaters of radiculopathy despite a fairly clean MRI with regard to stenosis and a negative EMG, which is a big part of the Respondent's defense in this matter. At the same time, PA Hayduk has consistently related Petitioner's symptoms to the C5/6 level since shortly after the accident and MRI findings, and two spine surgeons have determined that the C5/6 disc replacement was reasonable treatment for the Petitioner's symptoms.

The Arbitrator found nothing in Petitioner's testimony or the medical records that would raise doubt as to the veracity of her testimony regarding the accident or her ongoing complaints. Additionally, the use of "light duty" by Respondent as described by Petitioner, i.e. that she did nothing but sit in a cafeteria area, does not show the Respondent in the best possible light.

Overall, the greater weight of the evidence supports the Petitioner in the Arbitrator's view, and the Arbitrator concludes that Petitioner's current cervical spine condition is causally related to her lifting injury at work on 12/4/19.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator incorporates and adopts the findings contained within the "Accident" section of this decision (above) in finding that the medical treatment rendered to date has been reasonable and necessary to cure or relieve Petitioner of the effects of her cervical injuries. Therefore, the Arbitrator orders Respondent to pay all medical expenses outlined in Petitioner's Exhibit 7, pursuant to Sections 8(a) and 8.2 (Illinois Workers' Compensation Commission fee schedule) of the Act which relate to treatment of the cervical spine and upper back.

As the parties have deferred the issue of the causal relationship of the right shoulder condition, the Arbitrator has no ability to award or deny the medical expenses contained in Petitioner's Exhibit 7 that are related to right shoulder treatment.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator incorporates and adopts the findings contained within the "Accident" section of this decision (above) in finding that the proposed C5/6 cervical disc replacement is reasonable and causally related treatment for the cervical spine injury that occurred on 12/4/19. As such, the Respondent shall authorize the surgery recommended by both Dr. Mekhail and Dr. Coleman.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner, per Arbx1, claims entitlement to TPD from 12/5/19 through 3/2/20, and to TTD from 3/3/20 through 10/28/21. Respondent agreed with the period of TPD, and Petitioner agreed Respondent was entitled to a TPD credit of $6,374.06.

Respondent disputes the TTD period claimed, however, but the parties have stipulated that Respondent is entitled to a TTD credit of $25,104.71 against the claimed period, as well as a $4,725.12 PPD advance credit.

Based on the findings noted above, the Arbitrator finds that the Petitioner is entitled to TPD from 12/5/19 through 3/2/20, and to TTD from 3/3/20 through the 10/28/21 hearing date. She was held off work throughout this time by PA Hayduk, Dr. Mekhail and/or Dr. Coleman through the hearing date. While Respondent made a valid point during cross examination in terms of what changed in Petitioner's condition as of 2/26/20 when PA Hayduk changed Petitioner's work status from light duty to off work. However, it was at that point that the herniated disc had just been found via MRI in late January 2020. Additionally, as noted above, the light duty being provided by Respondent at that point, based on Petitioner's unrebutted testimony, appeared to involve doing absolutely nothing but sit in a cafeteria.

The Arbitrator notes that because no evidence was presented with regard to how many hours/weeks of TPD the Petitioner was entitled to, all that can be awarded is "TPD." The Arbitrator would assume that the TPD claimed and the TPD paid by Respondent balances out to zero, such that the only benefits actually due and owing would be TTD benefits. All the Arbitrator can do is award the noted periods of TPD and TTD, and to find that the Respondent is entitled to credit totaling $36,203.89 against that award.