STATE OF ILLINOIS )
) SS.
COUNTY OF )
JEFFERSON

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Lincoln Whitaker
Petitioner,

vs.

NO: 15 WC 34562
17 IWCC 00559

Menard Correctional Center
Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

This matter comes before the Commission on Respondent's motion to correct a clerical error in the Decision and Opinion on Review of the Commission filed October 10, 2017. After reviewing the Decision on Review, the Commission recalls the Decision for the purposes of correcting the clerical error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Order dated October 10, 2017, is hereby vacated and recalled pursuant to Section 19(f) for a clerical error contained therein.

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

JUN 7 – 2018

DATED:
DLG/mw

David L. Gore

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LINCOLN WHITAKER,

Petitioner,

vs.

NO: 15 WC 34562
17 I.W.C.C. 000559

MENARD CORRECTIONAL CENTER,

Respondent.

CORRECTED 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, notice, causal connection, medical expenses and permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner was hired by Respondent as a State employee in February 1996 as a Correctional Nurse II. He usually worked the 11p.m. to 7a.m. shift. He prepared medications by popping them out of a bubble card. Some medications required him to crush them with a hand crusher that had to be screwed tightly.

2. Petitioner's duties also included popping hundreds of bubble cards nightly, carrying medications, syringes and other equipment in a plastic container that had a handle in the center and a well on each side. When full, the container weighed seven to eight pounds. There was great torque required to carry the container (and to keep the medications separate from the sterile materials). Petitioner spent up to 4 hours per shift preparing medications.

He was not assisted by inmate helpers. He also handled files daily, pushed a cart weighing five to ten pounds up to five times daily, and when there were cell house emergencies, he carried a bag weighing twenty-five pounds up five flights of stairs.

3. Petitioner is left handed. He submitted a workers' compensation claim for left handed carpal tunnel syndrome in 2009. This claim was settled. His left-handed injury led to him overcompensating with his right hand, which developed his right-hand issues.

4. Petitioner complained of right hand symptoms on September 30, 2015.

5. Petitioner noticed symptoms in his right hand after his pill crushing and medication prepping decreased from 4 hours per shift to two to three hours per shift, but his handling and gripping of slippery files increased his right-hand pain as the files became heavier over the years. He pulled and handled files for two to two and-a-half hours daily.

6. Eventually, Petitioner began noticing severe numbness and pain in his right fingers. He continued working after filing an injury report and undergoing an EMG and nerve conduction study with Dr. Peeples. The nerve conduction study was performed very professionally, and Dr. Peeples took measurements beforehand.

7. Petitioner retired on April 1, 2016 due to his pain and sleep deprivation caused by his symptoms. He was eligible for retirement in February 2016 but delayed it for two months.

8. Petitioner eventually underwent surgery on his right hand and arm up to his elbow. The surgery helped his pain and numbness tremendously. However, he still suffers from right hand weakness.

9. Dr. Mall is an orthopedic surgeon who saw Petitioner September 30, 2015. He noted that an October 2009 nerve conduction study revealed no evidence of right median or right or left ulnar neuropathy. However, he noted that the October 2015 electrodiagnostic tests performed by Dr. Peeples revealed increased right sided latency in comparison to the 2009 tests. Dr. Peeples diagnosed significant carpal tunnel syndrome. He also noted that Petitioner had no non- work-related risk factors related to carpal tunnel syndrome. Surgery was recommended.

10. Dr. Peeples opined that Petitioner's job duties could contribute to the development of carpal tunnel syndrome. Carrying a tote required elbow flexion, and Petitioner had to manipulate other items in his hand while carrying said tote. Petitioner also had to lock and unlock cell doors and dispense medications, which were wrist/hand intensive acts.

11. Dr. Peeples found no evidence of ulnar neuropathy.

12. Dr. Mall has witnessed popping pills out of bubble packs, which he states also can contribute to carpal tunnel if performed frequently. He opined that Petitioner's work duties were a causative factor in the development of his right hand carpal tunnel syndrome.

13. Dr. Sudekum is a board certified upper extremity surgeon. He performed an Independent Medical Examination (IME) on Petitioner on December 15, 2015. Dr. Sudekum noted that his nerve conduction study performed revealed no objective evidence of significant upper extremity peripheral neuropathy.

14. Dr. Sudekum denied telling Petitioner that he had carpal tunnel syndrome. He acknowledged, however, that he may have told Petitioner that he had symptoms which could be consistent with carpal tunnel syndrome.

15. Petitioner testified that the IME nurse who performed the nerve conduction study on behalf of Dr. Sudekum did not took measurements beforehand, nor did she insert any needles into Petitioner before the exam. She simply placed some pads on his arm.

The Commission reverses in part and affirms in part the Arbitrator's finding of accident. The Commission views the evidence slightly different than the Arbitrator, and finds that there is enough objective evidence based on Petitioner's job duties and the opinions of Drs. Mall and Peeples to support Petitioner's claim for carpal tunnel syndrome. The Commission also took note of the fact that Dr. Sudekum relied upon Dr. Peeples' finding of no evidence of ulnar neuropathy, yet ignored Dr. Peeples' findings of median entrapment neuropathy at the right and left carpal tunnels.

The Commission affirms the Arbitrator's denial of accident in relation to Petitioner's claim for cubital tunnel syndrome.

In keeping with this ruling, the Commission also awards to Petitioner all reasonable and necessary medical expenses related to treatment for his right carpal tunnel syndrome.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner has proved accident in relation to his right carpal tunnel syndrome.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $755.22 per week for a period of 19 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused a 10% loss of use of Petitioner's right hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner all reasonable and necessary medical expenses related to his right carpal tunnel treatment under §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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $20,000.00. 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.

DATED: JUN 7 - 2018
O: 7/13/17
DLG/wde
45

David L. Gore

Stephen Mathis

Deborah L. Simpson

# ILLINOIS WORKERS' COMPENSATION COMMISSION
# NOTICE OF ARBITRATOR DECISION

**WHITAKER, LINCOLN**
Employee/Petitioner

Case# **15WC034562**

**SOI/MENARD CORRECTIONAL CENTER**
Employer/Respondent

**17IWCC0559**

On 1/6/2017, 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 0.63% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

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

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL
AARON L WRIGHT
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

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

1350 CENTRAL MANGEMENT SERVICES
BUREAU OF RISK MANAGEMENT
PO BOX 19208
SPRINGFIELD, IL 62794-9208

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

JAN 6 - 2017

DONALD A. RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS )
)SS.
COUNTY OF Jefferson )

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

# ILLINOIS WORKERS' COMPENSATION COMMISSION
# ARBITRATION DECISION

Lincoln Whitaker
Employee/Petitioner

v.

State of Illinois/Menard Correctional Center
Employer/Respondent

Case # 15 WC 34562

Consolidated cases: N/A

17IWCC0559

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 **Melinda Rowe-Sullivan**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **October 6, 2016**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

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

FINDINGS

On **August 23, 2015**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

In the year preceding the injury, Petitioner earned **$108,331.81**; the average weekly wage was **$2,083.34**.

On the date of accident, Petitioner was **54** years of age, ***married*** with **0** dependent children.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, **$0** in non-occupational indemnity disability benefits and **$0** for other benefits, for a total credit of **$0**.

Respondent is entitled to a credit **for all amounts paid** for bills paid under its group medical plan for which credit may be allowed under Section 8(j) of the Act as stipulated by the parties at the time of arbitration.

**ORDER**

Petitioner failed to prove that he sustained an accident that arose out of and in the course of his employment with Respondent, and that his current condition of ill-being is casually related to his alleged accident. All benefits are denied; the remaining issues are moot and the Arbitrator makes no conclusions as to those issues.

Respondent is entitled to a credit for **all amounts paid under group health plan** under 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.

Millicent M. Rose-Sullivan

Signature of Arbitrator

1/2/17

Date



JAN 6 - 2017

**ILLINOIS WORKERS' COMPENSATION COMMISSION**
**ARBITRATION DECISION**

Lincoln Whitaker
Employee/Petitioner

Case # 15 WC 34562

v.

Consolidated cases: N/A

State of Illinois/Menard Correctional Center
Employer/Respondent

## MEMORANDUM OF DECISION OF ARBITRATOR

### FINDINGS OF FACT

Petitioner testified that he served as a Correctional Nurse II for 20 years, predominantly on the night shift. He testified that on his shift he prepared for "medication pass" or dispensing of medications for offenders. He testified that he had to pop most medication out of a "bubble card" while other medication had to be crushed with a hand crusher. He testified that this was a screw mechanism that had to be screwed tightly until the medication was crushed. He testified that for a time, some medication had to be "floated" or placed in water, meaning he had to carry water with medication. He testified that this was necessary because some offenders were "cheeking" their medication, or avoiding taking the medication by hiding it under their tongue.

Petitioner testified that he opened hundreds of bubble packages each night. He testified that this was an activity that required the use of both of his hands. He also testified that some packages were difficult to open because of tough backing and almost impossible to push out without tearing the back of the package first. He testified that he carried his medical supplies, including sharps and insulin syringes, in a tote that weighed approximately 7-8 pounds. He testified that the tote was hard to balance and that it required grip strength to carry it. He testified that when the facility was short-staffed he covered the entire institution and had to work overtime, and that during such times, he would walk over 10 miles per shift. He testified that he did not have inmate helpers. He further testified that many times he lifted patients and cared for patients alone.

Petitioner testified that he also served as a first responder to the cell houses. He testified that the response bag weighed 25 pounds. He testified that he carried his supplies throughout the cell houses, which had five flights of stairs to their top level. He further testified that he pulled medical files, and that this also required forceful gripping.

Petitioner testified that first began developing symptoms in his left dominant hand. He testified that filed a claim for carpal tunnel syndrome in 2009, which was settled. He testified that he underwent surgery which consisted of left carpal tunnel decompression with Dr. Brown. He testified that after the surgery, he returned to performing the same activities. He testified that, because of his left-sided injury, he began overcompensating with his right upper extremity. He testified that he thereafter began developing symptoms in his right upper extremity. He testified that he does not suffer from diabetes, gout, hypothyroidism, hypertension or obesity. He testified that he has hobbies of bee keeping, hunting, fishing and gardening.

Petitioner testified that he attempted to work through his symptoms, but Respondent's facility was poorly staffed and his symptoms progressed. He testified to difficulty with pulling medical files. He further testified that it was difficult to balance and carry his tote because it would "torque [his] wrist and arm" based on how much weight he had on either side of the tote. He testified that he could tell if he had too much weight on one side. He testified that he could not balance the tote because he refused to mingle his biohazard container with his sterile supplies.

Gayle Walls was called as a witness by Petitioner at the time of arbitration. She testified that she is employed by Respondent and that her job title is that of Health Care Unit Administrator. She testified that she knows and worked with Petitioner as his supervisor. She testified that nothing that Petitioner testified to was incorrect.

The Medical Bills Exhibit was entered into evidence at the time of arbitration as Petitioner's Exhibit 1. The Medical Records List was entered into evidence at the time of arbitration as Petitioner's Exhibit 2.

The medical records of Dr. Mall were entered into evidence at the time of arbitration as Petitioner's Exhibit 3. The records reflect that Petitioner was seen on September 30, 2015, at which time he reported right hand complaints including a complaint of a band-like feeling around his wrist, a feeling like his fingers were numb and any movement of his wrist out of neutral produced significant discomfort. It was noted that Petitioner had a wrist splint provided by the physician's assistant at his primary care physician's office for carpal tunnel complaints, which he wore for 8-9 months and helped. It was noted that the symptoms had been worsening more recently, that he had difficulty with gripping objects and that he had numbness and tingling at night as well as when driving. It was noted that Petitioner worked for Menard Correctional Center and worked in the cell house where he passed out medications and insulin injections, and that he spent about 1½ hours carrying a tote and popping out medications for inmates. It was noted that Petitioner also spent a lot of time doing paperwork and documentation of medications, preparing for his routes, that he had to pull files and do paperwork and that he estimated that the tote weighed about 5 pounds. It was noted that Petitioner also had to turn the large, heavy keys on multiple occasions as he was moving in and out of the cell house, and that he also had to use the keys a lot to lock up the medications. It was noted that Petitioner had prior left carpal tunnel surgery about 5 years ago. The assessment was that of right-sided carpal tunnel syndrome, and it was recommended that Petitioner use an ulnar nerve night brace and undergo and EMG/nerve conduction study for the right side to evaluate for carpal tunnel syndrome and cubital tunnel syndrome. The note further indicated that Petitioner had no significant risk factors for carpal tunnel syndrome or cubital tunnel syndrome, that he was not obese, that he did not have any diabetes or thyroid issues and that he did not have any outside activities that were potentially a cause of carpal tunnel syndrome. Dr. Mall noted that he believed Petitioner's work-related duties were only a causative factor, but the prevailing factor in the cause for him to become symptomatic in the right hand with carpal tunnel syndrome and cubital tunnel syndrome. A work slip was issued on that date, allowing Petitioner to return to work full duty effective October 1, 2015. (PX3).

The records of Dr. Mall reflect that Petitioner was seen on October 20, 2015 for continued complaints of right upper extremity symptoms which began with his employment and his job duties associated with Respondent. It was noted that Petitioner was present for EMG follow-up given his diagnosis of carpal tunnel syndrome and cubital tunnel syndrome on the right side. The assessment was noted to be that of right cubital and carpal tunnel syndrome. It was noted that Petitioner had failed conservative treatment. Petitioner was instructed to continue to use his cubital tunnel brace and carpal tunnel brace, and surgery was recommended. A work slip was issued on that date, allowing Petitioner to return to work full duty effective October 20, 2015. At the time of the November 24, 2015 visit, it was noted that Petitioner stated that the night splint helped him substantially for a period of time, and that he still had some numbness throughout the day. It was noted that Petitioner had been on vacation recently as well, which had improved his symptoms slightly. It was noted that Petitioner estimated that he turned 20-

30 locks per day. The assessment was that of right cubital and carpal tunnel syndrome, possibly mild left cubital tunnel syndrome. Petitioner was recommended to continue to wear the night brace, and it was noted that he had failed conservative treatment. A right carpal tunnel release and cubital tunnel decompression, possible transposition, was recommended. (PX3).

The records of Dr. Mall reflect that Petitioner was seen on January 5, 2016 with continued complaints of numbness and tingling in his ulnar distribution of the right upper extremity as well as median distribution in the right upper extremity and symptoms into the left upper extremity in the ulnar nerve distribution. It was noted that Petitioner recently underwent an IME. It was noted that on December 31, 2015, Petitioner was at work and one of the offender's back went out and they had difficulty lifting him. It was noted that Petitioner had to up against a wall when trying to transfer the patient and was pinned against the wall when he picked him up to turn him, which resulted in right shoulder blade pain and cervical spine pain and stiffness. It was noted that Petitioner admitted that he had had scapular pain in the past due to his carrying the basket in the right upper extremity but had never had cervical spine symptoms in the past, other than following this injury. The assessment was that of (1) right cubital and carpal tunnel syndrome, mild left cubital tunnel syndrome; (2) cervical strain and scapulothoracic bursitis. It was recommended that Petitioner undergo a cortisone injection to the scapulothoracic bursa and physical therapy for his cervical spine discomfort and stiffness. It was noted that Petitioner was recommended to undergo a carpal and cubital tunnel release with cubital tunnel decompression and possible transposition, depending on the stability of the ulnar nerve. A work slip was issued on that date, allowing Petitioner to return to work full duty effective January 5, 2016. (PX3).

The records of Dr. Mall reflect that Petitioner was seen on February 23, 2016 for his right upper extremity cubital and carpal tunnel syndrome as well as a cervical strain and scapulothoracic bursitis. It was noted that Petitioner stated that his cervical strain and scapulothoracic symptoms got substantially better after physical therapy and the injection that was performed at the last visit, but he still felt the numbness symptoms into his hand and right upper extremity. It was noted that Petitioner stated that when he had decreased activities because of his new injury in the right upper extremity that his numbness and tingling into the upper extremity also was better, but when he returned back to work full duty the symptoms returned. The assessment was that of (1) right cubital and carpal tunnel syndrome, mild left cubital tunnel syndrome; (2) cervical strain and scapulothoracic bursitis, improved. It was noted that Petitioner was placed at maximum medical improvement and full release as it related to his scapulothoracic bursitis and cervical strain, and that Dr. Mall continued to recommend right elbow ulnar nerve decompression ad possible transposition with right carpal tunnel release. At the time of the April 12, 2016 visit, it was noted that Petitioner stated that his symptoms had improved in the posterior aspect of his shoulder, that he had continued numbness and tingling in the right upper extremity and that he had minimal symptoms with the left side. The assessment was that of (1) right cubital and carpal tunnel syndrome; (2) mild left cubital. Petitioner was again recommended to undergo right carpal tunnel release and cubital decompression with possible transposition. (PX3).

The records of Dr. Mall reflect that Petitioner was seen on June 28, 2016, at which time it was noted that Petitioner continued to have numbness and tingling in his right upper extremity which had actually forced him to retire from his job as it was bothering him dramatically. The assessment was that of right carpal tunnel and right cubital tunnel syndrome. Petitioner was again recommended to undergo surgery. At the time of the July 26, 2016 visit, it was noted that Petitioner was being seen in follow-up of his right elbow and wrist carpal and cubital tunnel decompressions and ulnar nerve transposition and was doing well and had minimal complaints. The assessment was that of status post right carpal tunnel release and cubital tunnel decompressions with ulnar nerve transposition. It was noted that Petitioner was feeling better, that his hand felt better, that his numbness had resolved and that he was doing quite well. At the time of the August 23, 2016 visit, it was noted that Petitioner was doing remarkably well and was quite satisfied with his progress. Petitioner was recommended additional strengthening for the right upper

extremity for the next three weeks. At the time of the September 27, 2016 visit, it was noted that Petitioner was doing quite well, had minimal complaints and was back to basically doing all of his normal activities, and that his numbness and tingling had improved and was basically gone at that point. Petitioner was recommended to continue his home-based physical therapy, was released to full activity and placed at maximum medical improvement. (PX3).

The medical records of Dr. Peeples were entered into evidence at the time of arbitration as Petitioner's Exhibit 4. The records reflect that Petitioner was seen on October 20, 2015 for electrodiagnostic evaluation of right greater than left hand numbness and question of carpal and cubital tunnel syndromes. It was noted that Petitioner reported gradual onset of symptoms of right hand pain and numbness, described right much more prominent than left numbness and had no neck pain, characteristic radicular, myelopathic or generalized neuropathic symptoms. It was also noted that Petitioner had a left carpal tunnel decompression five years ago. It was noted that the impression/diagnosis was that of electrodiagnostic findings for a median entrapment neuropathy at the right and left carpal tunnel; no evidence for a right or left ulnar neuropathy. (PX4).

The medical records of Mercy Hospital were entered into evidence at the time of arbitration as Petitioner's Exhibit 5. The records reflect that Petitioner underwent x-rays of the right hand on September 30, 2015 which were interpreted as revealing no identifiable bone abnormalities. (PX5).

The medical records of Orthopedic and Ambulatory Surgery Center were entered into evidence at the time of arbitration as Petitioner's Exhibit 6. The records reflect that Petitioner underwent a right carpal tunnel release and cubital tunnel decompression with ulnar nerve transposition on July 21, 2016 for a pre- and post-operative diagnosis of right carpal and carpal tunnel syndrome. (PX6).

The medical records of Rehab Unlimited – Murphysboro were entered into evidence at the time of arbitration as Petitioner's Exhibit 7. The records reflect that Petitioner underwent occupational therapy for the timeframe of August 5, 2016 through September 16, 2016. (PX7).

The Worker's Compensation Documentation Log was entered into evidence at the time of arbitration as Petitioner's Exhibit 8. The Illinois Form 45: Employer's First Report of Injury was dated September 22, 2015 and noted a date of accident of August 23, 2015. It was noted that the accident occurred with "repetitive motion: carrying carpenters box w/syringes and medications in it; carrying it around with 3 fingers usually because also carrying around envelopes; strain on wrist; pulling medical files; pushing meds out of blister packets." The Workers' Compensation Employee's Notice of Injury was dated September 22, 2015 and noted that Petitioner reported the accident to his supervisor, Gail Walls, on August 23, 2016 [*sic*]. It was noted that the duties Petitioner was performing at the time of injury was that of repetitive use of the right hand, wrist and arm performing setting up of medications and carrying medication caddy. When asked to describe how the injury occurred, Petitioner indicated popping out pills to set up offender medications and carrying medication caddy in cell houses, as well as pulling medical files for 2-3 hours every night. The Supervisor's Report of Injury or Illness completed by Gail Walls on September 22, 2015 noted that Petitioner gave written notice on that date and that Petitioner's description of accident/incident was that of repetitive use of the right hand and wrist/arm while setting up medications and carrying the medication caddy. (PX8).

The Work History Timeline was entered into evidence at the time of arbitration as Petitioner's Exhibit 9. The Timeline reflects that Petitioner indicated that on a shift the three areas that he may be assigned to included infirmary, medication pass in the cell houses and first aid. The Detailed Job Description references that Petitioner lifts 7-8 pounds daily for 2-3 hours, and that he pulls and refiles medical file folders for approximately 2 hours per shift. The Detailed Job Description also indicates that Petitioner carries the medication tote for 2-3 hours per shift, pulls medical files for 2 hours per shift and grips medication blister cards for 2 hours per shift. (PX9).

The Job Description was entered into evidence at the time of arbitration as Petitioner's Exhibit 10. The Client's Written Job Description was entered into evidence at the time of arbitration as Petitioner's Exhibit 11.

The Job Duties description was entered into evidence at the time of arbitration as Petitioner's Exhibit 12. The description as prepared by Petitioner referenced, among other things, the tasks of routinely reviewing records to assure that they were complete in detail and scope and ensuring medications were properly charted and records of nursing care and patient treatment and observations were maintained, as well as providing direct patient care as needed such as treatment and administering DOT medications and performing patient assessments, assisting physicians and transcribing orders and making infirmary and cell house rounds. (PX12).

The Corrections Nurse Class Specifications were entered into evidence at the time of arbitration as Petitioner's Exhibit 13. The March 23, 2006 Position Description was entered into evidence at the time of arbitration as Petitioner's Exhibit 14. The March 29, 2011 Position Description was entered into evidence at the time of arbitration as Petitioner's Exhibit 15. The February 18, 2011 Demands of the Job was entered into evidence at the time of arbitration as Petitioner's Exhibit 16. The May 13, 2011 Demands of the Job was entered into evidence at the time of arbitration as Petitioner's Exhibit 17.

The December 2, 2009 and December 22, 2009 Settlement Contract was entered into evidence at the time of arbitration as Petitioner's Exhibit 18. The Settlement Contract Lump Sum Petition and Order for Case Numbers 09 WC 52610 and 10 WC 3193 alleged dates of accident of December 2, 2009 and December 22, 2009 involving the right and left hands, wrists, elbows shoulders, neck and thumb as a result of repetitive trauma/pushing on side of lancet. The Settlement Contract Lump Sum Petition and Order further referenced a settlement of 7.5% loss of use of the left thumb and 17.5% loss of use of the left hand. (PX18).

The transcript of the deposition of Dr. Mall was entered into evidence at the time of arbitration as Petitioner's Exhibit 19. Dr. Mall testified that he is an orthopedic surgeon and that he first saw Petitioner on September 30, 2015 and that the various documentation he had in his file pertaining to Petitioner included a 2009 nerve conduction study which referenced mild to moderate severe median entrapment neuropathy at the left carpal tunnel and no evidence of right median or right or left ulnar neuropathy. (PX19).

Dr. Mall testified that Dr. Peeples' October 29, 2015 note referenced that Tinel's and Phalen's were negative, and that the impression of the diagnosis of the electrodiagnostic study was that of median nerve entrapment at the right carpal tunnel as well as some entrapment at the left carpal tunnel as well, but no evidence that he found for right or left ulnar neuropathy. He testified that Dr. Peeples did not compare the current findings to those of the prior values given the fact that Petitioner had had a left carpal tunnel release, but typically there could be some residual findings that would then need to be compared back to the initial study to make sure there was improvement in the nerve conduction. He testified that in comparing the two studies, the latency was the same on the left side as it was pre-operatively, and that the latency on the median nerve on the right side had increased which meant that the nerve was slower across the carpal tunnel which crossed the threshold into being significant. (PX19).

Dr. Mall testified that activities that cause and contribute to the development of carpal tunnel syndrome typically include gripping, and that it can be especially worse if one was gripping in a poor position. He testified that any sort of repetitive maneuvering of the wrist with poor position, such as flexion-extension of the wrist, was a risk factor as was heavy gripping and heavy loading. He testified that there are some non-work-related risk factors as well, but that Petitioner did not have any. He testified that his diagnoses were that of right-sided carpal and carpal tunnel syndrome, which were both clinical diagnoses. He testified that nerve conduction studies can help confirm the diagnosis, but did not

oftentimes have to be present to get a good outcome from either conservative or operative treatment. (PX19).

Dr. Mall testified that his recommendation for treatment initially was that of an ulnar nerve night brace but that failed, so he recommended surgical intervention for carpal tunnel release and cubital tunnel release with possible transposition. He testified that he reviewed Dr. Sudekum's deposition transcript, and that he had a few things that he disagreed with. He testified that Petitioner was not overweight. He testified that it had not been proven that smoking had anything to do with carpal tunnel syndrome. (PX19).

Dr. Mall testified that he believed that the job duties as a Correctional Nurse I and/or II would cause and contribute to the development of carpal and carpal tunnel syndrome on the right. He testified that Petitioner had to carry his tote which typically required a little bit of elbow flexion, and that he was placing force through the upper extremity with his elbow flexed. He testified that Petitioner was also having to manipulate things with his left hand and trying to keep the tote in hand, and that he had to flex and extend the wrist to do so. He testified that Petitioner also had to lock and unlock the cell doors and dispense medications, and that he was also sorting through medications and envelopes so he performed a lot of wrist and hand-intensive activities. He testified that for those things and his lack of other risk factors, he felt that Petitioner's job duties at Menard were contributing factors to the development of his carpal and cubital tunnel syndrome. (PX19).

Dr. Mall testified that Petitioner popped medications out of bubble packs, and that he has seen those in his practice and at his house as well. He testified that he imagined that this would contribute to the development of carpal tunnel syndrome if you were doing them frequently. He testified that he did not think it was one specific activity necessarily, but more so the combination of all of the activities that Petitioner was doing. He testified that he did not believe that Petitioner had any outside activities or hobbies that would cause and contribute to the condition, and that he did some hunting, fishing and gardening, as well as beekeeping. (PX19).

When asked about how examinations can be different on the same day as indicated by Dr. Sudekum, Dr. Mall responded that part of it may be the point of how Dr. Peeples did his examination and typically if it was different days of the week, you can have different exams based on how irritated the nerve may be. (PX19).

On cross examination, Dr. Mall admitted that he did not see the actual bubble packs, but that it sounded like Petitioner spent a fair amount of time at the beginning of the day getting those ready and popping the medications out. He testified that he had not done a force analysis on the bubble wraps. He testified that Petitioner demonstrated the elbow flexion to him in his office. He testified that carrying the container was maybe 30-40 degrees of flexion, but if he had to get a medicine out he would flex it up more to about 90 degrees so that he could see and pull out the other medication with his left hand and dispense it. He testified that he did not have the exact number of minutes that Petitioner carried the tote back and forth, but he knew he had to dispense medications for a fair amount of his day. (PX19).

On cross examination, Dr. Mall agreed that he made the statement that the literature did not demonstrate that smoking had an effect or was a cause in the etiology of carpal tunnel syndrome. He then testified that there may be some relationship, but it was not one that was typically pointed out as a major risk factor for carpal tunnel syndrome. He agreed that nicotine constricted the blood vessels. He testified that he could see how it could potentially cause some lack of blood supply to the nerve, but it was not necessarily going to cause the compression of the nerve. (PX19).

The Appearance of Representative was entered into evidence at the time of arbitration as Respondent's Exhibit 1.

The Worker's Compensation Documentation Log was entered into evidence at the time of arbitration as Respondent's Exhibit 2. The records were effectively duplicative of those as contained in Petitioner's Exhibit 8. (RX2; PX8).

The IME report of Dr. Sudekum was entered into evidence at the time of arbitration as Respondent's Exhibit 3. The report noted that Dr. Sudekum had the opportunity to perform the medication dispensing activity himself using bubble pack med cards to push out pills, and that the foil on the backside of the bubble pack was quite thin and perforated and released the pill relatively easily with little manual or digital force applied to the bubble side of the pack required to push the pill through the foil on the back side of the card. The report reflects that Dr. Sudekum noted that the majority of the digital/manual force involved when pushing pills out of the bubble pack was concentrated in the thumb tip and there was no direct pressure to the palm, wrist, carpal tunnel region, medial elbow or cubital tunnel region. (RX3).

The transcript of the deposition of Dr. Sudekum was entered into evidence at the time of arbitration as Respondent's Exhibit 4. Dr. Sudekum testified that he is board-certified in plastic and reconstructive surgery and also holds a separate board certification in surgery of the upper extremity. He testified that he performed an IME of Petitioner on December 15, 2015, at which time he was complaining of right upper extremity symptoms, including pain and paresthesias of his right wrist, elbow, hand, shoulder and the right side of his neck. (RX4).

Dr. Sudekum testified that some work factors that can create or lead to the development of carpal tunnel syndrome include situations where an employee has a sustained flexed posture for a long time, but that this was highly unusual for most employment activities since usually there was movement. He testified that if the patient held onto a vibrating instrument or tool or was swinging a hammer that was associated with vibration and impact, these types of activities can potentially contribute to the development of at least carpal tunnel symptoms if not carpal tunnel syndrome. He testified that heavy pinching, gripping and grasping, impact and vibration were some of the things that they knew contributed to the symptomatology. As to cubital tunnel syndrome, Dr. Sudekum testified that if an individual was in a work situation where there was sustained hyperflexion of the elbow, it could cause symptoms. (RX4).

Dr. Sudekum testified that co-morbid factors that can also lead to cubital tunnel syndrome include increasing age, arthritis, or tendinitis in and around the elbow joint, diabetes, obesity and smoking. He testified that what you were looking for would be anything that could cause increased pressure in and around the cubital tunnel region. He testified that you can also have direct metabolic conditions, like diabetes and hypothyroidism, which can cause cubital tunnel symptoms as well as carpal tunnel symptoms and syndrome as well. He also testified that you can have a sustained hyperglycemic situation cause direct neurotoxicity to the nerves, which was more of a direct metabolic effect that can contribute to those conditions. (RX4).

Dr. Sudekum testified that some of the co-morbid factors specifically for carpal tunnel syndrome would include increasing age, female sex, conditions such as arthritis, anything that causes edema or fluid to collect in the distal extremities, pregnancy, hypertension, hypothyroidism and diabetes. He testified that any type of condition that could lead to vasculopathy, such as smoking, hypertension or primary vascular disease can contribute to either of those conditions. (RX4).

Dr. Sudekum testified that Petitioner reported to him that he had a 2-3 year history of pain of the right volar wrist, medial elbow, right shoulder and right side of his neck, and that he also complained of numbness and tingling in the entire right hand at night and throughout the day as well as intermittent cramping of the right thenar eminence. He testified that Petitioner denied any weakness of his right upper extremity and denied any symptoms involving his left upper extremity. He testified that the physical examination performed revealed that Petitioner was in the overweight body morphology category and that

he had a well-healed surgical incision from his previous left carpal tunnel operation. He testified that Petitioner had subjective responses to his wrists, and that Tinel's and Phalen's signs on the right were positive on the right and negative on the left. He testified that Petitioner also had a positive right elbow Phalen's test and negative elbow Tinel's test on the right, and that his grip strength was reduced on the right side compared to the left. He testified that Petitioner had mild right lateral elbow pain with resisted wrist and middle finger extension, but he did not have any medial elbow pain. (RX4).

Dr. Sudekum testified that in reviewing Dr. Mall's note of September 30, 2015 which noted that any movement of Petitioner's wrist out of neutral produced significant discomfort was significant because it was not the type of symptoms that you would expect from carpal tunnel syndrome. He testified that typically with carpal tunnel syndrome, movement of the wrist relieved the symptoms. He testified that unless Petitioner had a very significant arthritis, that would be unusual. (RX4).

Dr. Sudekum further testified that his review of the medical records indicated that Petitioner saw Dr. Peeoples on October 20, 2015, and that on physical examination Dr. Peeples found that the wrist Tinel's and Phalen's signs were negative and elbow flexion test was also negative bilaterally. He testified that the records he reviewed indicated that on the same day Petitioner was seen by Dr. Mall, and that the physical examination findings by Dr. Mall were significantly different than those found by Dr. Peeples. He testified that Dr. Mall's records indicated that the wrist and elbow Tinel's and Phalen's signs were positive, while Dr. Peeples' the same day did not find them to be positive. He testified that at that time where was no objective evidence of any ulnar neuropathy or cubital tunnel syndrome, which he thought was significant. (RX4).

Dr. Sudekum testified that Petitioner's subjective symptoms were in his opinion out of proportion of the findings on the physical examination. He testified that Petitioner did not have any neurologic evidence on nerve conduction studies of any kind of an ulnar neuropathy or any kind of a cervical radiculopathy that was identified on nerve conduction studies that might explain the symptoms he was having. He testified that Dr. Mall made statements that any movement of Petitioner's hand or outer wrist caused significant discomfort, which in the absence of any kind of an arthritic condition, would certainly be unusual and may be an indication of symptom magnification. He testified that the x-rays performed revealed an incidental finding of bone cysts in the proximal phalanx of the right middle finger and evidence of calcific tendinitis of both elbows, which was just an indication of chronic tendinitis that may have occurred in those areas, but that there was no evidence of significant arthropathy or arthritis. (RX4).

Dr. Sudekum testified that nerve conduction studies performed at his office revealed normal distal motor and sensory latencies for the bilateral median and ulnar nerves, and that there was no evidence of significant neuropathy, carpal tunnel syndrome or cubital tunnel syndrome on either side. He testified that there was a minor abnormality of the right median nerve in the median ulnar differential, which by itself was a relatively minor and certainly non-diagnostic finding. (RX4).

Dr. Sudekum testified that Petitioner indicated that his job consisted of delivering medications to inmates, writing progress notes, locking and unlocking doors approximately 30 times a shift and occasionally using a computer to check his e-mail. He testified that Petitioner also indicated that he did Accu-Checks (*i.e.*, blood sugar checks) and that he would then give insulin shots as needed, and that he would do this for approximately 24-30 patients per shift. He testified that Petitioner reported that he was also required at times to push a cart with supplies and at times carry a tote with supplies, which were used to help carry the materials he needed to give medications and injections and do wound care. (RX4).

Dr. Sudekum testified that Petitioner's constellation of symptoms involving his right upper extremity would be classified as generalized subjective right upper extremity neuromuscoskeletal symptoms. He testified that the nerve conduction study that he performed had no objective evidence of significant upper extremity peripheral neuropathy, and that there was a minimal abnormality

electrodiagnostically of the right median nerve. He testified that he felt that Petitioner's whole constellation of neuromusculoskeletal symptoms was out of proportion to the objective findings on the physical examination, and that Petitioner's records and his examination of Petitioner revealed inconsistent bilateral upper extremity clinical examinations as compared to those of Dr. Mall and Dr. Peeples. He testified that he could not rule out symptom magnification as a confounding factor in his presentation. He testified that Petitioner did not have any objective evidence of carpal tunnel syndrome, and that it was his opinion that Petitioner did not suffer from cubital tunnel syndrome. (RX4).

On cross examination, Dr. Sudekum agreed that he performed a NeuroMetrix test on Petitioner's hands and arms, and that he and his nurse performed the test. He testified that his nurse was not a neurologist nor was she a physiatrist. He testified that he did not know who performed Dr. Peeples' test. (RX4).

On cross examination, Dr. Sudekum testified that he was not provided with any medical records after the date of the IME on December 15, 2015. He testified that he was not made aware that Petitioner sustained another injury on December 30, 2015. (RX4).

On cross examination, Dr. Sudekum testified that Petitioner indicated to him that there were three levels of medical providers at Menard and that as he rose through the ranks, he did not have to do the same job specifically that the lower level employees did but he performed all of those same jobs as needed depending on staffing. He testified that there were more administrative tasks from a higher level medical officer in that situation. He testified that Petitioner stated that he performed all of the same tasks, but not as frequently would he do many of those jobs depending on staffing. He testified that Petitioner made a statement when he saw him that he had in the recent past (although he admitted that he did not know specifically what that time period was) not been working overtime, but in the distant past he had worked overtime to a more significant degree. (RX4).

On cross examination, Dr. Sudekum testified that Petitioner was overweight but not obese. He testified that he was not aware that Petitioner had diabetes, hyperthyroidism or hypertension. He agreed that Petitioner was not a female. He testified that Petitioner told him that he did not have a smoking history but that he told Dr. Peeples that he had a smoking history, so it was his assumption that he had smoked in the past. (RX4).

On cross examination, Dr. Sudekum denied telling Petitioner that he had carpal tunnel syndrome but he would not have surgery if he was him. He testified that he might have told Petitioner that he had the symptoms which could be consistent with carpal tunnel syndrome, but because of the fact that his nerve conduction studies were normal he would not recommend carpal tunnel surgery. He testified that he did not recall if Petitioner asked him if he would do his surgery. (RX4).

On cross examination, Dr. Sudekum testified that there was no indication in the notes that Petitioner had taken any medications. He testified that there was no indication in the medical records or what he stated that he did any home exercises. He testified that he did not know how much conservative treatment Petitioner had prior to his left carpal tunnel release. He admitted that he did not know specifically how the job duties of a Nurse II changed when a facility was on lockdown. He testified that on physical examination, there was no objective evidence of carpal tunnel syndrome but that Petitioner had subjective symptoms which could be consistent with carpal tunnel syndrome but also could be consistent with a cervical radiculopathy, thoracic outlet syndrome or many other conditions like diabetes. (RX4).

## CONCLUSIONS OF LAW

With respect to disputed issues (C) and (F), given the commonality of facts and evidence relative to both issues, the Arbitrator addresses those jointly.

The Arbitrator finds that Petitioner failed to prove that he sustained accidental injuries that arose out of and in the course of his employment with Respondent on August 23, 2015, and that his current condition of ill-being is causally related to his work activities.

In so concluding that Petitioner failed to prove that he sustained accidental injuries that arose out of and in the course of his employment with Respondent, the Arbitrator finds the opinions of Dr. Sudekum to be more persuasive than the opinions provided by Dr. Mall. The Arbitrator finds to be highly significant the fact that Dr. Sudekum testified that Petitioner's subjective symptoms were in his opinion out of proportion of the findings on the physical examination and that Petitioner did not have any neurologic evidence on nerve conduction studies of any kind of an ulnar neuropathy or any kind of a cervical radiculopathy that was identified on nerve conduction studies that might explain the symptoms he was having. The Arbitrator further finds to be significant that Dr. Sudekum further testified that Dr. Mall made statements that any movement of Petitioner's hand or outer wrist caused significant discomfort, which in the absence of any kind of an arthritic condition, would certainly be unusual and may be an indication of symptom magnification. (RX4). The Arbitrator is troubled by Dr. Sudekum's testimony that his review of the medical records indicated that Petitioner saw Dr. Peeoples on October 20, 2015, and that on physical examination Dr. Peeples found that the wrist Tinel's and Phalen's signs were negative and elbow flexion test was also negative bilaterally, yet on the same day Petitioner was seen by Dr. Mall whose records indicated the wrist and elbow Tinel's and Phalen's signs were positive. (RX4). The totality of this evidence, then, thereby causes the Arbitrator to place greater reliance upon the opinions of Dr. Sudekum rather than Dr. Mall in this matter. Having reviewed the entirety of the evidence, the Arbitrator finds that Petitioner failed to prove that he sustained accidental injuries that arose out of and in the course of his employment with Respondent.

Based upon the foregoing and the record as a whole, the Arbitrator concludes that Petitioner has failed to prove that he sustained accidental injuries that arose out of and in the course of his employment with Respondent on August 23, 2015, and that his current condition of ill-being is causally related to his work activities. All benefits are denied. The remaining issues of notice, medical bills and nature and extent are moot, and the Arbitrator makes no conclusions as to those issues.

STATE OF ILLINOIS )
) SS
COUNTY OF COOK )

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

William Krutul,

Petitioner,

vs.

Nos. 06 WC 34802
06 WC 34803

DBM/Cotton JV,

Respondent.

ORDER

This matter comes before the Commission on Respondent's motion to adjudicate payment and distribution of the Arbitrator's award between the *pro se* Petitioner, Petitioner's prior attorneys and the Commission, and on Petitioner's motion for reinstatement of the case, a hearing, penalties and attorney fees. The matter came for hearing before Commissioner Stephen Mathis, with proper notice given and a record made. The Commission having been advised of the facts and law, finds and orders as follows:

On January 31, 2018, the Commission dismissed Petitioner's petition for review on jurisdictional grounds for failure to timely file an authenticated transcript. Petitioner did not appeal the Commission's order.

On April 4, 2018, Respondent filed a motion to adjudicate payment and distribution of the Arbitrator's award between the *pro se* Petitioner, Petitioner's prior attorneys and the Commission under section 20 of the Workers' Compensation Act (the Act). The Commission's records show Petitioner was previously represented by: Goldberg, Weisman & Cairo; Dworkin & Maciariello; Boudreau Law Firm; and attorney Margaret Lundahl. Respondent gave notice to Petitioner and the four prior attorneys.

On April 17, 2018, Petitioner filed a motion seeking reinstatement of the case, a hearing, penalties and attorney fees, asserting substantially the same grievances as he did previously, many of which fall outside the purview of the Commission's subject matter jurisdiction.

On April 18, 2018, Commissioner Mathis held a hearing in the matter. Petitioner and Respondent appeared, as well as Dworkin & Maciariello and Attorney Lundahl. Both Dworkin & Maciariello and Attorney Lundahl had previously filed petitions for attorney fees and costs.

In support of his motion, Petitioner mainly complained about his prior attorneys. Petitioner also made references to ongoing psychiatric problems since at least 2006. Regarding his request to reinstate, Petitioner asserted that when he subpoenaed certain medical records, he discovered "somebody changed the records" and there were "some suspicious records." When Commissioner Mathis asked Petitioner to explain why he failed to timely file an authenticated transcript, Petitioner responded that he was receiving multiple letters from collection agencies. Petitioner also made references to a dispute with Medicare and false statements allegedly made by Attorney Lundahl. Respondent opposed Petitioner's request to reinstate, arguing the Commission has lost jurisdiction.

Dworkin & Maciariello and Attorney Lundahl then renewed their respective petitions for attorney fees and costs. Dworkin & Maciariello stated that during the period of representation, the firm was in constant communication with Petitioner and secured an offer of $14,023.73. Dworkin & Maciariello seeks attorney fees of $2,804.75, representing 20 percent of the settlement offer. Attorney Lundahl stated that she represented Petitioner from June of 2010 through arbitration in January of 2017. Attorney Lundahl waived attorney fees and requested reimbursement of her costs, introducing into evidence an itemized ledger of costs totaling $5,141.17. Lastly, Respondent noted the Commission is owed transcript preparation costs of $1,926.10 after granting Petitioner's motion under section 20 of the Act to proceed as a poor person on review. Respondent introduced into evidence court reporters' bills to that effect.

The Commission finds that it does not have jurisdiction to reinstate Petitioner's review. Our Rule 9020.90 governing petitions to reinstate applies only to "a cause *** dismissed from the Arbitration call for want of prosecution." 50 Ill. Adm. Code §9020.90(a). The Commission possesses no authority to reinstate a petition for review, which had been (correctly) dismissed on jurisdictional grounds. See Alvarado v. Industrial Comm'n, 216 Ill. 2d 547, 553 (2005).

Turning to Respondent's motion to adjudicate payment and distribution of the Arbitrator's award between the *pro se* Petitioner, Petitioner's prior attorneys and the Commission, section 20 of the Act provides: "If an award is granted to such employee [proceeding as a poor person] *** the costs and expenses chargeable to the employee as provided for by this Act shall be paid by the employer out of the award herein granted *** before any of the balance of the award *** is paid to the employee." 820 ILCS 305/20. Section 16a governs an award of attorney fees. 820 ILCS 305/16a.

The Arbitrator awarded: temporary total disability benefits of $902.85 per week for 15 weeks, subject to a credit of $16,292.70 for the temporary total disability benefits that had been paid; medical benefits from the dates of accident in July of 2006 through November 13, 2006, subject to a credit of $10,077.88 for the medical benefits that had been paid; and permanent partial disability benefits of $619.97 per week for 37.65 weeks (representing a 5 percent loss of use of the right arm and 5 percent disability to the person as a whole), subject to a credit of

$10,000.00 for the permanency advance. The gross amount of the award is $36,884.62 and the outstanding balance of the award is $10,591.92.

The Commission finds that Dworkin & Maciariello is entitled to attorney fees of $2,804.75, and Attorney Lundahl is entitled to costs of $5,141.17. The Commission is owed transcript preparation costs of $1,926.10. Subtracting attorney fees and costs from the outstanding amount of the award, leaves the sum of $719.90 payable to Petitioner.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's motion for reinstatement of the case, penalties and attorney fees is denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent's motion to adjudicate payment and distribution of the Arbitrator's award between the *pro se* Petitioner, Petitioner's prior attorneys and the Commission is granted. Respondent shall pay to Dworkin & Maciariello the sum of $2,804.75. Respondent shall pay to Attorney Lundahl the sum of $5,141.17. Respondent shall pay to the Commission the sum of $1,926.10. Respondent shall pay to Petitioner the sum of $719.90.

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

DATED: JUN 18 2018
d-06/07/2018
SM/sk
44

Stephen Mathis

David L. Gore

Deborah Simpson

STATE OF ILLINOIS )
) SS
COUNTY OF DUPAGE )

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

| | | |
|---|---|---|
| Rosa Maria Sanchez,<br>Petitioner, | ) | |
| vs. | ) | No. 11 WC 25277<br>18 IWCC 0297 |
| Federal Envelope Company,<br>Respondent. | ) | |

ORDER

This matter comes before the Commission on Respondent's Petition to Recall the Commission Decision to Correct Clerical Error pursuant to Section 19(f) of the Act. The Commission having been fully advised in the premises finds the following:

The Commission finds that said Decision should be recalled for the correction of a clerical/computational error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Decision dated May 9, 2018, is hereby recalled pursuant to Section 19(f) of the Act. The parties should return their original decisions to Commissioner Kevin W. Lamborn.

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

Kevin W. Lamborn

MAY 31 2018

DATED:
KWL/mav
042

STATE OF ILLINOIS )
) SS.
COUNTY OF DUPAGE )

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROSA MARIA SANCHEZ,

Petitioner,

vs.

NO: 11 WC 25277
18 IWCC 0297

FEDERAL ENVELOPE COMPANY,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

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

On page 25 of the Decision of the Arbitrator, the Arbitrator wrote, "Based on the exhibits, it appears that all the medical bills through May 3, 2012 have been paid pursuant to the fee schedule and Sections 8(a) and 8.2 of the Act." Petitioner, through its Petition for Review and subsequent pleadings, claims two medical bills for medical treatment received prior to May 3, 2012, remain unpaid. Respondent, in response to Petitioner's pleading, argues those medical bills are unrelated to her May 4, 2011, work accident. The Commission finds Respondent, in effect, acknowledges those medical bills remained unpaid. The lack of controversy on this issue frees the Commission to find that said medical bills remain unpaid.

The Commission, concluding that two medical bills remain outstanding, also concludes, contrary to Respondent's stance, that both medical bills are causally related to the that was

deemed necessary to treat the injuries from Petitioner's May 4, 2011, work accident. The Commission finds both medical bills were incurred in the course of Petitioner's treating physician, Dr. James Hill, seeking to find the cause of Petitioner's bilateral wrist pain.

Dr. Hill, after examining Petitioner on August 1, 2011, was unable to deduce the etiology of Petitioner's symptoms. He believed Petitioner could have been experiencing an atypical cervical radiculopathy or possibly an inflammatory arthropathy. To confirm or to eliminate either as a possible cause of Petitioner's symptoms, Dr. Hill prescribed an MRI of her cervical spine as well as a serologic workup. The serologic workup was performed at Northwest Community Hospital on August 4, 2011, and at cost of $936.00. The MRI was performed at Western Open MRI and Imaging on August 17, 2011, and at a cost of $1,002.72. Both the MRI and the serologic workup were attempts by Dr. Hill to identify the cause of Petitioner's symptomology. The Commission finds both courses of treatment, in addition to being reasonable and necessary, to be causally related to Petitioner's May 4, 2011, work injury.

The Commission affirms and adopts all other findings of the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the additional sum of $1,938.72 for the medical treatment ordered by Dr. Hill and undertaken by Petitioner that was mistakenly omitted from the May 11, 2016, Decision of the Arbitrator.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $2,100.00. 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.

DATED: MAY 31 2018
KWL/mav
O: 03/20/18
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

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

**SANCHEZ, ROSA MARIA**
Employee/Petitioner

Case# **11WC025277**

13WC037473

**FEDERAL ENVELOPE COMPANY**
Employer/Respondent

**18IWCC0297**

On 5/11/2016, 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 0.38% 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:

1922 STEVEN B SALK & ASSOCIATES LTD
FRANK I GAUGHAN
150 N WACKER DR SUITE 2570
CHICAGO, IL 60606

0210 GANAN & SHAPIRO PC
JOSEPH P BRANCKY
210 W ILLINOIS ST
CHICAGO, IL 606054

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) & 8(a)

Rosa Maria Sanchez
Employee/Petitioner

v.

Federal Envelope Company
Employer/Respondent

Case # 11 WC 25277

Consolidated cases: 13 WC 37473

18IWCC0297

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 **Barbara N. Flores**, Arbitrator of the Commission, in the city of **Wheaton (for Elgin)** on **April 12, 2016**, respectively. 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 4, 2011**, 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 as explained *infra*.

In the year preceding the injury, Petitioner earned **$17,680.00**; the average weekly wage was **$340.00**.

On the date of accident, Petitioner was **44** years of age, ***single*** with **no** dependent children.

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

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

As explained in the Arbitration Decision Addendum, the Arbitrator finds that Petitioner has established a causal connection between her accident at work on May 4, 2011 and her bilateral wrist condition through May 3, 2012.

*Medical Benefits*

Petitioner's claim for payment of additional medical expenses beyond those paid by Respondent for treatment through May 3, 2012, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act is denied. Petitioner's claim for payment for any medical bills related to the motor vehicle accident on March 3, 2012 is specifically denied.

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

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

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

Signature of Arbitrator

May 11, 2016
Date

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM*
19(b) & 8(a)

Rosa Maria Sanchez
Employee/Petitioner

v.

Federal Envelope Company
Employer/Respondent

Case # 11 WC 25277

Consolidated cases: 13 WC 37473

## FINDINGS OF FACT

The parties appeared for a consolidated trial in the above captioned cases. The issues in dispute in this case include causal connection and Respondent's liability for payment of certain medical bills. Arbitrator's Exhibit[1] ("AX") 1. The issues in dispute in Case No. 13 WC 37473 include whether Petitioner sustained a compensable accident on October 3, 2013, causal connection, Respondent's liability for payment of certain medical bills, Petitioner's entitlement to temporary total disability benefits commencing October 4, 2013 through April 12, 2016 as well as Petitioner's entitlement to prospective medical care, which are addressed in a concurrent decision issued in that case. AX2. The parties have stipulated to all other issues. AX1 & AX2.

*May 4, 2011*

Rosa Maria Sanchez (Petitioner) testified that she was employed as a Machine Operator by Federal Envelope Company (Respondent) on May 4, 2011 and she had been so employed for six years. Petitioner explained that she packed envelopes that came out of a machine into boxes all day. Envelopes would come out of the machine in horizontal stacks of 2,400 envelopes. Petitioner explained that some of the envelopes would stick up and she would have to push them down to even out the stack. Petitioner testified that she would compress the stack of envelopes together and turn the stack of 2,400 envelopes over to place them in a box located to her left side. When the box was filled with envelopes, Petitioner would close the box and put it through a taping machine. After the box was closed, Petitioner would put the box down on a skid. She estimated that each box weighed about 60 pounds.

Petitioner testified that she compressed stacks of envelopes and turned them over many times throughout her eight hour shift per day. She explained that she did this for six years before May 4, 2011. Petitioner is right hand dominant.

On May 4, 2011, Petitioner testified that her hands started to hurt. She had experienced pain for a couple of months before this date. She felt a burning sensation in both wrists that went up to her elbows, but more on the right. Petitioner explained that the pain did not allow her to sleep.

On cross examination, Petitioner testified that she had bilateral wrist pain as well as numbness in her thumb, index finger, ring finger and pinky finger. Petitioner testified that she noticed pain when using her wrists to turn envelopes over and when lifting boxes to lift them up.

[1] The Arbitrator similarly references the parties' exhibits herein. Petitioner's exhibits are denominated "PX" and Respondent's exhibits are denominated "RX" with a corresponding number as identified by each party. Exhibits attached to depositions will be further denominated with "(Dep. Ex. _)."

On May 4, 2011, Petitioner spoke with her supervisor, Dean, and reported that she could not work anymore because she had pain in her hands. She testified that her pain was very strong and explained that she could no longer work. Petitioner estimated her pain at a level of 6 or 7 out of 10 while she was packing envelopes. She testified that Dean sent her to Kelly in the Human Resources department and, thereafter, she was sent to Advanced Occupational Medicine and saw Dr. Sandra Bender (Dr. Bender).

*Medical Treatment*

On May 4, 2011, Petitioner testified that she saw Sandra Bender, M.D. (Dr. Bender) at Advanced Occupational Medicine. PX6 at 9-10. She was given a wrist splint for each hand and placed on light duty restrictions. *Id.* Petitioner testified that she then returned to work on May 5, 2011. On cross examination, Petitioner testified that she returned to light duty without repetitive work and no lifting over a certain amount of pounds. While she was no longer performing repetitive activities, Petitioner testified that the pain was less, but still at night she felt pain.

On May 27, 2011, Petitioner testified that she returned to Advanced Occupational Medicine. Bilateral wrist MRIs were ordered. PX6 at 10. On June 2, 2011, Petitioner underwent the recommended MRIs. PX2 at 21-24. The interpreting radiologist noted a scapholunate ligament sprain with focal signal abnormality by its scaphoid attachment suspicious for partial thickness tear on the left and a high-grade partial tear of the scapholunate ligament on the right. *Id.*

Petitioner testified that she returned to Dr. Bender on June 9, 2011. The medical records reflect that Jacey Howard, PA-C, referred Petitioner to Srdjan (Andrei) Ostric, M.D. (Dr. Ostric). PX6 at 6. Ms. Howard noted "[bilateral] wrist pain presented [with] s/s DeQuervains, Tx [with] PT/splints [without] improvement. MRI on 6/2 revealed [left] partial tear/sprain of scapholunate & tear of [right] scapholunate. NSAIDs and phys therapy continued [without] improvement in pain (8/10) please eval & tx." PX6 at 6.

On June 16, 2011 Petitioner saw Dr. Ostric at Midwest Plastic & Reconstructive Surgery. PX1. Dr. Ostric noted the following history:

> Ms. Sanchez is a 43-year old right-hand dominant female who complained of pain early January 2011 and it has progressed over the past several months to the point where she is having difficulty at work. She works as a machine operator packaging envelop[e]s into boxes and it requires overhead lifting and significant use of her hands. She has been doing this for approximately six years. She is otherwise, healthy and I know she is taking anti-inflammatory medications, which you prescribed to her. I did review the MRIs. I am not concerned that she has a pathology in her wrist. These are all normal changes with aging such as the partial tear of the scapholunate, ligament and the lunate cyst.

*Id.* He noted that Petitioner's physical examination was more consistent with carpal tunnel syndrome and he ordered bilateral EMG/NCVs and prescribed physical therapy. *Id.* Petitioner remained on light duty work restrictions. *Id.*

On July 8, 2011, Petitioner underwent the recommended EMG/NCVs. PX4 at 41-43; PX6 at 2-5. The results included no evidence of bilateral median neuropathy, ulnar neuropathy or cervical radiculopathy. *Id.*

On July 8, 2011, Petitioner saw Priti Khanna, M.D. (Dr. Khanna) at Advanced Occupational Medicine Specialists. PX6 at 5. Dr. Khanna noted "repetitive work – started having pain in both hands [left] [illegible]

greater than the right now R>L. Numbness [bilateral] hand [bilateral] thumb, index & [right] ring at times. Numbness intermittent [without] nocturnal paresthesias [positive] weakness [R>L] [positive] neck pain [into] right shoulder & [without left] radicular pain in [positive left] elbow + forearm[.]" *Id.* Dr. Khanna reviewed Petitioner's EMG/NCV which showed no evidence of bilateral median neuropathy, ulnar neuropathy or cervical radiculopathy. *Id.* On July 12, 2011, Petitioner was released from care. PX6 at 10.

On July 29, 2011, Petitioner testified that she returned to Dr. Bender after an incident at work lifting garbage. See also PX6 at 10. Petitioner testified that Dr. Bender provided some conservative treatment then released her from her care and then referred her to Dr. Hill at Illinois Bone and Joint.

On August 1, 2011, Petitioner saw James Hill, M.D. (Dr. Hill) at Illinois Bone and Joint. PX2 at 2-3. He noted Petitioner's reported "longstanding history of bilateral upper extremity pain and paresthesias." *Id.* Petitioner reported "that she began to notice discomforts in her upper extremities bilaterally beginning May 2011. She feels that her right upper extremity is slightly more affected than the left. She attributes the onset of her symptoms to the repetitive requirements of work-related activities as a machine operator." *Id.*

Dr. Hill noted his review of Petitioner's bilateral EMG/NCV test results which showed partial, bilateral scapholunate tearing. PX2 at 2-3. He diagnosed Petitioner with chronic bilateral upper extremity pain and paresthesias of uncertain etiology. *Id.* Dr. Hill also indicated that Petitioner's clinical presentation did not suggest carpal tunnel syndrome or ulnar neuritis. *Id.* He believed that Petitioner could be experiencing some form of atypical cervical radiculopathy or even inflammatory arthropathy. *Id.* Dr. Hill ordered a cervical MRI and seriologic work-up. *Id.* On August 17, 2011, Petitioner underwent the recommended cervical MRI, which was normal. PX2 at 20.

Petitioner testified that she then saw Michael Vender, M.D. (Dr. Vender) on September 12, 2011 as referred by her prior attorney. The medical records reflect Petitioner's report of bilateral hand symptoms since May of 2011 including intermittent numbness in the thumbs and index fingers, a feeling of weakness and wrist pain into the palm. PX2 at 29-31; PX4 at 14-17, 35-36. Dr. Vender diagnosed Petitioner with bilateral tenosynovitis and administered a steroid injection into the right wrist. *Id.* He also ordered a second set of EMG/NCV tests, which were performed on the same day by Scott Heller, M.D. (Dr. Heller). PX4 at 37-38. Dr. Vender noted that the results were normal. *Id.*

Petitioner returned to see Dr. Vender on September 26, 2011 and he administered an injection into the left wrist. PX4 at 12-13, 33-34. On October 20, 2011, Dr. Vender noted that Petitioner did not respond to the injection and she was experiencing more pain and numbness, more prominently on the right. PX4 at 11, 32. She testified that she had bilateral wrist pain at this time while she was working and turning envelopes over and that she continued to work every day. Petitioner returned to Dr. Vender on November 17, 2011. PX4 at 10, 30-31. He noted that she was being followed for possible abnormal flexor tendon interconnections with continued radial symptoms bilaterally. *Id.* Dr. Vender diagnosed Petitioner with tenosynovitis and he administered a steroid injection into the left wrist. *Id.*

Petitioner testified that she then began to make complaints about pain in her bilateral elbows. She explained that the pain would begin in her right wrist and go up to her elbow. Dr. Vender's medical records reflect that Petitioner returned on December 1, 2011 reporting no response to the left wrist steroid injection and continued complaints with left-sided radial pain and right-sided radial and ulnar pain. PX4 at 9, 29. Her most significant complaint was also medial elbow pain on the left. *Id.* Dr. Vender diagnosed bilateral tenosynovitis and medial epicondylitis. *Id.* He administered an injection into the left elbow. *Id.*

On January 12, 2012, Petitioner reported that her left elbow injection did help, but she still had pain with twisting motions as well as medial elbow pain. PX4 at 7-8, 18, 28. Secondarily, Petitioner also reported ulnar right wrist pain and various other complaints in both upper extremities. *Id.* Dr. Vender referred Petitioner to occupational therapy, gave her an elbow sleeve and kept her released to full duty work. *Id.*

On February 20, 2012, Dr. Vender noted Petitioner's most prominent complaint to be left arm pain. PX4 at 5-6, 26. He maintained Petitioner's diagnoses of bilateral tenosynovitis and left medial epicondylitis. *Id.* Dr. Vender indicated that no aggressive treatment was recommended for the multiple upper extremities complaints and he ordered a home exercise program. *Id.* Petitioner saw the occupational therapist on the same date and was instructed in home exercises for the bilateral wrists and left elbow. PX4 at 25.

*Motor Vehicle Accident*

On March 13, 2012 Petitioner arrived at the emergency room at Northwest Community Hospital. PX3. She reported that she was in a motor vehicle accident with no airbag deployment hit on the driver side coming out of the parking lot by another oncoming vehicle. *Id.* She complained of mild headache, neck pain, and bilateral lower rib cage pain. *Id.* She was diagnosed with a head contusion and neck sprain. *Id.* Petitioner was discharged home the same day with instructions to follow up with her primary care physician. *Id.*

*Continued Medical Treatment*

Then, on May 3, 2012, Petitioner returned to Dr. Vender once more. PX4 at 4, 24. Petitioner reported that she was feeling the same as at her last visit with worsening pain located in the left elbow that had been occurring for five months and bilateral wrist pain that had been occurring one year ago. *Id.* Dr. Vender noted that Petitioner's complaints were mostly related to the right upper extremity, which were diffuse in nature, and that her pain radiated toward her shoulder and neck. *Id.* She also reported diffuse pain on the left stopping at the elbow. *Id.* Dr. Vender noted that Petitioner's daughter was present and translated for her. *Id.* He also noted that "[he] discussed the complaints today with the patient and her daughter. There has been difficulty with the location and consistency of complaints and findings. Would recommend followup. With her primary physician or possibly a rheumatologist." *Id.* Petitioner testified that this was her last visit with Dr. Vender. For approximately one year, Petitioner did not see any physician for treatment of her elbows or wrists.

On April 9, 2013, Petitioner testified that she went to see John O'Keefe, M.D. (Dr. O'Keefe) at Central Medical Specialists who she found in a newspaper. Dr. O'Keefe's records reflect Petitioner's report on that date of bilateral wrist and hand pain as well as handwritten notes with the following history:

> Patient here seeking 2nd opinion for bil hand & wrist pain from overuse injury at work. Pt packs envelopes & constantly rolling envelopes. Saw several doctors & was diagnosed with tendonitis. Was given cortisone injections on both hands by Dr Vender.

PX5 at 3. Petitioner testified that she then spent several months without any medical treatment for her hands, wrists or elbows, but she continued to work for Respondent.

*October 3, 2013*

Petitioner testified that on October 3, 2013 she was working for Respondent when she sustained an injury. She explained that she was working on machine "RA5," which is an envelope machine that packs envelopes. A conveyor belt is located at approximately knee level. Petitioner explained that her arm was hurting her a little bit at the time. She explained that she filled up a box that weighed 65-70 pounds and was placing it onto a skid stacked seven boxes high. Petitioner testified that she lifted up the box, but she felt pain in her hand and her hand was not stable after which the box came toward her and made her fall down.

Petitioner testified that her right hand started to hurt although she grabbed the box as it was coming down with both hands, but let the box go because her right hand did not "respond." Petitioner testified that the box fell and she fell onto her buttocks such that her hands and buttocks hit the floor. She explained that she felt a strong pain in her right hand, a lot of heat in her whole body, and dizzy for a few seconds.

Petitioner testified that her boss, Mitch, came to pick her up, but she did not let him because she was very dizzy and in a lot of pain. She described that the pain in her right hand was different than her pain before in that it was much stronger.

On cross examination, Petitioner testified that she had both hands on the outside corners of the box and she was using her right hand to propel the box upward onto the skid overhead. Petitioner testified that when she lifted the box overhead it was heavy and she felt pain in her right hand and she let the box go, which is when it fell. Petitioner also testified that she felt pain all the way from her right hand into her neck. The box did not stay where it was supposed to and she felt pain in her right hand. Petitioner stated that she had pain in both wrists, but it was stronger on the right side. She also had a little pain in her elbows and fingers, but no pain in her shoulders. She explained that she could not remember if the pain was different than the pain that she felt in 2011.

*Medical Treatment*

Petitioner testified that she was sent to U.S. Health Works, which is the same clinic as Advanced Occupational Medicine, but with a new name. The medical records reflect that Petitioner saw Alan Sisson, M.D. (Dr. Sisson), who recommended ice and heat and prescribed wrist splints while working. PX5 at 15; PX6 at 9-16. Petitioner was also instructed on home exercises, given Ibuprofen and released back to full duty work. *Id.*

Dr. Sisson also provided a letter dated October 3, 2013 addressed to Ms. Mueller summarizing Petitioner's care at his clinic in 2011. PX6 at 9-11. Dr. Sisson noted the following reported history in pertinent part:

> I had the opportunity to see Ms. Sanchez in our offices on the evening of October 3, 2013. She states that at approximately 5:25 PM, on October 3, 2013, she was lifting a box up onto an overhead area when she experienced pain in her right wrist that resulted in her losing control of the box, which then began to fall and she attempted to arrest that fall using her hands. She now complains of pain in both wrists that radiates up her arms toward her shoulders. She had a previous history of bilateral wrist injuries in 2011, that I was detail momentarily. Her statement at the time of this visit was that her previous wrist pain "never got better" since the time of the initial injury in approximately January of 2011. At this time, she is experiencing both pain and numbness in her hands bilaterally. She states that this discomfort in her wrists and numbness in her hands occurs frequently.

*Id.* Dr. Sisson noted that Petitioner previously presented on May 5, 2011 reporting bilateral wrist pain since January of 2011, which was diagnosed as a bilateral wrist sprain. *Id.* Petitioner underwent conservative treatment and diagnostic testing. *Id.* Her June 2, 2011 bilateral wrist MRIs showed a "high-grade partial tear of the scapholunate ligament[, and the] results for the left wrist showed a scapholunate ligament sprain that was suspicious for a partial-thickness tear." *Id.* Petitioner was referred to Dr. Ostric, who noted that Petitioner might be suffering from carpal tunnel syndrome, but her EMG showed no evidence of radiculopathy or neuropathy. *Id.* Dr. Ostric administered a steroid injection into the right wrist and Petitioner was released from care on July 12, 2011. *Id.*

Dr. Sisson also noted that "[o]n July 29, 2011, [Petitioner] returned with complaints of having injured her wrist and neck while lifting a sack of garbage. At that time, conservative treatment was instituted and she was again discharged from our care." *Id.* After an examination on October 3, 2013, Dr. Sisson diagnosed Petitioner with a bilateral wrist strain and released her back to work full duty. *Id.* Dr. Sisson also indicated in pertinent part:

> This particular complaint of injury aside, it appears that she continues to complain of chronic bilateral wrist pain which has been exhaustively investigated without a treatable underlying etiology discerned. I will evaluate her one additional time for this particular injury; however, I do not believe that, ongoing beyond that visit, we will have anything of substance to offer her in terms of further evaluation and/or treatment. For that reason, I suspect that I will discharge her from care for this particular incident at the time of her followup visit. ....

*Id.*

Petitioner testified that the following day, October 4, 2013, she could not get out of bed. Petitioner testified that she did not go to work from October 4, 2013 to October 8, 2013.

Petitioner testified that she then saw John O'Keefe, M.D. (Dr. O'Keefe) on October 8, 2013. The Central Medical Specialists[2] records reflect Petitioner's report on that date of bilateral wrist and low back pain as well as handwritten notes with the following history:

> went to move 60# box of paper that was above her head for the machine to make envelopes, felt her (R) hand give and the box fell off, patient fell into a seated position hitting buttox + using both hands to break her fall.

PX5 at 2. In a typed progress note of the same date, Dr. O'Keefe's physician's assistant, Lauren Kirsch, PA-C, noted the following history:

> Patient works as an envelope machine operator for Federal Envelopes. She is a 9-year veteran with this company and works 40+ hours weeks. Her job requires her to lift and place 50-60 lb. boxes about 15x an hour to fill the machine with paper. She was injured on 10/03/13 when she was moving a 60 lb. box that was stacked higher than her head to load it into the machine. She felt her right wrist give way as she was trying to move the box, causing her to lose balance. The box fell onto the cement floor to her left and she fell backwards onto her buttocks into a seated position. She used her two hands to break her fall on either side of her. Her supervisor, Mitch, helped her up. She verbally reported the incident to him and Kelly from HR immediately after. She was then seen by the company doctor. They took x-rays of the bilateral wrist which were read as negative for fracture. She was given 2 wrist braces for her wrists and

[2] The records of Dr. O'Keefe were procured from "Central Medical Specialists" as well as an entity known as "Marian Orthopedics & Rehabilitation." See PX5 & PX6.

> ibuprofen 200mg. She was then told to go back to work. At present, she has increased pain in her low back and bilateral wrist from the fall. She is unable to sleep due to pain. Patient has a history of gastritis. She also has a history of bilateral wrist tendinitis in 2011 that was treated by Dr. Vendor. She states her wrist pain was virtually resolved until the injury at work 10/03/13 re-aggravated those problems. She has no prior history of back pain or pathology.

PX5 at 161-162, 318-321; PX7 at 61-63. Ms. Kirsch diagnosed Petitioner with a low back sprain and bilateral wrist sprains post work injury on October 3, 2013. *Id.* She recommended physical therapy, which Petitioner then began at the Central Medical Specialists clinic. *Id.*

A handwritten phone call note that appears to be taken by one of Dr. O'Keefe's staff indicates that Kelly from Respondent's Human Resources department called. PX5 at 32. Among other notations, the handwritten note reflects Kelly's message that if Petitioner had restrictions they could be accommodated, that Petitioner was expected to return to work the following day at 3:00 p.m. as she had been released with no restrictions by the company clinic, and noting that the "Company is suspicious that she is truly injured and that her fall 'looked faked.' She says pt has a history of magnifying her sx + not being compliant with her wrist splints[.]" PX5 at 32.

On October 17, 2013, Petitioner returned to see Dr. O'Keefe. PX5 at 158-160, 194-195; PX7 at 58-60; PX28 (Dep. Ex. 3)[3]. Dr. O'Keefe noted the following history and gave the following opinions regarding the relatedness of her condition to an incident at work in October of 2013:

> Patient is a 9-year veteran at Federal Envelope. She had a severe injury 10/03/13. Her supervisor Mitch witnessed it. He actually helped her up from the floor. Her job as a machine operator and envelope manufacturer requires that she work at a very rapid pace. 15x an hour she lifts 50-60 lb. loads. They stack boxes well above the height of her head with that load. On 10/03/13, she was up on her toes trying to shove a box mostly with her right shoulder up above her head (it was the 7th row). Her arm popped with pain. The box fell towards her chest, knocking her to the ground. She fell backwards onto the concrete with her arms hyperextended. She had intense pain in her back, right shoulder, and both hands at that point. The company doctor did see the patient that day and sent her back to work. She's had numbness and tingling in the hands since that time and weakness in the shoulder. She has left> right sciatica which is new since this injury. Unbelieveably, HR is calling us and telling us that they think she's malingering. From my perspective, she's concise, accurate, consistent, and honest. HR is saying they have light duty. ....

*Id.* He ordered an H-wave machine and recommended continued physical therapy. *Id.* Dr. O'Keefe also indicated that "**[i]t's my board-certified orthopedic opinion that the patient was intact and working as a heavy laborer for 9 years prior to this episode. She's never had back pain or sciatica. She's never had severe shoulder sprain.** The peripheral neuritic symptoms that she has at present are severe but hopefully will resolve with therapy and splints." *Id.* (**emphasis** in original).

On cross examination, Petitioner testified that she did not receive bills for the H-wave machine and she is not sure whether it was paid for through insurance. On the same day, Dr. O'Keefe's records reflect a call from Kelly in Respondent's Human Resources department that they had light duty work for Petitioner. PX5 at 135. The noted response was that Dr. O'Keefe did not release Petitioner to work because of her physical examination and clinical findings. *Id.*

[3] The physical examination findings, review of diagnostics, etc. presumably located on page two of the three page progress note was not submitted into evidence in any of the exhibits.

On October 30, 2013, Petitioner returned to Dr. O'Keefe. PX5 at 133, 156-157, 193-194; PX7 at 56-57. Dr. O'Keefe noted the following history and gave the following opinions regarding the relatedness of her condition to an incident at work in October of 2013:

> Patient is a 9-year veteran at Federal Envelope and had a heavy, unprotected fall. She was knocked off of her feet by a 50-60 lb. box that struck her chest as she was trying to place it above the height of her head. She contused and sprained both arms in her spine. She's been off work despite HR's strong orders to return to work. **It's my board-certified orthopedic opinion that this woman was seriously hurt and has a discal injury in the L/S spine producing intense neuritis in the right > left leg at present. She has strong neuritic symptoms in both arms from the strain and contusion that she sustained from that injury 10/03/13.** She was intact and without debility or problems for the year prior as she worked with these heavy loads on a near constant basis.

*Id.* (**emphasis** in original). Dr. McAfee diagnosed Petitioner with a heavy, unprotected full spraining her spine on October 3, 2013, modest resolution of cervical spinal problems, persistent lumbar contusion and sprain with right greater than left sciatica at present as well as a sprain and strain of both hands with neuritic symptoms in both arms. *Id.* He ordered a lumbar MRI and therapy. *Id.* Dr. O'Keefe kept Petitioner off work. *Id.* Petitioner had an initial occupational therapy evaluation at Dr. O'Keefe's office on November 5, 2013. PX5 at 130-132.

In a letter dated November 14, 2013, Shalonda Lockett (Ms. Lockett), Sr. Claims Adjuster of Employers Preferred Insurance Company, requested that Petitioner complete and return a questionnaire and medical authorization form. PX5 at 98-103.

On November 26, 2013, Dr. O'Keefe PX5 at 134, 153-155, 193, 197; PX7 at 53-55. Dr. O'Keefe noted the following history in pertinent part:

> Patient had a work injury witnessed by her supervisor 10/03/13. She hurt her spine and has traumatic bilateral carpal tunnel symptoms, worse on the right than the left. She still having strong dysesthesias into the right arm from the neck and into the right leg from the lumbar plexus. ....
>
> The patient is an 8-year veteran at this jobsite and has had no history of spine problems or radicular symptoms until this severe, unprotected fall with a 60 lb. load smashing her into the concrete from a standing position. History for the carpal tunnel is positive for some treatment by Dr. Vender in the past but she's had years of function without the ability. This isn't a pre-existing condition. ....

*Id.* Dr. O'Keefe ordered a cervical MRI after a "heavy unprotected fall @ work 10/3/13" and continued occupational therapy. *Id.* He also noted that "[i]t's my board-certified orthopedic opinion that the patients had a trauma 10/13 produced spinal injury with disco injury in the cervical and lumbar area, producing peripheral neuritic symptoms of traumatic carpal tunnel and right > left sciatica." *Id.*

Petitioner returned to the occupational therapist at Dr. O'Keefe's office on December 3, 2013. PX5 at 128-129. The therapist noted that Petitioner had been diagnosed with a right wrist sprain with a "gradual onset[.]" *Id.* She recommended six weeks of therapy twice per week. *Id.*

Dr. O'Keefe ordered another EMG/NCV, which Petitioner underwent on December 4, 2013. PX5 at 125-127. The EMG/NCV showed no evidence of cervical radiculopathy or peripheral entrapment neuropathy. *Id.*

On December 23, 2013, Petitioner underwent an MRI of the cervical and lumbar spine. PX5 at 121-124; PX8 at 15-18. The interpreting radiologist noted degenerative disc disease at L4-5 with a moderate size disc protrusion and bony spondylitic changes with associated stenosis, mild-to-moderate L3-4 stenosis with left-sided asymmetric disc protrusion and narrowing left of the midline and mild levoscoliosis. *Id.* In the cervical spine, the radiologist noted mild disc bulging diffusely at C3-4 and C5-6 with mild vertebral endplate bony spondylotic changes. *Id.*

On December 31, 2013, Dr. O'Keefe referred Petitioner to his colleague at Central Medical Specialists, Krishna Chunduri, M.D. (Dr. Chunduri), to assess and treat her neck and low back injury at work in October of 2013. PX5 at 28, 148-151, 191-192; PX7 at 48-51. Dr. O'Keefe noted the following history from Petitioner and gave the following opinions regarding the relatedness of her condition to an incident at work in October of 2013:

> Patient was hurt with a well-documented injury 10/13. She weighs 140 lbs. and throws 60 lb. loads above the height of her head 15x an hour. She's Been 9 years of that job site. She's not had spine problems prior. She had some wrist symptoms in 2011 but no interval wrist symptoms until she was hurt 10/13. **It's my board-certified orthopedic opinion that she may have had some wrist injury back in 2011 but it was the 10/13 injury that is causing her present debility and symptoms.** Certainly the mechanism of throwing a 60 lb. box above the height of her head causing electrical pain into the neck and right arm and a painful pop in the wrist is a suitable mechanism to produce a triangular fibrocartilage complex (TFCC) tear and a discal injury. The patient has abnormal MRI of the C-spine 12/13 showing discal traumatic bulge at C3-4 and C5-6 and abnormal MRI from Molecular Imaging 12/23/13 of the lumbar spine showing L4 and L5 bulging disc injuries. Electrical testing 12/04/13 is negative for radiculopathy in the neck and both arms.
>
> On questioning, it's her neck and right arm pain that are most disabling. She's been working with OT with a vast improvement from initial assessment 10/13 but she still having a high level of symptoms. She's only tolerating 2 lbs. resistance. I talked to OT today as I examined the patient and with us both here she's having mechanical popping with ulnar deviation and loading the risk.

*Id.* (**emphasis** in original). Dr. O'Keefe diagnosed Petitioner with a throwing injury above the height of her head with 60 lb. loads producing discal injuries in the neck and low back, right radiculitis secondary to the first diagnosis, and right wrist TFCC symptoms persisting. *Id.* He ordered occupational therapy twice a week. *Id.* Dr. O'Keefe also noted that he spoke with Kelly and that Petitioner's IME should assess her neck, low back, and bilateral hands. *Id.*

Petitioner also saw an occupational therapist at Dr. O'Keefe's office on January 9, 2014. PX5 at 119-120. The therapist noted that Petitioner had been diagnosed with a right wrist sprain with a "gradual onset[.]" *Id.* She recommended two weeks of therapy twice per week. *Id.*

Petitioner first saw Dr. Chunduri on January 22, 2014. PX5 at 170-171, 190. The medical records reflect that Dr. Chunduri is a board-certified anesthesiologist and pain management specialist. *Id.* Dr. Chunduri noted the following history from Petitioner and gave the following opinions regarding the relatedness of her condition to an incident at work in October of 2013:

> Ms. Sanchez presents to the clinic with complaints of pain in her neck and mid-back, and lower back since her work injury 10/03/2013. She states she is a machine operator. She was placing a 50 lb. Box above her head when she suddenly felt pain in her neck and her arm. She was unable to securely placed the box which then fell down, causing her to fall onto her buttocks. She states that since his injury, she has been having throbbing, sharp, burning pain in her neck and her lower back. The neck pain she states

radiates into her right upper extremity which feels numbness and tingling down her arm to her hand. She states that her low back pain radiates into her right buttock where she feels electric-like feeling in her upper thigh. She rates the pain as severe at 7/10. It is constant. It is worse in the mid-day and afternoon. It is worse with prolonged sitting, walking, lying down, and coughing. She states that standing makes it better. It affects her daily routine. She has been taking Meloxicam, Tramadol, and Prilosec and she has been in physical therapy.

*Id.* Dr. Chunduri diagnosed Petitioner with cervical spondylosis and cervicalgia as well as lumbar spondylosis and lumbago. *Id.* He prescribed a Medrol Dosepak, continued NSAIDs and continued physical therapy. *Id.* Dr. Chunduri also noted "[i]t is my opinion, based on a reasonable degree of medical certainty, that the above symptoms and diagnoses are causally related to the work injury and that the current treatments and recommendations are medically necessary." *Id.*

Petitioner returned to Dr. O'Keefe on January 28, 2014 solely for evaluation of the wrists noting that Dr. Chunduri was treating Petitioner for the low back. PX5 at 147, 189; PX7 at 47. He diagnosed Petitioner with resolving wrist sprains with poor ability to improve power. *Id.* He reduced physical therapy to once per week.

On February 6, 2014, Dr. Chunduri administered a right L4-L5 transforaminal epidural steroid injection. PX5 at 167-169. Petitioner testified that she remained off work as ordered by Dr. O'Keefe and Dr. Chunduri. On March 13, 2014, Dr. O'Keefe ordered continued physical therapy and requested authorization for epidural steroid injection into the lumbar spine and cervical spine. PX5 at 207; PX7 at 45-46.

On April 15, 2014, Dr. O'Keefe noted that Petitioner was 15 minutes late to her IME on January 6, 2014. PX5 at 139, 187, 206. She reported that her low back pain persisted, but was not as severe and that she continued to experience sciatica symptoms into the right leg. *Id.* She also reported continued bilateral wrist pain with less numbness in tingling into the digits. *Id.* Dr. O'Keefe ordered a series of 4-5 cervical epidural injections. PX5 at 137.

On May 15, 2014, Petitioner reported shooting pain from the right wrist to the elbow and mild low back pain. PX5 at 139, 142-143, 187, 206; PX7 at 42-44. Dr. O'Keefe noted that Petitioner "had a backward full heavily at work 10/13. She's been miserable with spine pain since." *Id.* He diagnosed an injury to the cervical and lumbar areas as a result of her heavy, unprotected fall at work in October of 2013 with abnormal MRIs from December of 2013 showing discal injuries. *Id.* Dr. O'Keefe also diagnosed Petitioner with bilateral carpal tunnel symptoms, right worse than left. *Id.* He indicated that Petitioner was miserable with neuritic symptoms, more in the neck then the low back and he recommended a trial of cervical epidural injections. *Id.* Dr. O'Keefe also indicated that he suspected that Petitioner's back would not be cured and she may need more of those injections in the future. *Id.* With regard to the carpal tunnel, Dr. O'Keefe indicated that it was partly being aggravated by Petitioner's cervical radiculitis and noted that he would hold off on advising surgery, but that she may need surgical release in the future. *Id.* He ordered continued use of the H-wave machine and physical therapy. *Id.*

*Section 12 Examination – Dr. Weber*

On May 19, 2014, Petitioner saw Dr. Kathleen Weber (Dr. Weber) at Respondent's request. RX1 (Dep. Ex. 2); PX5 at 92-97. Prior to this date, Petitioner testified that she had some appointments set with Dr. Weber, but she did not attend or she forgot to attend. On cross examination, Petitioner testified that she did not attend the prior

IMEs because on one occasion she spoke with her attorney at the time, and on another occasion it was 40 degrees below 0 and she got there 10 minutes late and Dr. Weber would not see her.

Dr. Weber's report indicates that she reviewed an incident report dated October 3, 2013 noting that "[t]he IE was raising a carton on top of a skid of boxes. The box was too heavy. The IE fell to the ground and injured both wrists and her lower spine." *Id.* Dr. Weber also reviewed the medical records of Dr. O'Keefe, Dr. Sisson, various utilization reviews and peer reports as well as Petitioner's May 7, 2014 lumbar MRI report. *Id.*

Petitioner reported to Dr. Weber through a translator that she had been a machine operator for nine years for Respondent and she had a prior bilateral hand repetitive trauma injury in 2011, but no prior low back injuries. *Id.* Dr. Weber noted the following history of accident:

> She states that on October 3, 2013, she was lifting a 50-pound box overhead, approximately 6-8 inches above her head. She felt right arm pain from her hand to her shoulder. The box began to fall and she tried to lift it back up but got dizzy and colleagues tried to help. Then, she states that she fell onto her buttocks. She is unsure if she had immediate back pain secondary to her dizziness. She caught herself with her hands. She was unable to stand and she was sent to the clinic. She states that following being evaluated at the clinic she went home. The next day she could not get out of bed, secondary to her whole back hurting. She did not return to the company clinic. She sought medical treatment with Dr. O'Keefe a couple of days later.

*Id.* Ultimately, Dr. Weber diagnosed Petitioner with bilateral wrist sprains and lumbar back sprain. *Id.* In so concluding, Dr. Weber noted that Petitioner's reported mechanism of injury changed within the medical records. *Id.* She opined that Petitioner's physical examination produced no objective findings or abnormalities, and determined that Petitioner's subjective complaints did not correlate with objective clinical findings on examination. *Id.* Dr. Weber stated Petitioner required no further care based on her normal exam, that she had reached maximum medical improvement, and had likely reached MMI within 4-6 weeks of the accident. *Id.* She stated Petitioner could return to work in a full duty capacity based on the normal exam. *Id.*

*Utilization Reviews, Termination of Benefits & Continued Medical Treatment*

The record reflects that Respondent obtained various utilization reviews dated May 6-8, 2014, July 10, 2014 and July 16, 2014. RX2-RX4; PX5 at 71-74; PX5 at 39, 44-46, 73. The reviews certified only 10 physical therapy sessions to the lumbar spine as of October 15, 2013 and 15 sessions to the bilateral wrists as of November 5, 2013. *Id.* The utilization reviews did not certify a series of cervical epidural injections recommended by Dr. O'Keefe, a prescription for Relafen, Tramadol, Dendracin, Prilosec, Mobic, Meloxicam, Omeprazole and Gabapentin. *Id.*

In a letter dated May 30, 2014, Shalonda Lockett (Ms. Lockett), Sr. Claims Adjuster of Employers Preferred Insurance Company, informed Petitioner's then-attorney that Petitioner's claim was being denied based on the independent medical evaluation report of Dr. Weber as well as the utilization reviews. PX5 at 91.

On July 8, 2014, Dr. O'Keefe noted the following: "[Petitioner] had a well-reported and documented injury 10/13. On that date, her normal duty was handling 50–60 lb. boxes, often above the height of her head. On such an occasion, the box slipped. She fell backwards heavily on both arms and landed on her rump on the ground behind her with this 60 lb. load falling. She had immediate pain in her spine and both arms." PX5 at 140-141, 185-186; PX7 at 40-41. Dr. O'Keefe diagnosed Petitioner with a lumbar discal injury with abnormal MRI as a

result of her injury at work in October of 2013. *Id.* He also indicated that Petitioner sprained and contused both arms. *Id.*

Petitioner underwent the updated EMG/NCV of the bilateral hands as well as of the low back on the following day, July 9, 2014. PX5 at 35-38; PX7 at 81-84; PX8 at 19-22. The results showed mild irritability present on EMG needle insertion at various muscles including those suggestive of L4-5 nerve root irritation. *Id.*

On August 7, 2014, Dr. O'Keefe noted that Petitioner was complaining of upper and lower spine pain, as well as bilateral arm pain, the month after her injury at work in October of 2013. PX6 at 37-38; PX5 at 136, 185. Among various other notations and opinions, Dr. O'Keefe indicated that "[w]e've been buried by work comp. with a worthless chart review done 07/16/14 that completely neglects the abnormal electrical test and MRI." *Id.* Dr. O'Keefe ordered a series of four transforaminal steroid injections. *Id.*

As referred by Dr. O'Keefe, Petitioner first saw Ossama Abedellatif Hassan, M.D. (Dr. Hassan) on September 25, 2014. PX8 at 88-90, 94. Dr. Hassan noted the following history of accident in pertinent part:

> Rosa Sanchez is a patient that comes to us with lumbar spine pain and cervical spine pain due to a work related accident suffered on 10/3/13. Patient states while working as a machine operator for Federal Envelope Company as she was lifting boxes repetitively above head level on one occasion one box weighing approximately 50 pounds fell back on patient forcing her to take weight and fall to floor hitting buttocks and bilateral hands she report it (sic) injury as she noticed supervisor witnessed accident she went to company clinic attempted light duty work but was unable to do continue as pain had increased she has been off work since then she has undergone one previous injection in 2013 with positive response she continues to exhibit pain today nothing has been able to stabilize pain since date of injury ....

*Id.* Petitioner reported cervical pain that radiated into both upper extremities and low back pain radiating into both lower extremities. *Id.* Dr. Hassan primarily diagnosed Petitioner with lumbar radiculopathy lumbar facet syndrome as well as cervical radiculopathy with cervical facet syndrome and he made a tertiary diagnosis of myofascial pain. *Id.* He ordered a lumbar MRI, lower extremity EMG/NCV, lumbar epidural steroid injection, lumbar foraminal steroid injection, cervical MRI, upper extremity EMG/NCV, trigger point injection for myofascial pain and a work conditioning program followed by a functional capacity evaluation. *Id.* Dr. Hassan also imposed light duty restrictions including no sitting or standing more than two hours at a time. *Id.*

Petitioner testified that she attempted to return to work with these restrictions, but she went to work and she was told that they did not have a position for her. She explained that she saw Kelly Mueller in Human Resources and that she told Ms. Mueller that her doctor recommended that she return to work with restrictions including no standing or walking over two hours and no lifting over 20 pounds. Petitioner testified that Ms. Mueller told her that they did not have a position for her with those restrictions.

On September 11, 2014, Petitioner saw Dr. O'Keefe who noted the following history in pertinent part:

> Patient was heard with a well-reported and documented injury while working 10/13. A 50-60 lb. load cell from above the height of her head, forcing her hands into hyperextension. The load then made her fall backwards onto her rump, injuring her spine in the neck and low back. The hands took another blow at that point she tried to break the fall as she was falling back with her hands. We've been treating her for severe wrist sprains, worse on the right than the left, since she was first seen 5 days after the injury. She had a single injection 02/14 which was beneficial. That practitioner left our practice and we've not had authorization to proceed with further injections. My board-certified orthopedic opinion is that she

has serious problems with her neck with discal injury evidence on MRI from 12/13 at the cervical C5-6 levels and in the lumbar L4-5 levels. She has abnormal electrical testing per Dr. Paly, M.D. 07/14 showing a right L4-5 radiculopathy. At this point I'm referring her to Dr. Hassan, pain management Dr., for assessment and treatment. ....

PX6 at 34-35. Dr. O'Keefe also noted that he received an IME from Dr. Weber dated May 19, 2014. *Id.* he indicated that the report only assessed Petitioner's low back and hands, although the patient asked Dr. Weber to assess the neck which she refused. *Id.* Dr. O'Keefe indicated that he disagreed with Dr. Weber's report noting that the exam took 20 minutes and the patient was not in a gown. *Id.* He also noted Dr. Weber's indication that Petitioner had no symptoms with TFCC provocative testing although Petitioner reported to him that she did tell Dr. Weber that it was painful when her wrist was put through range of motion. *Id.*

Dr. Hassan administered a trigger point injection, an epidural steroid injection and a sacral medial branch block in the low back on October 8, 2014. PX8 at 82-87. Petitioner returned to see Dr. Hassan on October 14, 2014 at which time he recommended bilateral radio-frequency ablation. PX8 at 77-81.

Petitioner underwent the recommended lumbar MRI on October 17, 2014. PX8 at 14. The interpreting radiologist noted disc herniations at L3-L4 and L4-L5 as well as mild spinal stenosis and bilateral neuroforaminal narrowing on the left at L4-L5. *Id.* Petitioner also underwent the recommended cervical MRI, which the interpreting radiologist noted showed a 1-2 mm posterior annular disc bulge at C5-C6 without spinal stenosis or significant neuroforaminal narrowing. PX8 at 13.

Petitioner then underwent the recommended radio-frequency ablation as well as an epidural steroid injection and trigger point injection on October 24, 2014. PX8 at 72-76. On October 30, 2014, Petitioner returned to Dr. Hassan who recommended another radio-frequency ablation into the lumbar spine. PX8 at 67-71.

On November 11, 2014, Dr. O'Keefe diagnosed Petitioner with a work-related sprain of the right wrist producing a traumatic DeQuervain's contracture of the right "1st ray" and distal forearm for which he ordered an ultra-sound guided cortisone injection. PX6 at 31-32. He also diagnosed Petitioner with a cervical and lumbar spinal injury with disc herniation per Dr. Hassan. *Id.*

Petitioner underwent the recommended radio-frequency ablation as well as an epidural steroid injection and trigger point injection on November 22, 2014. PX8 at 62-66. Petitioner testified that Dr. Hassan kept her off of work. Dr. Hassan's records reflect Petitioner's report on November 25, 2014 and January 20, 2015 that her lumbar condition had improved. PX8 at 54-61. He recommended proceeding with cervical injections. *Id.*

In the interim, on December 16, 2014, Dr. O'Keefe noted his "board-certified orthopedic opinion that [Petitioner] does have discal neck symptoms." PX6 at 28-30. He diagnosed Petitioner with a "[w]ell-documented injury at work, hurting her neck and low back with discal herniation seen from abnormal MRIs 12/13." *Id.* Dr. O'Keefe ordered a repeat cervical MRI and repeat EMG/NCV. *Id.* Petitioner underwent the cervical and bilateral upper extremity EMG/NCV on January 7, 2015. PX6 at 85-87. The results showed no evidence of cervical radiculopathy or peripheral entrapment neuropathy. *Id.*

Dr. O'Keefe also referred Petitioner to Mark Sokolowski, M.D. (Dr. Sokolowski) for assessment and treatment. PX9 at 4. Petitioner first saw Dr. Sokolowski on December 22, 2014. PX9 at 7-8. Petitioner reported neck pain with radiation to the right upper extremity, lumbar pain with radiation to the right lower extremity, left

hand pain and symptoms subsequent to a work injury. *Id.* Dr. Sokolowski noted the following history in pertinent part:

> ... [Rosa Sanchez] reports that she was in her usual state of health, and working in the course of her usual occupation, on October 3, 2013. Her job requires that she place envelopes into 60-pound boxes. She then lifts the boxes onto a skid. She reports that she was performing these duties, and lifting the boxes onto a skid stacked high enough that it was necessary for her to lift the box above eye level. As she lifted one such box of envelopes onto the skid, she developed shooting pain from her wrist through her right arm to her neck as well as left-sided hand pain. As the box started to slip, she lost her balance and fell backwards landing on her buttocks, catching herself on the ground with both arms. She reports that her supervisor saw her fall and came to assist her. She reported that she was very dizzy and unable to stand. ....

*Id.* Dr. Sokolowski reviewed Petitioner's cervical MRI of December 17, 2014. *Id.* He noted no large disc herniations. *Id.* Dr. Sokolowski also reviewed Petitioner's lumbar MRI from October of 2014. *Id.* He noted a central and left-sided disc herniation at L4-5 and an annular tear at L3-4. *Id.* Dr. Sokolowski diagnosed Petitioner with cervical pain and radiculopathy as well as lumbar pain and radiculopathy. *Id.* He ordered a cervical EMG to determine the etiology of Petitioner's symptoms versus peripheral entrapment process. *Id.* He also indicated that Petitioner was a candidate for a lumbar laminectomy from L3-5. *Id.*

On January 15, 2015, Petitioner returned to Dr. O'Keefe who noted the following history:

> Patient had a fall to the floor while working 10/03/13. She had shooting pain in the upper extremity as she held a 60 lb. load. She lost control of back and dropped back box which was about the height of her head. That knocked her off of her feet and she fell backward onto her arms, injuring her spine and both hands, right worse than left. We've tried to improve her with McKenzie and core strengthening exercises. She still having a high level of symptoms. She's had some pain management injections in the mid and low back with Dr. Hassan, M.D. in 2014. She's due to see him on 01/20/15. Dr. Sokolowski, M.D. assessed the patient and feels she is a candidate for some lumbar fusion needs because of this work injury. I saw the patient 12/14 and ordered a repeat MRI of the neck. That's not normal but it's not horribly abnormal. She had a repeat electrical test which was negative for neck and arm neuropathy. **It's my board-certified orthopedic opinion that she has traumatic discal injury in the next and it is causing clinical symptoms into the right arm and traumatic carpal tunnel symptoms.** We asked work comp. Several months ago for permission to do an ultrasound-guided cortisone injection. That's not been forthcoming. Will bring her back in the next week or two and do that as she's worsening and is very debilitated.

PX6 at 25-27 (**emphasis** in original). Dr. O'Keefe noted that electrical testing performed on January 7, 2015 for the neck and arm was negative for neuropathy/radiculopathy. *Id.* Petitioner's cervical MRI as noted by Dr. O'Keefe showed a mild herniation of the C5-6 disc with some thecal effacement and no apparent stenosis. *Id.*

On January 27, 2015, Petitioner returned to Dr. O'Keefe who noted that Petitioner had clinical evidence of a TFCC tear and traumatic carpal tunnel syndrome on the right. PX6 at 23-24. He also diagnosed Petitioner with DeQuervain's, traumatic carpal tunnel syndrome and a TFCC tear in the right wrist. *Id.* Dr. O'Keefe ordered a cortisone injection trial for the carpal tunnel syndrome or the DeQuervain's. *Id.*

On January 28, 2015, Dr. Hassan administered the recommended cervical medial branch block as well as an epidural steroid injection and trigger point injection. PX8 at 47-53. Petitioner returned to Dr. Hassan on February 3, 2015 reporting increased lumbar spine pain. PX8 at 43-46. He recommended a discogram and CT

scan as well as trigger point injection for myofascial pain as needed. *Id.* Dr. Hassan performed the recommended discogram and post-discogram CT scan the following day. PX8 at 10-12, 34-42. On cross examination, Petitioner testified that she was under anesthesia during the discogram.

On February 10, 2015 and March 5, 2015, Dr. Hassan recommended additional injections into the cervical spine and referred Petitioner for a surgical consult related to the low back. PX8 at 32-33. In the interim, on February 12, 2015, Petitioner underwent the recommended EMG/NCV. PX8 at 8-9. The radiologist noted the following history:

> The patient is a 48 year old female of (sic) with chief complaints of pain in her neck and lower back with pain, numbness and tingling in her arms and legs. She reports that 10/03/2013 she was at work lifting boxes and on one occasion she lifted a heavy box over her head when it came down on her, she fell back onto her knees and lower back. She had the immediate onset of pain in her neck and lower back pain, numbness and tingling in her arms and legs. She notes that she has been receiving care, with improvement; however, pain in her neck and lower back, with pain, numbness in tingling in her arms and legs persists. She noticed difficulty in sitting, bending and twisting. Her past medical history is unremarkable. ....

*Id.*

On February 26, 2015, Petitioner returned to Dr. O'Keefe who diagnosed traumatic carpal tunnel syndrome on the right. PX6 at 21-22. He ordered an ultra-sound guided cortisone injection to address DeQuervain's as well as another injection to address carpal tunnel syndrome if those symptoms did not improve. *Id.*

On March 31, 2015, Dr. O'Keefe ordered a repeat low back MRI. PX6 at 16-18. He noted that "[i]t's my **board-certified orthopedic opinion that the fall of 10/13 produced DeQuervain's symptoms in both wrists and peripheral neuritic symptoms in both arms which should be treated.** At this point, work comp. should authorize the ultrasound-guided injection of the 1st and 2nd dorsal compartments on the right. **Work comp. should authorize Dr.** Sokolowski's **request to perform spinal surgery.** She's miserable and can't work with those symptoms." *Id.* (**emphasis** in original). Dr. O'Keefe also reiterated that he reviewed Petitioner's IME report, with which he did not agree, and that the exam was not thorough. *Id.* He wrote a "prescription asking for her to have a genuine and thorough exam of her arms." *Id.* Petitioner underwent the recommended low back MRI on March 31, 2015. PX6 at 88. The interpreting radiologist noted L3-4 and L4-5 disc herniations that impinged the ventral margin of the dural sac. *Id.*

On April 10, 2015, Petitioner returned to Dr. Sokolowski. PX9 at 6. Petitioner testified that she knows that he reviewed her MRIs because she observed him reviewing her films. Dr. Sokolowski maintained his diagnoses and recommendation for a cervical EMG and lumbar laminectomy from L3-5. *Id.*

On April 14, 2015, Petitioner returned to Dr. Hassan who indicated that she was awaiting approval for surgery as recommended by Dr. Sokolowski. PX8 at 4-5, 26-28. He also recommended a surgical consultation related to the cervical spine. *Id.*

Dr. O'Keefe then ordered a right hand MRI, which was performed on August 8, 2015. PX6 at 64-65. The interpreting radiologist noted that the MRI showed a small wrist joint effusion, mild osteoarthritis most prominent in the first CMC joint, and was otherwise normal. *Id.*

Thereafter, from June 15, 2015 through September 29, 2015, Dr. O'Keefe has continued to recommend surgery to the right hand as well as the surgery recommended by Dr. Sokolowski to the low back. PX6 at 6-13. Petitioner last saw Dr. Hassan on August 18, 2015. PX8 at 1-3. He diagnosed Petitioner with cervical radiculopathy and cervical facet syndrome, lumbar radiculopathy and lumbar facet syndrome as well as myofascial pain. *Id.* Dr. Hassan maintained that Petitioner required a surgical consultation for the cervical spine, follow up with Dr. Sokolowski for the lumbar spine, and trigger point injections for her myofascial pain as needed. *Id.*

*Deposition Testimony – Dr. O'Keefe*

On November 12, 2015, Petitioner called Dr. O'Keefe as a witness and he gave testimony at an evidence deposition regarding Petitioner's medical treatment and his opinions. PX28. Dr. O'Keefe is a board-certified orthopedic surgeon. PX28 at 4-6, 72; PX28 (Dep. Ex. 1).

Dr. O'Keefe testified that traumatic carpal tunnel syndrome could occur if Petitioner fell heavily onto her wrists and he opined that she could have further torn a pre-existing TFCC tear causing an aggravation of the condition as a result of this mechanism of injury. PX28 at 14. He explained that even if Petitioner had a prior MRI showing a TFCC tear, she reported to him that she was functioning at a high level "hoisting up 60-pound boxes over her head, throwing them up over her head on her tiptoes 15 times an hour. You couldn't do that with a torn wrist." *Id.*, at 62-63. Dr. O'Keefe also opined that the treatment that he rendered to Petitioner was "absolutely connected" with her injury at work noting that she had been working for eight months before the injury without any problems. *Id.*, at 61-62, 64.

Dr. O'Keefe opined that the medications provided by Dr. Chunduri were indicated. *Id.*, at 45. Dr. O'Keefe also opined that the lumbar surgery recommended by Dr. Sokolowski was reasonable and necessary because "[w]e've had a cooperative patient that has tried therapy and medicines and restricted activity and injections, and she's not nearly good enough." *Id.*, at 58. He further opined that the treatment rendered by Dr. Hassan was reasonable and necessary. *Id.*, at 58-59. As of the date of his deposition, Dr. O'Keefe wanted to perform an arthroscopic "assessment" surgery of the sprain of the ulnar aspect of Petitioner's right wrist. PX28 at 59.

Dr. O'Keefe also disagreed with the opinions of Dr. Weber noting that she "doesn't have a real clue on this patient." PX28 at 65-66.

On cross examination, Dr. O'Keefe testified he performs surgery on "toes, fingers, hands, ankles, hips, knees," and that the spine is "the one I don't do." PX28 at 72. He testified half his patients have workers' compensation claims and that Petitioner found him through the "Hoya" newspaper[4]. *Id.*, at 72-73.

Dr. O'Keefe testified that Petitioner presented for a second opinion in April of 2013 reporting repetitive activity and treatment by Dr. Vender. PX28 at 73. He explained that Petitioner's bilateral wrist complaints from April of 2013 and October of 2013 were not the same. *Id.*, at 73-74. Dr. O'Keefe explained that "[t]he glaring difference is that she didn't have an explicit trauma for the treatment she had in 5 of '11. She did work activities. And I think she was told by Dr. Vender it was just kind of a repetitive use situation. But let me get to the actual note. I'm going for 4 of '13. Here we go. Cortisone injections that were beneficial, so she's just kind of asking what's going on and not saying I need surgery or anything. She's just saying, what do you think what

[4] *Hoy* is a Spanish language newspaper based in Chicago. http://www.vivelohoy.com/ (last visited May 10, 2016).

my physical exam is?" *Id.*, at 74. He maintained that Petitioner's bilateral hand symptoms were "[h]ugely" different in October of 2013 from those in April of 2013. *Id.*, at 75-76.

On cross examination, Dr. O'Keefe refused to directly respond to questioning about whether Petitioner had reached maximum medical improvement or if her condition had resolved between her visit in April of 2013 and her return to him in October of 2013. PX28 at 76-77. He explained that Petitioner had a mild overuse condition in April of 2013 and that he was not aware that Petitioner had a prior injury in April of 2013. *Id.* Rather, he testified that he did not know of a prior injury and that Petitioner had "so much trauma in October that that would have completely overwhelmed this April 13 assessment. She had mild symptoms there with no restrictions needed and not even for sure she needed medicines. When I saw her the first time, she's badly hurt and needs narcotic medicines and can't work. So I can't - - she was supposed to come back if she was having significant symptoms, at which I would feel more comfortable with them saying an injury in April of '13. I don't think it was an injury in April of '13 that I saw her for." *Id.*, at 77. Dr. O'Keefe further explained that Petitioner did not return to see him after April of 2013, which she was supposed to do, so he thinks she did well based on the lack of a follow up appointment. *Id.*, at 78-79.

Also on cross examination, Dr. O'Keefe testified regarding his physician's assistant's notations of the mechanism of injury and Petitioner's condition on October 8, 2013. PX28 at 80-83. He understood that Petitioner "was on her toes trying to push the box to stack it on the seventh row of a pallet...[a]nd it got hung up or hooked up and came back at her, hitting her in the chest and knocking her back onto her hands and her butt." *Id.*, at 80. He testified that the height of the box involved was significant because "she's probably not in very perfect balance[,]" she "is extremely extending" and the box at that height is "probably very capable of knocking her back onto her feet." *Id.*, at 81. Dr. O'Keefe also testified that the weight of the box as reported by Respondent was significant because a 50-60 pound box, or even a 40 pound box, would have been a third of Petitioner's body weight and enough to knock her off her feet. *Id.*, 79-80. With regard to a potential inaccuracy in Petitioner's accident history, Dr. O'Keefe explained that "[s]ome women don't know the right amount of a weight." *Id.*, at 98. Regardless, Dr. O'Keefe acknowledged that his physician's assistant's note of October 8, 2013 does not reflect a report by Petitioner that she injured her right shoulder, hyperextended her arms, or of any complaint of neck or right shoulder pain. *Id.*, at 81-83.

Dr. O'Keefe maintained that Petitioner had traumatic carpal tunnel syndrome, ulnar tunnel symptoms and a TFCC tear. *Id.*, at 86-89. He maintained that these diagnoses would be clinically diagnosed and that diagnostic tests, which in Petitioner's case were all negative, was unnecessary to accurately diagnose the conditions. *Id.* He maintained that Petitioner's symptoms were also caused by a cervical disc issue despite the lack of evidence of cervical radiculopathy or peripheral entrapment neuropathy at the time of Petitioner's cervical EMG in January of 2015. *Id.*, at 92-93.

Dr. O'Keefe was clearly and repeatedly asked what specific surgery or surgeries he recommended for Petitioner and what conditions such treatment was intended to address. PX28 at 94-95. In an evasive and generalized manner, he testified that "[w]e're putting in to do an arthroscopy of the wrist[,]" and that he was looking for perform an arthroscopic "assessment" of the TFCC tear and possibly, in two other surgeries, repair Petitioner's carpal tunnel syndrome and DeQuervain's syndrome. *Id.* He added, "[w]e would not - - this lady has got a complex problem here. She has carpal tunnel findings. What I would do is say, hey, Rosa, what is your worst symptoms right now, which of these three things. And I would try to go for that. But any of these things could be surgical and probably will. We'll probably work on one of them, have an improvement there, and then go to the next most-troublesome thing." *Id.*, at 95-96.

*Continued Medical Treatment*

On November 17, 2015, Petitioner returned to Dr. O'Keefe. PX6 at 4-5. He reiterated that Petitioner was hurt at work in October of 2013 and that she had severe mechanical symptoms in her right wrist. *Id.* Specifically, Dr. O'Keefe noted that "[w]e've asked to perform an arthroscopic procedure as an outpatient with probable open repair of the triangular fibrocartilage complex (TFCC) ligament. She has carpal tunnel symptoms and cubital tunnel symptoms on the ipsilateral side, even in the face of normal electrical testing. If we do the wrist scope and deal with the mechanical symptoms but the neuritic symptoms persist, she may well require nerve releases." *Id.*

*Deposition Testimony – Dr.* Sokolowski

On December 7, 2015, Petitioner called Dr. Sokolowski as a witness and he gave testimony at an evidence deposition regarding Petitioner's medical treatment and his opinions. PX29. Dr. Sokolowski is a board-certified orthopedic surgeon specializing in the spine. PX29 at 4-5; PX29 (Dep. Ex. 1).

Dr. Sokolowski testified that Petitioner's cervical and lumbar spine conditions as of Petitioner's first visit with him were causally related to her injury at work on October 3, 2013 based on the correlation between the event and onset of symptoms, the lack of pre-existing pathology in those regions, his physical examination findings and corroborative diagnostic studies. PX29 at 11-12. He maintained his opinions as of Petitioner's second visit on April 10, 2015. *Id.*, at 15-16. Dr. Sokolowski specifically opined that Petitioner's lumbar radiculopathy, disc herniation at L4-L5 and annular tear at L3-L4 were more likely than not caused by the incident at work. *Id.*, at 16-17. With respect to the neck, Dr. Sokolowski ordered an EMG, if one had not already been performed, as well as a lumbar laminectomy surgery. *Id.*, at 15-16.

On cross examination, Dr. Sokolowski testified that he believed the mechanism of injury described by Petitioner caused her cervical and lumbar findings. PX29 at 20-21. Specifically, he understood that Petitioner was extending a box weighing 60 pounds overhead and that she fell on her buttocks. *Id.* Dr. Sokolowski trusted Petitioner with regard to the reported history. *Id.*, at 21.

Dr. Sokolowski also testified that disc pathology in the cervical spine was not causing Petitioner's right arm symptoms. PX29 at 23. He explained that "[w]e have excluded disc pathology because I did not observe a herniation. Based on her symptoms, she more likely has peripheral entrapment." *Id.* Dr. Sokolowski also testified that the etiology of Petitioner's cervical symptoms was unclear. *Id.*, at 30.

With regard to the lumbar spine, Dr. Sokolowski testified that Petitioner's central findings were a probative cause of her central symptoms. PX29 at 26. He acknowledged that it was not typical for a left-sided herniation to cause symptoms on the right side, but he explained that Petitioner had central and left-sided herniation so there was a reasonable expectation of bilateral nerve root involvement. *Id.*, at 27. Dr. Sokolowski acknowledged that Petitioner had pre-existing pathology (i.e., disc desiccation) at L3-L4 and L4-L5. PX29 at 28.

*Continued Medical Treatment*

On December 31, 2015, Dr. O'Keefe indicated that Petitioner had a severe right wrist sprain from her work injury in October of 2013 with an abnormal MRI showing a TFCC injury, which was tremendously alleviated for a few hours after an ultra-sound guided cortisone injection. PX6 at 3. Dr, O'Keefe noted that "**[t]his**

**patient needs to have the outpatient arthroscopic procedure performed. There is little I can do to get her back to being functional as a worker who is supposed to handle 50-60 lb. loads when she has a torn ligament in her wrist that's causing painful weakness and arc of motion. Work comp. needs to authorize this immediately or else set her up with a new IME with a hand surgeon to assess this genuine and severely injured patient after the work injury of 10/13."** *Id.* (emphasis in original). He kept Petitioner off work. *Id.*

*Deposition Testimony – Dr. Weber*

On January 13, 2016, Respondent called Dr. Weber as a witness and she gave testimony at an evidence deposition regarding Petitioner's conditions and the relatedness, if any, of her conditions to an injury at work. RX1. Dr. Weber is board-certified in internal medicine and sports medicine. RX1 at 5-8; RX1 (Dep. Ex. 1).

Dr. Weber explained Petitioner's back examination was within normal limits with the exception of subjective complaints with lumbar range of motion, and had no neurologic abnormalities. RX1 at 13. She did not diagnose lumbar radiculopathy because Petitioner exhibited no symptoms which suggested neural tension, such as a straight leg or cross leg raise, and a negative slump. *Id.*, at 15. Dr. Weber stated that although Petitioner reported some decreased sensation in the distal right thigh, the exam was normal. *Id.*, at 15-16. Dr. Weber also reviewed Petitioner's low back MRI report noting degenerative changes in the lumbar spine, which were not symptomatic at the time of her examination. *Id.*, at 13, 26.

Dr. Weber testified that she reviewed Petitioner's bilateral wrist MRI reports, which suggested chronic scapholunate abnormality and preexisting degenerative changes. RX1 at 13, 26. Dr. Weber explained she did not diagnose a TFCC tear because Petitioner had no tenderness over the TFCC and provocative testing of the TFCC did not reproduce any symptoms. RX1 at 14. Though Petitioner had MRI findings at the scapholunate, her physical exam yielded no scapholunate pain or instability. *Id.* Dr. Weber also testified that she did not diagnose carpal tunnel syndrome because Petitioner "had no findings that would suggest carpal tunnel in the sense that she had negative Tinel's and negative Phalen's bilaterally at the wrist[]" with no evidence of atrophy. *Id.* Dr. Weber further explained she did not diagnose Petitioner with DeQuervain's syndrome because Petitioner did not have an unequivocal Finkelstein's and because the mechanism of injury described by Petitioner would not have caused it. *Id.*, at 14-15.

Ultimately, Dr. Weber maintained that Petitioner's presentation was wholly subjective and did not correlate to any objective findings. RX1 at 15-16. "Based on the described mechanism of injury it appeared that she more probable than not sustained a mild wrist and lumbar back strain." *Id.*, at 16. Dr. Weber testified that "there is a suggestion of non-physiological causes for ongoing subjective complaints as her exam was normal." *Id.*, at 22. Dr. Weber testified that the accident as described by Petitioner did not aggravate any pre-existing scapholunate or degenerative lumbar spine findings. *Id.*, at 18.

Dr. Weber testified that a reasonable course of treatment for Petitioner's condition resulting from the October 3, 2013 accident would have been a short course of physical therapy and medications lasting 4-6 weeks. RX1 at 19-20. She explained that injections were not necessary because there was nothing in the record to suggest any true radicular-type symptoms. *Id.*, at 29. She also explained that epidural injections are not indicated for numbness, but rather for radicular type symptoms, and she noted that the Central Medical Specialists records showed nothing to suggest positive straight leg raises or slump tests. *Id.*, at 20. Dr. Weber testified that Petitioner had a normal exam and no further medical treatment was necessary. *Id.*, at 21.

On cross examination, Dr. Weber testified that if Petitioner fell backwards on her buttocks and hands she could aggravate a TFCC tear, increase a scapholunate tear and increase symptoms in the lumbar spine. RX1 at 26-27. Dr. Weber acknowledged that she did not evaluate Petitioner for a cervical spine condition. *Id.*, at 27.

*Continued Medical Treatment*

Petitioner testified that she has continued to see Dr. O'Keefe through March 31, 2016 and he has continued to keep her off of work. On March 31, 2016, Dr. O'Keefe continued to recommend surgery to repair a right wrist TFCC tear and requested authorization of the back surgery recommended by Dr. Sokolowski. PX7 at 1-2. He noted the following in pertinent part:

> ... [Petitioner] was hurt so badly in 10/13 that she wasn't able to go back without restrictions. We did try to have her go back but work wouldn't have her. She's been a very compliant patient on maximum doses of medications, including NSAIDs, Aciphex, Hydrocodone, and Neurontin. She had gastric symptoms and even had an endoscopy which that doctor said was probably related to the prescription medicines we've been providing. **Ideally we'd be allowed to do the surgery so that we wouldn't be trying to suppress these high symptoms with medications. Work comp. should authorize the requested surgeries ASAP (the back surgery with Dr. Sokolowski, M.D. was requested 04/15 and the right arm surgery was requested 08/15). It's my board-certified orthopedic opinion that the patient was hurt with work activities 10/13 and had a back injury and discal symptoms with right radiculitis which should be authorized for Dr. Sokolowski to performing back surgery on.** Her right arm remains problematic with numbness and tingling in the ulnar and median nerves. We asked for ultrasound-guided cortisone injection of the wrist back in 08/15. That occur from a 7/10 level to a 0/10 for a brief time. The triangular fibrocartilage complex (TFCC) ligament needs to be addressed with arthroscopic exam as requested 08/15.

*Id.* (emphasis in original). Petitioner testified that she wishes to undergo the surgery recommended by Dr. O'Keefe and the low back surgery as recommended by Dr. Sokolowski.

Prior to October 3, 2013, Petitioner testified that she did not have any low back problems. She also testified that she has not had any accidents thereafter. On October 13, 2012, Petitioner testified that she was involved in a motor vehicle accident and she underwent CT scans of her neck and her thorax and chest. She also had CT scans of her abdomen and hips. She was treated and released from the emergency room on that date, but did not have any further follow up care thereafter as a result of her accident.

Regarding her current condition, Petitioner testified that she does not engage in any activities at 100%. She explained that this is due to her right wrist pain and her low back pain. While walking, Petitioner testified that her whole right side becomes numb, her right knee does not allow her to descend stairs easily and her right big toe is always numb. Petitioner explained that she can walk for about 15 minutes before her pain starts.

While ascending or descending stairs, Petitioner testified that there is no time when she does not feel pain in her right knee. Petitioner described that she has to adjust her right knee when she ascends or descends stairs because she does not have strength. She also has low back pain and she cannot sit for long periods of time in one position or any position. Petitioner testified that, at the time of the hearing, she had been sitting for over an hour and 15 minutes and she felt a lot of pain in the right buttock and low back.

With regard to her right hand, Petitioner testified that her fingers become numb. She experiences pain and feels cracking with movements of the right wrist such as while using a knife, washing dishes, or stirring food while

cooking. Petitioner testified that she uses a wrist brace on both wrists at night and she uses a brace on her right wrist most of the time. Petitioner takes Tylenol and pain medication prescribed by Dr. Smith, her primary care physician, for her right wrist pain sometimes three times per day.

On cross examination, Petitioner testified that Dr. Smith told her that the medications are for her nerves, but she could not recall the names of the medications. She also testified that her right hand pain is now stronger than it was in 2011 and she has different symptoms in the left hand compared to the right hand. On the left, Petitioner testified that she feels wrist pain, but no numbness in the fingers. Petitioner testified that she has not had any subsequent accidents to her hands.

*Mitchell Silva*

Respondent called Mitchell Silva (Mr. Silva) as a witness. Mr. Silva testified that he is currently employed by Respondent as a Plant Manager and has worked there for 15 years. Mr. Silva oversees all three shifts, primarily overseeing machines.

Mr. Silva testified that Petitioner was a second shift Operator. He explained that Petitioner's main responsibility was to check quality and pack envelopes inside cartons measuring 21¼ x 12¼ x 9⅞ that weighed an average of 30 pounds when full. Mr. Silva testified that he knew the dimensions and weight of these boxes because he ordered 20,000 every month. Mr. Silva testified that Petitioner was to place filled boxes onto pallets and complete a production sheet with totals for the day. Pallets held 36 cartons and were stacked six cartons wide and six cartons high. Each full pallet measured about 54 inches tall including the height of the pallet, which is 4-5 inches. Mr. Silva testified that the cartons were not supposed to be stacked seven cartons high because the weight would crush the bottom cartons.

On October 2, 2013, Mr. Silva testified that he was working with Petitioner and he observed the alleged accident. He explained that he was walking toward her machine and noticed her pick up a box and walk toward a center aisle. She lifted the carton chest high on the skid, paused, then awkwardly and slowly went down to her left side and made a quick yelp. He testified that Petitioner landed on her left wrist and elbow. Mr. Silva testified that Petitioner was putting the box onto the fifth level of boxes on the skid at approximately chest height at the time of this incident and that he was only 10 feet from her when he witnessed the incident.

Mr. Silva testified that he asked Petitioner if she was ok and she grabbed her right wrist and elbow. Although he testified that he saw Petitioner land on her left wrist and elbow, Petitioner told him that she fell on her right wrist and elbow. Mr. Silva testified that he did not recall helping Petitioner up from the floor.

Mr. Silva then reported the accident to Kelly Mueller (Ms. Mueller) in the Human Resources department. Mr. Silva told Ms. Mueller that there was an incident where an employee said she was hurt. He testified that Petitioner landed on her butt and her left hand was down and when he went over to her she was holding her right hand. He did not observe her on her right hand and he did not observe Petitioner's right hand hit the ground.

Respondent offered into evidence a compilation of photographs taken by Mr. Silva of the pallet involved in the incident from different angles. RX7. Mr. Silva testified that these photographs were taken the day after the incident.

On cross examination, Mr. Silva testified that the photographs show the pallet stacked five cartons high and he explained that a pallet can be stacked up to six cartons high. He testified that each carton weighed about 30 pounds. He testified that, if someone is only 5'2 tall, that person would not have to lift a carton over shoulder level to get it onto the fifth level of cartons. Mr. Silva testified that he actually observed Petitioner putting the box up on the pallet. He explained that he was looking at Petitioner from her left side. He explained that Petitioner put the box on the pallet, hesitated and then fell. He also testified that he did see where Petitioner's right hand was during this incident. Mr. Silva explained that he observed Petitioner the entire time and he maintained that Petitioner put the box on the pallet, hesitated, and then fell. He explained that Petitioner did not exhibit any pain symptoms. He also testified that the box that Petitioner was lifting did not fall.

*Rebuttal Testimony of Petitioner*

Petitioner testified that she is 5'2 tall and that the boxes photographed in Respondent's Exhibit 7 are like the boxes with which she was working. Petitioner testified that on October 3, 2013 she is sure that she was stacking boxes seven levels high and the box that she was stacking was over her head at the seventh level.

## ISSUES AND CONCLUSIONS

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

**In support of the Arbitrator's decision relating to the admissibility of Respondent's Exhibit 9, the Arbitrator finds the following:**

Petitioner objected to the admissibility of Respondent's Exhibit 9 based on either lack of foundation or the hearsay nature of the exhibit. Petitioner's objection on the basis of foundation is overruled. Petitioner's objection on the basis of the hearsay nature of the exhibit is sustained. Respondent's Exhibit 9 is a prior consistent statement. Respondent's Exhibit 9 is not admitted into evidence, but will remain with the Commission's file as a rejected exhibit.

**In support of the Arbitrator's decision relating to Issue (F), whether Petitioner's current condition of ill-being is causally related to the accident at work, the Arbitrator finds the following:**

In this case, Petitioner claims that she sustained a repetitive trauma injury manifesting on May 4, 2011. The fact that Petitioner sustained such an accident at work is not disputed. See AX1. Petitioner claims continued causal connection between her accident on May 4, 2011 and her current condition of ill-being based on an intervening, aggravating accident at work occurring on October 3, 2013. Petitioner's claim for benefits related to the claimed October 3, 2013 accident is addressed in the concurrent decision issued in Case No. 13 WC 37473. With regard to her May 4, 2011 accident, the Arbitrator finds that Petitioner's bilateral wrist condition is causally connected to the injury through her last visit with Dr. Vender on May 3, 2012.

On May 4, 2011, Petitioner received care at the company clinic with Dr. Bender and other doctors or physicians' assistants. She was given a wrist splint for each hand and placed on light duty restrictions. Petitioner then underwent bilateral wrist MRIs, which the interpreting radiologist noted to show a scapholunate ligament sprain with focal signal abnormality by its scaphoid attachment suspicious for partial thickness tear on the left and a high grade partial tear of the scapholunate ligament on the right. These MRIs were reviewed by Dr. Ostric who indicated that he was "not concerned that she has a pathology in her wrist. These are all normal changes with aging such as the partial tear of the scapholunate, ligament and the lunate cyst." Dr. Ostric believed that Petitioner might have carpal tunnel syndrome and ordered an EMG, which Petitioner underwent and showed no evidence of bilateral median neuropathy, ulnar neuropathy or cervical radiculopathy.

After Petitioner was released from care at the clinic on July 12, 2011, she saw Dr. Hill at Illinois Bone and Joint. He also reviewed Petitioner's test results and diagnosed Petitioner with chronic bilateral upper extremity pain and paresthesias of uncertain etiology. Dr. Hill disagreed with Dr. Ostric and noted that Petitioner's clinical presentation did not suggest carpal tunnel syndrome or ulnar neuritis. He believed that Petitioner could be experiencing some form of atypical cervical radiculopathy or even inflammatory arthropathy. He ordered a cervical MRI, which was normal.

Dr. Sisson of the company clinic noted that Petitioner underwent conservative treatment and diagnostic testing with bilateral wrist MRIs showed a "high-grade partial tear of the scapholunate ligament[, and the] results for the left wrist showed a scapholunate ligament sprain that was suspicious for a partial-thickness tear." He also noted that "[o]n July 29, 2011, [Petitioner] returned with complaints of having injured her wrist and neck while

lifting a sack of garbage. At that time, conservative treatment was instituted and she was again discharged from our care."

Petitioner then saw Dr. Vender on September 12, 2011 who diagnosed bilateral tenosynovitis. He also ordered a second set of EMG/NCV tests, which were performed on the same day. The results were normal. Petitioner returned to see Dr. Vender and received several injections with no reported relief. Then on December 1, 2011, Petitioner reported left elbow complaints for the first time. Dr. Vender diagnosed bilateral tenosynovitis and medial epicondylitis and administered an injection into the left elbow. Dr. Vender ordered occupational therapy, which Petitioner underwent. He indicated that as of February 20, 2012, no aggressive treatment was recommended for Petitioner's multiple upper extremities complaints and he ordered a home exercise program.

In the interim, Petitioner was involved in a motor vehicle accident. She testified that this accident did not aggravate her condition in any way. The medical records reflect that Petitioner was diagnosed with a neck sprain and sent home. When Petitioner returned to Dr. Vender on May 3, 2012, he noted that he discussed Petitioner's bilateral wrist pain and diffuse upper extremity, neck and shoulder complaints with Petitioner and her daughter. Dr. Vender indicated that "There has been difficulty with the location and consistency of complaints and findings. Would recommend followup. With her primary physician or possibly a rheumatologist."

However, Petitioner did not undergo further medical treatment for any condition for 11 months until she saw Dr. O'Keefe on April 9, 2013 for a second opinion related to the bilateral wrists. The Arbitrator finds sufficient evidence that Petitioner had reached maximum medical improvement as of May 3, 2012 when she was released by Dr. Vender as it is followed by this gap in treatment, particularly after she had been referred for follow up with either her primary care physician or a rheumatologist. Notwithstanding, Dr. O'Keefe's testimony about Petitioner's April 9, 2013 visit further supports the proposition that Petitioner's bilateral wrist condition had resolved long before she saw him or sustained her claimed second accident at work.

Dr. O'Keefe testified that Petitioner presented for a second opinion in April of 2013 and took pains to explain that Petitioner's bilateral wrist complaints from April of 2013 and October of 2013 were not the same. Indeed, he went so far as to add that "[t]he glaring difference is that she didn't have an explicit trauma for the treatment she had in 5 of '11. She did work activities. And I think she was told by Dr. Vender it was just kind of a repetitive use situation. But let me get to the actual note. I'm going for 4 of '13. Here we go. Cortisone injections that were beneficial, so she's just kind of asking what's going on and not saying I need surgery or anything. She's just saying, what do you think what my physical exam is?" He maintained that Petitioner's bilateral hand symptoms were "[h]ugely" different in October of 2013 from those in April of 2013. Dr. O'Keefe also specifically explained that Petitioner did well based on the lack of a follow up appointment with him after April 9, 2013.

As it relates to Petitioner's May 4, 2011 repetitive trauma accident, Dr. O'Keefe's testimony supports the conclusions of Dr. Sisson and Petitioner's own treating physician, Dr. Vender, that Petitioner's conservatively treated bilateral wrist condition had resolved long before her claimed accident at work on October 3, 2013. Based on all of the foregoing, the Arbitrator finds that Petitioner's condition of ill-being resolved as of her last visit with Dr. Vender on May 3, 2012.

**In support of the Arbitrator's decision relating to Issue (J), whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds the following:**

Petitioner claims entitlement to payment of reasonable and necessary medical bills from medical providers that administered care after her accident at work on May 4, 2011. The medical bills submitted into evidence relate to immediate care at the company clinic, hospital services, diagnostic testing, physicians' services, physical therapy and prescription medications prescribed as a direct result of her injury at work. Based on the exhibits, it appears that all of the medical bills through May 3, 2012 have been paid pursuant to the fee schedule and Sections 8(a) and 8.2 of the Act. Petitioner has also placed into evidence medical bills for care administered at Northwestern Community Hospital on and after March 13, 2012 for treatment subsequent to a motor vehicle accident. These bills are clearly unrelated to Petitioner's May 4, 2011 work accident and the bills found in Petitioner's Exhibit 10 are specifically denied.

Based on all of the foregoing, the Arbitrator denies Petitioner's claim for payment of additional medical expenses beyond those paid by Respondent for treatment through May 3, 2012, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Petitioner's claim for payment for any medical bills related to the motor vehicle accident on March 3, 2012 is specifically denied.

STATE OF ILLINOIS )
) SS
COUNTY OF DUPAGE )

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rosa Maria Sanchez,
Petitioner,

vs.

Federal Envelope Company,
Respondent.

No. 13WC 37473
18IWCC 0298

ORDER

This matter comes before the Commission on Petitioner and Respondent's Petition to Recall the Commission Decision to Correct Clerical Error pursuant to Section 19(f) of the Act. The Commission having been fully advised in the premises finds the following:

The Commission finds that said Decision should be recalled for the correction of a clerical/computational error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Decision dated May 9, 2018, is hereby recalled pursuant to Section 19(f) of the Act. The parties should return their original decisions to Commissioner Kevin W. Lamborn.

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

Kevin W. Lamborn

DATED: MAY 31 2018
KWL/jrc
042

13WC37473
18IWCC0298

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

ROSA MARIA SANCHEZ,

Petitioner,

vs.

NO: 13 WC 37473
18IWCC 0298

FEDERAL ENVELOPE COMPANY,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 31, 2016, 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.

13WC37473
18IWCC0298

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 $1,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 31 2018
KWL/jrc
O: 03/20/18
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

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

**SANCHEZ, ROSA MARIA**
Employee/Petitioner

Case# **13WC037473**

11WC025277

**FEDERAL ENVELOPE COMPANY**
Employer/Respondent

**18IWCC0298**

On 5/31/2016, 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 0.48% 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:

1922 STEVEN B SALK & ASSOCIATES LTD
FRANK I GAUGHAN
150 N WACKER DR SUITE 2570
CHICAGO, IL 60606

0210 GANAN & SHAPIRO PC
JOSEPH P BRANCKY
210 W ILLINOIS ST
CHICAGO, IL 60654

18IWCC0298

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
## AMENDED ARBITRATION DECISION
19(b) & 8(a)

Rosa Maria Sanchez
Employee/Petitioner

v.

Federal Envelope Company
Employer/Respondent

Case # 13 WC 37473

Consolidated cases: 11 WC 25277

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 **Barbara N. Flores**, Arbitrator of the Commission, in the city of **Wheaton (for Elgin)** on **April 12, 2016**, respectively. 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, **October 3, 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 as explained *infra*.

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

Petitioner's current condition of ill-being ***is in part*** causally related to the accident as explained *infra*.

In the year preceding the injury, Petitioner earned **$17,680.00**; the average weekly wage was **$340.00**.

On the date of accident, Petitioner was **46** years of age, ***single*** with **no** dependent children.

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

Respondent shall be given a credit of **$4,490.73** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$4,490.73**.

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

ORDER

As explained in the Arbitration Decision Addendum, the Arbitrator finds that Petitioner did sustain an accident at work on October 3, 2013 as claimed to the extent opined by Respondent's Section 12 examiner, Dr. Weber.

*Temporary Total Disability Benefits*

Respondent shall pay Petitioner temporary total disability benefits of $237.67/week for 5 & 6/7th weeks, commencing October 4, 2013 through November 13, 2013, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from October 3, 2013 through March 12, 2016, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be entitled to a credit of Petitioner's $4,490.73 for temporary total disability benefits paid.

*Medical Benefits*

Respondent shall pay the reasonable and necessary medical services related to the bilateral wrist sprains and low back sprain through November 13, 2013 as reflected in Petitioner's Exhibits as provided in Sections 8(a) and 8.2 of the Act. Petitioner's claim for payment of any other medical bills is denied.

*Prospective Medical Treatment*

As explained in the Arbitration Decision Addendum, the Arbitrator denies the prospective medical care recommended by Dr. O'Keefe and Dr. Sokolowski.

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

May 31, 2016
Date

ICArbDec19(b) p. 3

MAY 31 2016

ILLINOIS WORKERS' COMPENSATION COMMISSION
AMENDED ARBITRATION DECISION *ADDENDUM*
19(b) & 8(a)

Rosa Maria Sanchez
Employee/Petitioner

v.

Federal Envelope Company
Employer/Respondent

Case # 13 WC 37473

Consolidated cases: 11 WC 25277

## FINDINGS OF FACT

The parties appeared for a consolidated trial in the above captioned cases. The issues in dispute in this case include whether Petitioner sustained a compensable accident on October 3, 2013, causal connection, Respondent's liability for payment of certain medical bills, Petitioner's entitlement to temporary total disability benefits commencing October 4, 2013 through April 12, 2016 as well as Petitioner's entitlement to prospective medical care. Arbitrator's Exhibit[1] ("AX") 2. The issues in dispute in Case No. 11 WC 25277 include causal connection and Respondent's liability for payment of certain medical bills, which are addressed in a concurrent decision issued in that case. AX1. The parties have stipulated to all other issues. AX1 & AX2.

*May 4, 2011*

Rosa Maria Sanchez (Petitioner) testified that she was employed as a Machine Operator by Federal Envelope Company (Respondent) on May 4, 2011 and she had been so employed for six years. Petitioner explained that she packed envelopes that came out of a machine into boxes all day. Envelopes would come out of the machine in horizontal stacks of 2,400 envelopes. Petitioner explained that some of the envelopes would stick up and she would have to push them down to even out the stack. Petitioner testified that she would compress the stack of envelopes together and turn the stack of 2,400 envelopes over to place them in a box located to her left side. When the box was filled with envelopes, Petitioner would close the box and put it through a taping machine. After the box was closed, Petitioner would put the box down on a skid. She estimated that each box weighed about 60 pounds.

Petitioner testified that she compressed stacks of envelopes and turned them over many times throughout her eight hour shift per day. She explained that she did this for six years before May 4, 2011. Petitioner is right hand dominant.

On May 4, 2011, Petitioner testified that her hands started to hurt. She had experienced pain for a couple of months before this date. She felt a burning sensation in both wrists that went up to her elbows, but more on the right. Petitioner explained that the pain did not allow her to sleep.

On cross examination, Petitioner testified that she had bilateral wrist pain as well as numbness in her thumb, index finger, ring finger and pinky finger. Petitioner testified that she noticed pain when using her wrists to turn envelopes over and when lifting boxes to lift them up.

[1] The Arbitrator similarly references the parties' exhibits herein. Petitioner's exhibits are denominated "PX" and Respondent's exhibits are denominated "RX" with a corresponding number as identified by each party. Exhibits attached to depositions will be further denominated with "(Dep. Ex. )."

On May 4, 2011, Petitioner spoke with her supervisor, Dean, and reported that she could not work anymore because she had pain in her hands. She testified that her pain was very strong and explained that she could no longer work. Petitioner estimated her pain at a level of 6 or 7 out of 10 while she was packing envelopes. She testified that Dean sent her to Kelly in the Human Resources department and, thereafter, she was sent to Advanced Occupational Medicine and saw Dr. Sandra Bender (Dr. Bender).

*Medical Treatment*

On May 4, 2011, Petitioner testified that she saw Sandra Bender, M.D. (Dr. Bender) at Advanced Occupational Medicine. PX6 at 9-10. She was given a wrist splint for each hand and placed on light duty restrictions. *Id.* Petitioner testified that she then returned to work on May 5, 2011. On cross examination, Petitioner testified that she returned to light duty without repetitive work and no lifting over a certain amount of pounds. While she was no longer performing repetitive activities, Petitioner testified that the pain was less, but still at night she felt pain.

On May 27, 2011, Petitioner testified that she returned to Advanced Occupational Medicine. Bilateral wrist MRIs were ordered. PX6 at 10. On June 2, 2011, Petitioner underwent the recommended MRIs. PX2 at 21-24. The interpreting radiologist noted a scapholunate ligament sprain with focal signal abnormality by its scaphoid attachment suspicious for partial thickness tear on the left and a high grade partial tear of the scapholunate ligament on the right. *Id.*

Petitioner testified that she returned to Dr. Bender on June 9, 2011. The medical records reflect that Jacey Howard, PA-C, referred Petitioner to Srdjan (Andrei) Ostric, M.D. (Dr. Ostric). PX6 at 6. Ms. Howard noted "[bilateral] wrist pain presented [with] s/s DeQuervains, Tx [with] PT/splints [without] improvement. MRI on 6/2 revealed [left] partial tear/sprain of scapholunate & tear of [right] scapholunate. NSAIDs and phys therapy continued [without] improvement in pain (8/10) please eval & tx." PX6 at 6.

On June 16, 2011 Petitioner saw Dr. Ostric at Midwest Plastic & Reconstructive Surgery. PX1. Dr. Ostric noted the following history:

> Ms. Sanchez is a 43-year old right-hand dominant female who complained of pain early January 2011 and it has progressed over the past several months to the point where she is having difficulty at work. She works as a machine operator packaging envelop[e]s into boxes and it requires overhead lifting and significant use of her hands. She has been doing this for approximately six years. She is otherwise, healthy and I know she is taking anti-inflammatory medications, which you prescribed to her. I did review the MRIs. I am not concerned that she has a pathology in her wrist. These are all normal changes with aging such as the partial tear of the scapholunate, ligament and the lunate cyst.

*Id.* He noted that Petitioner's physical examination was more consistent with carpal tunnel syndrome and he ordered bilateral EMG/NCVs and prescribed physical therapy. *Id.* Petitioner remained on light duty work restrictions. *Id.*

On July 8, 2011, Petitioner underwent the recommended EMG/NCVs. PX4 at 41-43; PX6 at 2-5. The results included no evidence of bilateral median neuropathy, ulnar neuropathy or cervical radiculopathy. *Id.*

On July 8, 2011, Petitioner saw Priti Khanna, M.D. (Dr. Khanna) at Advanced Occupational Medicine Specialists. PX6 at 5. Dr. Khanna noted "repetitive work – started having pain in both hands [left] [illegible]

greater than the right now R>L. Numbness [bilateral] hand [bilateral] thumb. index & [right] ring at times. Numbness intermittent [without] nocturnal paresthesias [positive] weakness [R>L] [positive] neck pain [into] right shoulder & [without left] radicular pain in [positive left] elbow + forearm[.]" *Id.* Dr. Khanna reviewed Petitioner's EMG/NCV which showed no evidence of bilateral median neuropathy, ulnar neuropathy or cervical radiculopathy. *Id.* On July 12, 2011, Petitioner was released from care. PX6 at 10.

On July 29, 2011, Petitioner testified that she returned to Dr. Bender after an incident at work lifting garbage. See also PX6 at 10. Petitioner testified that Dr. Bender provided some conservative treatment then released her from her care and then referred her to Dr. Hill at Illinois Bone and Joint.

On August 1, 2011, Petitioner saw James Hill, M.D. (Dr. Hill) at Illinois Bone and Joint. PX2 at 2-3. He noted Petitioner's reported "longstanding history of bilateral upper extremity pain and paresthesias." *Id.* Petitioner reported "that she began to notice discomforts in her upper extremities bilaterally beginning May 2011. She feels that her right upper extremity is slightly more affected than the left. She attributes the onset of her symptoms to the repetitive requirements of work-related activities as a machine operator." *Id.*

Dr. Hill noted his review of Petitioner's bilateral EMG/NCV test results which showed partial, bilateral scapholunate tearing. PX2 at 2-3. He diagnosed Petitioner with chronic bilateral upper extremity pain and paresthesias of uncertain etiology. *Id.* Dr. Hill also indicated that Petitioner's clinical presentation did not suggest carpal tunnel syndrome or ulnar neuritis. *Id.* He believed that Petitioner could be experiencing some form of atypical cervical radiculopathy or even inflammatory arthropathy. *Id.* Dr. Hill ordered a cervical MRI and seriologic work-up. *Id.* On August 17, 2011, Petitioner underwent the recommended cervical MRI, which was normal. PX2 at 20.

Petitioner testified that she then saw Michael Vender, M.D. (Dr. Vender) on September 12, 2011 as referred by her prior attorney. The medical records reflect Petitioner's report of bilateral hand symptoms since May of 2011 including intermittent numbness in the thumbs and index fingers, a feeling of weakness and wrist pain into the palm. PX2 at 29-31; PX4 at 14-17, 35-36. Dr. Vender diagnosed Petitioner with bilateral tenosynovitis and administered a steroid injection into the right wrist. *Id.* He also ordered a second set of EMG/NCV tests, which were performed on the same day by Scott Heller, M.D. (Dr. Heller). PX4 at 37-38. Dr. Vender noted that the results were normal. *Id.*

Petitioner returned to see Dr. Vender on September 26, 2011 and he administered an injection into the left wrist. PX4 at 12-13, 33-34. On October 20, 2011, Dr. Vender noted that Petitioner did not respond to the injection and she was experiencing more pain and numbness, more prominently on the right. PX4 at 11, 32. She testified that she had bilateral wrist pain at this time while she was working and turning envelopes over and that she continued to work every day. Petitioner returned to Dr. Vender on November 17, 2011. PX4 at 10, 30-31. He noted that she was being followed for possible abnormal flexor tendon interconnections with continued radial symptoms bilaterally. *Id.* Dr. Vender diagnosed Petitioner with tenosynovitis and he administered a steroid injection into the left wrist. *Id.*

Petitioner testified that she then began to make complaints about pain in her bilateral elbows. She explained that the pain would begin in her right wrist and go up to her elbow. Dr. Vender's medical records reflect that Petitioner returned on December 1, 2011 reporting no response to the left wrist steroid injection and continued complaints with left-sided radial pain and right-sided radial and ulnar pain. PX4 at 9, 29. Her most significant complaint was also medial elbow pain on the left. *Id.* Dr. Vender diagnosed bilateral tenosynovitis and medial epicondylitis. *Id.* He administered an injection into the left elbow. *Id.*

On January 12, 2012, Petitioner reported that her left elbow injection did help, but she still had pain with twisting motions as well as medial elbow pain. PX4 at 7-8, 18, 28. Secondarily, Petitioner also reported ulnar right wrist pain and various other complaints in both upper extremities. *Id.* Dr. Vender referred Petitioner to occupational therapy, gave her an elbow sleeve and kept her released to full duty work. *Id.*

On February 20, 2012, Dr. Vender noted Petitioner's most prominent complaint to be left arm pain. PX4 at 5-6, 26. He maintained Petitioner's diagnoses of bilateral tenosynovitis and left medial epicondylitis. *Id.* Dr. Vender indicated that no aggressive treatment was recommended for the multiple upper extremities complaints and he ordered a home exercise program. *Id.* Petitioner saw the occupational therapist on the same date and was instructed in home exercises for the bilateral wrists and left elbow. PX4 at 25.

*Motor Vehicle Accident*

On March 13, 2012 Petitioner arrived at the emergency room at Northwest Community Hospital. PX3. She reported that she was in a motor vehicle accident with no airbag deployment hit on the driver side coming out of the parking lot by another oncoming vehicle. *Id.* She complained of mild headache, neck pain, and bilateral lower rib cage pain. *Id.* She was diagnosed with a head contusion and neck sprain. *Id.* Petitioner was discharged home the same day with instructions to follow up with her primary care physician. *Id.*

*Continued Medical Treatment*

Then, on May 3, 2012, Petitioner returned to Dr. Vender once more. PX4 at 4, 24. Petitioner reported that she was feeling the same as at her last visit with worsening pain located in the left elbow that had been occurring for five months and bilateral wrist pain that had been occurring one year ago. *Id.* Dr. Vender noted that Petitioner's complaints were mostly related to the right upper extremity, which were diffuse in nature, and that her pain radiated toward her shoulder and neck. *Id.* She also reported diffuse pain on the left stopping at the elbow. *Id.* Dr. Vender noted that Petitioner's daughter was present and translated for her. *Id.* He also noted that "[he] discussed the complaints today with the patient and her daughter. There has been difficulty with the location and consistency of complaints and findings. Would recommend followup. With her primary physician or possibly a rheumatologist." *Id.* Petitioner testified that this was her last visit with Dr. Vender. For approximately one year, Petitioner did not see any physician for treatment of her elbows or wrists.

On April 9, 2013, Petitioner testified that she went to see John O'Keefe, M.D. (Dr. O'Keefe) at Central Medical Specialists who she found in a newspaper. Dr. O'Keefe's records reflect Petitioner's report on that date of bilateral wrist and hand pain as well as handwritten notes with the following history:

> Patient here seeking 2nd opinion for bil hand & wrist pain from overuse injury at work. Pt packs envelopes & constantly rolling envelopes. Saw several doctors & was diagnosed with tendonitis. Was given cortisone injections on both hands by Dr Vender.

PX5 at 3. Petitioner testified that she then spent several months without any medical treatment for her hands, wrists or elbows, but she continued to work for Respondent.

*October 3, 2013*

Petitioner testified that on October 3, 2013 she was working for Respondent when she sustained an injury. She explained that she was working on machine "RA5," which is an envelope machine that packs envelopes. A conveyor belt is located at approximately knee level. Petitioner explained that her arm was hurting her a little bit at the time. She explained that she filled up a box that weighed 65-70 pounds and was placing it onto a skid stacked seven boxes high. Petitioner testified that she lifted up the box, but she felt pain in her hand and her hand was not stable after which the box came toward her and made her fall down.

Petitioner testified that her right hand started to hurt although she grabbed the box as it was coming down with both hands, but let the box go because her right hand did not "respond." Petitioner testified that the box fell and she fell onto her buttocks such that her hands and buttocks hit the floor. She explained that she felt a strong pain in her right hand, a lot of heat in her whole body, and dizzy for a few seconds.

Petitioner testified that her boss, Mitch, came to pick her up, but she did not let him because she was very dizzy and in a lot of pain. She described that the pain in her right hand was different than her pain before in that it was much stronger.

On cross examination, Petitioner testified that she had both hands on the outside corners of the box and she was using her right hand to propel the box upward onto the skid overhead. Petitioner testified that when she lifted the box overhead it was heavy and she felt pain in her right hand and she let the box go, which is when it fell. Petitioner also testified that she felt pain all the way from her right hand into her neck. The box did not stay where it was supposed to and she felt pain in her right hand. Petitioner stated that she had pain in both wrists, but it was stronger on the right side. She also had a little pain in her elbows and fingers, but no pain in her shoulders. She explained that she could not remember if the pain was different than the pain that she felt in 2011.

*Medical Treatment*

Petitioner testified that she was sent to U.S. Health Works, which is the same clinic as Advanced Occupational Medicine, but with a new name. The medical records reflect that Petitioner saw Alan Sisson, M.D. (Dr. Sisson), who recommended ice and heat and prescribed wrist splints while working. PX5 at 15; PX6 at 9-16. Petitioner was also instructed on home exercises, given Ibuprofen and released back to full duty work. *Id.*

Dr. Sisson also provided a letter dated October 3, 2013 addressed to Ms. Mueller summarizing Petitioner's care at his clinic in 2011. PX6 at 9-11. Dr. Sisson noted the following reported history in pertinent part:

> I had the opportunity to see Ms. Sanchez in our offices on the evening of October 3, 2013. She states that at approximately 5:25 PM, on October 3, 2013, she was lifting a box up onto an overhead area when she experienced pain in her right wrist that resulted in her losing control of the box, which then began to fall and she attempted to arrest that fall using her hands. She now complains of pain in both wrists that radiates up her arms toward her shoulders. She had a previous history of bilateral wrist injuries in 2011, that I was detail momentarily. Her statement at the time of this visit was that her previous wrist pain "never got better" since the time of the initial injury in approximately January of 2011. At this time, she is experiencing both pain and numbness in her hands bilaterally. She states that this discomfort in her wrists and numbness in her hands occurs frequently.

*Id.* Dr. Sisson noted that Petitioner previously presented on May 5, 2011 reporting bilateral wrist pain since January of 2011, which was diagnosed as a bilateral wrist sprain. *Id.* Petitioner underwent conservative treatment and diagnostic testing. *Id.* Her June 2, 2011 bilateral wrist MRIs showed a "high-grade partial tear of the scapholunate ligament[, and the] results for the left wrist showed a scapholunate ligament sprain that was suspicious for a partial-thickness tear." *Id.* Petitioner was referred to Dr. Ostric, who noted that Petitioner might be suffering from carpal tunnel syndrome, but her EMG showed no evidence of radiculopathy or neuropathy. *Id.* Dr. Ostric administered a steroid injection into the right wrist and Petitioner was released from care on July 12, 2011. *Id.*

Dr. Sisson also noted that "[o]n July 29, 2011, [Petitioner] returned with complaints of having injured her wrist and neck while lifting a sack of garbage. At that time, conservative treatment was instituted and she was again discharged from our care." *Id.* After an examination on October 3, 2013, Dr. Sisson diagnosed Petitioner with a bilateral wrist strain and released her back to work full duty. *Id.* Dr. Sisson also indicated in pertinent part:

> This particular complaint of injury aside, it appears that she continues to complain of chronic bilateral wrist pain which has been exhaustively investigated without a treatable underlying etiology discerned. I will evaluate her one additional time for this particular injury; however, I do not believe that, ongoing beyond that visit, we will have anything of substance to offer her in terms of further evaluation and/or treatment. For that reason, I suspect that I will discharge her from care for this particular incident at the time of her followup visit. ....

*Id.*

Petitioner testified that the following day, October 4, 2013, she could not get out of bed. Petitioner testified that she did not go to work from October 4, 2013 to October 8, 2013.

Petitioner testified that she then saw John O'Keefe, M.D. (Dr. O'Keefe) on October 8, 2013. The Central Medical Specialists[2] records reflect Petitioner's report on that date of bilateral wrist and low back pain as well as handwritten notes with the following history:

> went to move 60# box of paper that was above her head for the machine to make envelopes, felt her (R) hand give and the box fell off, patient fell into a seated position hitting buttox + using both hands to break her fall.

PX5 at 2. In a typed progress note of the same date, Dr. O'Keefe's physician's assistant, Lauren Kirsch, PA-C, noted the following history:

> Patient works as an envelope machine operator for Federal Envelopes. She is a 9-year veteran with this company and works 40+ hours weeks. Her job requires her to lift and place 50-60 lb. boxes about 15x an hour to fill the machine with paper. She was injured on 10/03/13 when she was moving a 60 lb. box that was stacked higher than her head to load it into the machine. She felt her right wrist give way as she was trying to move the box, causing her to lose balance. The box fell onto the cement floor to her left and she fell backwards onto her buttocks into a seated position. She used her two hands to break her fall on either side of her. Her supervisor, Mitch, helped her up. She verbally reported the incident to him and Kelly from HR immediately after. She was then seen by the company doctor. They took x-rays of the bilateral wrist which were read as negative for fracture. She was given 2 wrist braces for her wrists and

[2] The records of Dr. O'Keefe were procured from "Central Medical Specialists" as well as an entity known as "Marian Orthopedics & Rehabilitation." See PX5 & PX6.

> ibuprofen 200mg. She was then told to go back to work. At present, she has increased pain in her low back and bilateral wrist from the fall. She is unable to sleep due to pain. Patient has a history of gastritis. She also has a history of bilateral wrist tendinitis in 2011 that was treated by Dr. Vendor. She states her wrist pain was virtually resolved until the injury at work 10/03/13 re-aggravated those problems. She has no prior history of back pain or pathology.

PX5 at 161-162, 318-321; PX7 at 61-63. Ms. Kirsch diagnosed Petitioner with a low back sprain and bilateral wrist sprains post work injury on October 3, 2013. *Id.* She recommended physical therapy, which Petitioner then began at the Central Medical Specialists clinic. *Id.*

A handwritten phone call note that appears to be taken by one of Dr. O'Keefe's staff indicates that Kelly from Respondent's Human Resources department called. PX5 at 32. Among other notations, the handwritten note reflects Kelly's message that if Petitioner had restrictions they could be accommodated, that Petitioner was expected to return to work the following day at 3:00 p.m. as she had been released with no restrictions by the company clinic, and noting that the "Company is suspicious that she is truly injured and that her fall 'looked faked.' She says pt has a history of magnifying her sx + not being compliant with her wrist splints[.]" PX5 at 32.

On October 17, 2013, Petitioner returned to see Dr. O'Keefe. PX5 at 158-160, 194-195; PX7 at 58-60; PX28 (Dep. Ex. 3)[3]. Dr. O'Keefe noted the following history and gave the following opinions regarding the relatedness of her condition to an incident at work in October of 2013:

> Patient is a 9-year veteran at Federal Envelope. She had a severe injury 10/03/13. Her supervisor Mitch witnessed it. He actually helped her up from the floor. Her job as a machine operator and envelope manufacturer requires that she work at a very rapid pace. 15x an hour she lifts 50-60 lb. loads. They stack boxes well above the height of her head with that load. On 10/03/13, she was up on her toes trying to shove a box mostly with her right shoulder up above her head (it was the 7th row). Her arm popped with pain. The box fell towards her chest, knocking her to the ground. She fell backwards onto the concrete with her arms hyperextended. She had intense pain in her back, right shoulder, and both hands at that point. The company doctor did see the patient that day and sent her back to work. She's had numbness and tingling in the hands since that time and weakness in the shoulder. She has left> right sciatica which is new since this injury. Unbelieveably, HR is calling us and telling us that they think she's malingering. From my perspective, she's concise, accurate, consistent, and honest. HR is saying they have light duty.
> ....

*Id.* He ordered an H-wave machine and recommended continued physical therapy. *Id.* Dr. O'Keefe also indicated that "**[i]t's my board-certified orthopedic opinion that the patient was intact and working as a heavy laborer for 9 years prior to this episode. She's never had back pain or sciatica. She's never had severe shoulder sprain.** The peripheral neuritic symptoms that she has at present are severe but hopefully will resolve with therapy and splints." *Id.* (**emphasis** in original).

On cross examination, Petitioner testified that she did not receive bills for the H-wave machine and she is not sure whether it was paid for through insurance. On the same day, Dr. O'Keefe's records reflect a call from Kelly in Respondent's Human Resources department that they had light duty work for Petitioner. PX5 at 135. The noted response was that Dr. O'Keefe did not release Petitioner to work because of her physical examination and clinical findings. *Id.*

[3] The physical examination findings, review of diagnostics, etc. presumably located on page two of the three page progress note was not submitted into evidence in any of the exhibits.

On October 30, 2013, Petitioner returned to Dr. O'Keefe. PX5 at 133, 156-157, 193-194; PX7 at 56-57. Dr. O'Keefe noted the following history and gave the following opinions regarding the relatedness of her condition to an incident at work in October of 2013:

> Patient is a 9-year veteran at Federal Envelope and had a heavy, unprotected fall. She was knocked off of her feet by a 50-60 lb. box that struck her chest as she was trying to place it above the height of her head. She contused and sprained both arms in her spine. She's been off work despite HR's strong orders to return to work. **It's my board-certified orthopedic opinion that this woman was seriously hurt and has a discal injury in the L/S spine producing intense neuritis in the right > left leg at present. She has strong neuritic symptoms in both arms from the strain and contusion that she sustained from that injury 10/03/13.** She was intact and without debility or problems for the year prior as she worked with these heavy loads on a near constant basis.

*Id.* (**emphasis** in original). Dr. McAfee diagnosed Petitioner with a heavy, unprotected full spraining her spine on October 3, 2013, modest resolution of cervical spinal problems, persistent lumbar contusion and sprain with right greater than left sciatica at present as well as a sprain and strain of both hands with neuritic symptoms in both arms. *Id.* He ordered a lumbar MRI and therapy. *Id.* Dr. O'Keefe kept Petitioner off work. *Id.* Petitioner had an initial occupational therapy evaluation at Dr. O'Keefe's office on November 5, 2013. PX5 at 130-132.

In a letter dated November 14, 2013, Shalonda Lockett (Ms. Lockett), Sr. Claims Adjuster of Employers Preferred Insurance Company, requested that Petitioner complete and return a questionnaire and medical authorization form. PX5 at 98-103.

On November 26, 2013, Dr. O'Keefe PX5 at 134, 153-155, 193, 197; PX7 at 53-55. Dr. O'Keefe noted the following history in pertinent part:

> Patient had a work injury witnessed by her supervisor 10/03/13. She hurt her spine and has traumatic bilateral carpal tunnel symptoms, worse on the right than the left. She still having strong dysesthesias into the right arm from the neck and into the right leg from the lumbar plexus. ....
>
> The patient is an 8-year veteran at this jobsite and has had no history of spine problems or radicular symptoms until this severe, unprotected fall with a 60 lb. load smashing her into the concrete from a standing position. History for the carpal tunnel is positive for some treatment by Dr. Vender in the past but she's had years of function without the ability. This isn't a pre-existing condition. ....

*Id.* Dr. O'Keefe ordered a cervical MRI after a "heavy unprotected fall @ work 10/3/13" and continued occupational therapy. *Id.* He also noted that "[i]t's my board-certified orthopedic opinion that the patients had a trauma 10/13 produced spinal injury with disco injury in the cervical and lumbar area, producing peripheral neuritic symptoms of traumatic carpal tunnel and right > left sciatica." *Id.*

Petitioner returned to the occupational therapist at Dr. O'Keefe's office on December 3, 2013. PX5 at 128-129. The therapist noted that Petitioner had been diagnosed with a right wrist sprain with a "gradual onset[.]" *Id.* She recommended six weeks of therapy twice per week. *Id.*

Dr. O'Keefe ordered another EMG/NCV, which Petitioner underwent on December 4, 2013. PX5 at 125-127. The EMG/NCV showed no evidence of cervical radiculopathy or peripheral entrapment neuropathy. *Id.*

On December 23, 2013, Petitioner underwent an MRI of the cervical and lumbar spine. PX5 at 121-124; PX8 at 15-18. The interpreting radiologist noted degenerative disc disease at L4-5 with a moderate size disc protrusion and bony spondylitic changes with associated stenosis, mild-to-moderate L3-4 stenosis with left-sided asymmetric disc protrusion and narrowing left of the midline and mild levoscoliosis. *Id.* In the cervical spine, the radiologist noted mild disc bulging diffusely at C3-4 and C5-6 with mild vertebral endplate bony spondylotic changes. *Id.*

On December 31, 2013, Dr. O'Keefe referred Petitioner to his colleague at Central Medical Specialists, Krishna Chunduri, M.D. (Dr. Chunduri), to assess and treat her neck and low back injury at work in October of 2013. PX5 at 28, 148-151, 191-192; PX7 at 48-51. Dr. O'Keefe noted the following history from Petitioner and gave the following opinions regarding the relatedness of her condition to an incident at work in October of 2013:

> Patient was hurt with a well-documented injury 10/13. She weighs 140 lbs. and throws 60 lb. loads above the height of her head 15x an hour. She's Been 9 years of that job site. She's not had spine problems prior. She had some wrist symptoms in 2011 but no interval wrist symptoms until she was hurt 10/13. **It's my board-certified orthopedic opinion that she may have had some wrist injury back in 2011 but it was the 10/13 injury that is causing her present debility and symptoms.** Certainly the mechanism of throwing a 60 lb. box above the height of her head causing electrical pain into the neck and right arm and a painful pop in the wrist is a suitable mechanism to produce a triangular fibrocartilage complex (TFCC) tear and a discal injury. The patient has abnormal MRI of the C-spine 12/13 showing discal traumatic bulge at C3-4 and C5-6 and abnormal MRI from Molecular Imaging 12/23/13 of the lumbar spine showing L4 and L5 bulging disc injuries. Electrical testing 12/04/13 is negative for radiculopathy in the neck and both arms.
>
> On questioning, it's her neck and right arm pain that are most disabling. She's been working with OT with a vast improvement from initial assessment 10/13 but she still having a high level of symptoms. She's only tolerating 2 lbs. resistance. I talked to OT today as I examined the patient and with us both here she's having mechanical popping with ulnar deviation and loading the risk.

*Id.* (**emphasis** in original). Dr. O'Keefe diagnosed Petitioner with a throwing injury above the height of her head with 60 lb. loads producing discal injuries in the neck and low back, right radiculitis secondary to the first diagnosis, and right wrist TFCC symptoms persisting. *Id.* He ordered occupational therapy twice a week. *Id.* Dr. O'Keefe also noted that he spoke with Kelly and that Petitioner's IME should assess her neck, low back, and bilateral hands. *Id.*

Petitioner also saw an occupational therapist at Dr. O'Keefe's office on January 9, 2014. PX5 at 119-120. The therapist noted that Petitioner had been diagnosed with a right wrist sprain with a "gradual onset[.]" *Id.* She recommended two weeks of therapy twice per week. *Id.*

Petitioner first saw Dr. Chunduri on January 22, 2014. PX5 at 170-171, 190. The medical records reflect that Dr. Chunduri is a board-certified anesthesiologist and pain management specialist. *Id.* Dr. Chunduri noted the following history from Petitioner and gave the following opinions regarding the relatedness of her condition to an incident at work in October of 2013:

> Ms. Sanchez presents to the clinic with complaints of pain in her neck and mid-back, and lower back since her work injury 10/03/2013. She states she is a machine operator. She was placing a 50 lb. Box above her head when she suddenly felt pain in her neck and her arm. She was unable to securely placed the box which then fell down, causing her to fall onto her buttocks. She states that since his injury, she has been having throbbing, sharp, burning pain in her neck and her lower back. The neck pain she states

radiates into her right upper extremity which feels numbness and tingling down her arm to her hand. She states that her low back pain radiates into her right buttock where she feels electric-like feeling in her upper thigh. She rates the pain as severe at 7/10. It is constant. It is worse in the mid-day and afternoon. It is worse with prolonged sitting, walking, lying down, and coughing. She states that standing makes it better. It affects her daily routine. She has been taking Meloxicam, Tramadol, and Prilosec and she has been in physical therapy.

*Id.* Dr. Chunduri diagnosed Petitioner with cervical spondylosis and cervicalgia as well as lumbar spondylosis and lumbago. *Id.* He prescribed a Medrol Dosepak, continued NSAIDs and continued physical therapy. *Id.* Dr. Chunduri also noted "[i]t is my opinion, based on a reasonable degree of medical certainty, that the above symptoms and diagnoses are causally related to the work injury and that the current treatments and recommendations are medically necessary." *Id.*

Petitioner returned to Dr. O'Keefe on January 28, 2014 solely for evaluation of the wrists noting that Dr. Chunduri was treating Petitioner for the low back. PX5 at 147, 189; PX7 at 47. He diagnosed Petitioner with resolving wrist sprains with poor ability to improve power. *Id.* He reduced physical therapy to once per week.

On February 6, 2014, Dr. Chunduri administered a right L4-L5 transforaminal epidural steroid injection. PX5 at 167-169. Petitioner testified that she remained off work as ordered by Dr. O'Keefe and Dr. Chunduri. On March 13, 2014, Dr. O'Keefe ordered continued physical therapy and requested authorization for epidural steroid injection into the lumbar spine and cervical spine. PX5 at 207; PX7 at 45-46.

On April 15, 2014, Dr. O'Keefe noted that Petitioner was 15 minutes late to her IME on January 6, 2014. PX5 at 139, 187, 206. She reported that her low back pain persisted, but was not as severe and that she continued to experience sciatica symptoms into the right leg. *Id.* She also reported continued bilateral wrist pain with less numbness in tingling into the digits. *Id.* Dr. O'Keefe ordered a series of 4-5 cervical epidural injections. PX5 at 137.

On May 15, 2014, Petitioner reported shooting pain from the right wrist to the elbow and mild low back pain. PX5 at 139, 142-143, 187, 206; PX7 at 42-44. Dr. O'Keefe noted that Petitioner "had a backward full heavily at work 10/13. She's been miserable with spine pain since." *Id.* He diagnosed an injury to the cervical and lumbar areas as a result of her heavy, unprotected fall at work in October of 2013 with abnormal MRIs from December of 2013 showing discal injuries. *Id.* Dr. O'Keefe also diagnosed Petitioner with bilateral carpal tunnel symptoms, right worse than left. *Id.* He indicated that Petitioner was miserable with neuritic symptoms, more in the neck then the low back and he recommended a trial of cervical epidural injections. *Id.* Dr. O'Keefe also indicated that he suspected that Petitioner's back would not be cured and she may need more of those injections in the future. *Id.* With regard to the carpal tunnel, Dr. O'Keefe indicated that it was partly being aggravated by Petitioner's cervical radiculitis and noted that he would hold off on advising surgery, but that she may need surgical release in the future. *Id.* He ordered continued use of the H-wave machine and physical therapy. *Id.*

*Section 12 Examination – Dr. Weber*

On May 19, 2014, Petitioner saw Dr. Kathleen Weber (Dr. Weber) at Respondent's request. RX1 (Dep. Ex. 2); PX5 at 92-97. Prior to this date, Petitioner testified that she had some appointments set with Dr. Weber, but she did not attend or she forgot to attend. On cross examination, Petitioner testified that she did not attend the prior

IMEs because on one occasion she spoke with her attorney at the time, and on another occasion it was 40 degrees below 0 and she got there 10 minutes late and Dr. Weber would not see her.

Dr. Weber's report indicates that she reviewed an incident report dated October 3, 2013 noting that "[t]he IE was raising a carton on top of a skid of boxes. The box was too heavy. The IE fell to the ground and injured both wrists and her lower spine." *Id.* Dr. Weber also reviewed the medical records of Dr. O'Keefe, Dr. Sisson, various utilization reviews and peer reports as well as Petitioner's May 7, 2014 lumbar MRI report. *Id.*

Petitioner reported to Dr. Weber through a translator that she had been a machine operator for nine years for Respondent and she had a prior bilateral hand repetitive trauma injury in 2011, but no prior low back injuries. *Id.* Dr. Weber noted the following history of accident:

> She states that on October 3, 2013, she was lifting a 50-pound box overhead, approximately 6-8 inches above her head. She felt right arm pain from her hand to her shoulder. The box began to fall and she tried to lift it back up but got dizzy and colleagues tried to help. Then, she states that she fell onto her buttocks. She is unsure if she had immediate back pain secondary to her dizziness. She caught herself with her hands. She was unable to stand and she was sent to the clinic. She states that following being evaluated at the clinic she went home. The next day she could not get out of bed, secondary to her whole back hurting. She did not return to the company clinic. She sought medical treatment with Dr. O'Keefe a couple of days later.

*Id.* Ultimately, Dr. Weber diagnosed Petitioner with bilateral wrist sprains and lumbar back sprain. *Id.* In so concluding, Dr. Weber noted that Petitioner's reported mechanism of injury changed within the medical records. *Id.* She opined that Petitioner's physical examination produced no objective findings or abnormalities, and determined that Petitioner's subjective complaints did not correlate with objective clinical findings on examination. *Id.* Dr. Weber stated Petitioner required no further care based on her normal exam, that she had reached maximum medical improvement, and had likely reached MMI within 4-6 weeks of the accident. *Id.* She stated Petitioner could return to work in a full duty capacity based on the normal exam. *Id.*

*Utilization Reviews, Termination of Benefits & Continued Medical Treatment*

The record reflects that Respondent obtained various utilization reviews dated May 6-8, 2014, July 10, 2014 and July 16, 2014. RX2-RX4; PX5 at 71-74; PX5 at 39, 44-46, 73. The reviews certified only 10 physical therapy sessions to the lumbar spine as of October 15, 2013 and 15 sessions to the bilateral wrists as of November 5, 2013. *Id.* The utilization reviews did not certify a series of cervical epidural injections recommended by Dr. O'Keefe, a prescription for Relafen, Tramadol, Dendracin, Prilosec, Mobic, Meloxicam, Omeprazole and Gabapentin. *Id.*

In a letter dated May 30, 2014, Shalonda Lockett (Ms. Lockett), Sr. Claims Adjuster of Employers Preferred Insurance Company, informed Petitioner's then-attorney that Petitioner's claim was being denied based on the independent medical evaluation report of Dr. Weber as well as the utilization reviews. PX5 at 91.

On July 8, 2014, Dr. O'Keefe noted the following: "[Petitioner] had a well-reported and documented injury 10/13. On that date, her normal duty was handling 50–60 lb. boxes, often above the height of her head. On such an occasion, the box slipped. She fell backwards heavily on both arms and landed on her rump on the ground behind her with this 60 lb. load falling. She had immediate pain in her spine and both arms." PX5 at 140-141, 185-186; PX7 at 40-41. Dr. O'Keefe diagnosed Petitioner with a lumbar discal injury with abnormal MRI as a

result of her injury at work in October of 2013. *Id.* He also indicated that Petitioner sprained and contused both arms. *Id.*

Petitioner underwent the updated EMG/NCV of the bilateral hands as well as of the low back on the following day, July 9, 2014. PX5 at 35-38; PX7 at 81-84; PX8 at 19-22. The results showed mild irritability present on EMG needle insertion at various muscles including those suggestive of L4-5 nerve root irritation. *Id.*

On August 7, 2014, Dr. O'Keefe noted that Petitioner was complaining of upper and lower spine pain, as well as bilateral arm pain, the month after her injury at work in October of 2013. PX6 at 37-38; PX5 at 136, 185. Among various other notations and opinions, Dr. O'Keefe indicated that "[w]e've been buried by work comp. with a worthless chart review done 07/16/14 that completely neglects the abnormal electrical test and MRI." *Id.* Dr. O'Keefe ordered a series of four transforaminal steroid injections. *Id.*

As referred by Dr. O'Keefe, Petitioner first saw Ossama Abedellatif Hassan, M.D. (Dr. Hassan) on September 25, 2014. PX8 at 88-90, 94. Dr. Hassan noted the following history of accident in pertinent part:

> Rosa Sanchez is a patient that comes to us with lumbar spine pain and cervical spine pain due to a work related accident suffered on 10/3/13. Patient states while working as a machine operator for Federal Envelope Company as she was lifting boxes repetitively above head level on one occasion one box weighing approximately 50 pounds fell back on patient forcing her to take weight and fall to floor hitting buttocks and bilateral hands she report it (sic) injury as she noticed supervisor witnessed accident she went to company clinic attempted light duty work but was unable to do continue as pain had increased she has been off work since then she has undergone one previous injection in 2013 with positive response she continues to exhibit pain today nothing has been able to stabilize pain since date of injury ....

*Id.* Petitioner reported cervical pain that radiated into both upper extremities and low back pain radiating into both lower extremities. *Id.* Dr. Hassan primarily diagnosed Petitioner with lumbar radiculopathy lumbar facet syndrome as well as cervical radiculopathy with cervical facet syndrome and he made a tertiary diagnosis of myofascial pain. *Id.* He ordered a lumbar MRI, lower extremity EMG/NCV, lumbar epidural steroid injection, lumbar foraminal steroid injection, cervical MRI, upper extremity EMG/NCV, trigger point injection for myofascial pain and a work conditioning program followed by a functional capacity evaluation. *Id.* Dr. Hassan also imposed light duty restrictions including no sitting or standing more than two hours at a time. *Id.*

Petitioner testified that she attempted to return to work with these restrictions, but she went to work and she was told that they did not have a position for her. She explained that she saw Kelly Mueller in Human Resources and that she told Ms. Mueller that her doctor recommended that she return to work with restrictions including no standing or walking over two hours and no lifting over 20 pounds. Petitioner testified that Ms. Mueller told her that they did not have a position for her with those restrictions.

On September 11, 2014, Petitioner saw Dr. O'Keefe who noted the following history in pertinent part:

> Patient was heard with a well-reported and documented injury while working 10/13. A 50-60 lb. load cell from above the height of her head, forcing her hands into hyperextension. The load then made her fall backwards onto her rump, injuring her spine in the neck and low back. The hands took another blow at that point she tried to break the fall as she was falling back with her hands. We've been treating her for severe wrist sprains, worse on the right than the left, since she was first seen 5 days after the injury. She had a single injection 02/14 which was beneficial. That practitioner left our practice and we've not had authorization to proceed with further injections. My board-certified orthopedic opinion is that she

> has serious problems with her neck with discal injury evidence on MRI from 12/13 at the cervical C5-6 levels and in the lumbar L4-5 levels. She has abnormal electrical testing per Dr. Paly, M.D. 07/14 showing a right L4-5 radiculopathy. At this point I'm referring her to Dr. Hassan, pain management Dr., for assessment and treatment. ....

PX6 at 34-35. Dr. O'Keefe also noted that he received an IME from Dr. Weber dated May 19, 2014. *Id.* he indicated that the report only assessed Petitioner's low back and hands, although the patient asked Dr. Weber to assess the neck which she refused. *Id.* Dr. O'Keefe indicated that he disagreed with Dr. Weber's report noting that the exam took 20 minutes and the patient was not in a gown. *Id.* He also noted Dr. Weber's indication that Petitioner had no symptoms with TFCC provocative testing although Petitioner reported to him that she did tell Dr. Weber that it was painful when her wrist was put through range of motion. *Id.*

Dr. Hassan administered a trigger point injection, an epidural steroid injection and a sacral medial branch block in the low back on October 8, 2014. PX8 at 82-87. Petitioner returned to see Dr. Hassan on October 14, 2014 at which time he recommended bilateral radio-frequency ablation. PX8 at 77-81.

Petitioner underwent the recommended lumbar MRI on October 17, 2014. PX8 at 14. The interpreting radiologist noted disc herniations at L3-L4 and L4-L5 as well as mild spinal stenosis and bilateral neuroforaminal narrowing on the left at L4-L5. *Id.* Petitioner also underwent the recommended cervical MRI, which the interpreting radiologist noted showed a 1-2 mm posterior annular disc bulge at C5-C6 without spinal stenosis or significant neuroforaminal narrowing. PX8 at 13.

Petitioner then underwent the recommended radio-frequency ablation as well as an epidural steroid injection and trigger point injection on October 24, 2014. PX8 at 72-76. On October 30, 2014, Petitioner returned to Dr. Hassan who recommended another radio-frequency ablation into the lumbar spine. PX8 at 67-71.

On November 11, 2014, Dr. O'Keefe diagnosed Petitioner with a work-related sprain of the right wrist producing a traumatic DeQuervain's contracture of the right "1st ray" and distal forearm for which he ordered an ultra-sound guided cortisone injection. PX6 at 31-32. He also diagnosed Petitioner with a cervical and lumbar spinal injury with disc herniation per Dr. Hassan. *Id.*

Petitioner underwent the recommended radio-frequency ablation as well as an epidural steroid injection and trigger point injection on November 22, 2014. PX8 at 62-66. Petitioner testified that Dr. Hassan kept her off of work. Dr. Hassan's records reflect Petitioner's report on November 25, 2014 and January 20, 2015 that her lumbar condition had improved. PX8 at 54-61. He recommended proceeding with cervical injections. *Id.*

In the interim, on December 16, 2014, Dr. O'Keefe noted his "board-certified orthopedic opinion that [Petitioner] does have discal neck symptoms." PX6 at 28-30. He diagnosed Petitioner with a "[w]ell-documented injury at work, hurting her neck and low back with discal herniation seen from abnormal MRIs 12/13." *Id.* Dr. O'Keefe ordered a repeat cervical MRI and repeat EMG/NCV. *Id.* Petitioner underwent the cervical and bilateral upper extremity EMG/NCV on January 7, 2015. PX6 at 85-87. The results showed no evidence of cervical radiculopathy or peripheral entrapment neuropathy. *Id.*

Dr. O'Keefe also referred Petitioner to Mark Sokolowski, M.D. (Dr. Sokolowski) for assessment and treatment. PX9 at 4. Petitioner first saw Dr. Sokolowski on December 22, 2014. PX9 at 7-8. Petitioner reported neck pain with radiation to the right upper extremity, lumbar pain with radiation to the right lower extremity, left

hand pain and symptoms subsequent to a work injury. *Id.* Dr. Sokolowski noted the following history in pertinent part:

> ... [Rosa Sanchez] reports that she was in her usual state of health, and working in the course of her usual occupation, on October 3, 2013. Her job requires that she place envelopes into 60-pound boxes. She then lifts the boxes onto a skid. She reports that she was performing these duties, and lifting the boxes onto a skid stacked high enough that it was necessary for her to lift the box above eye level. As she lifted one such box of envelopes onto the skid, she developed shooting pain from her wrist through her right arm to her neck as well as left-sided hand pain. As the box started to slip, she lost her balance and fell backwards landing on her buttocks, catching herself on the ground with both arms. She reports that her supervisor saw her fall and came to assist her. She reported that she was very dizzy and unable to stand. ....

*Id.* Dr. Sokolowski reviewed Petitioner's cervical MRI of December 17, 2014. *Id.* He noted no large disc herniations. *Id.* Dr. Sokolowski also reviewed Petitioner's lumbar MRI from October of 2014. *Id.* He noted a central and left-sided disc herniation at L4-5 and an annular tear at L3-4. *Id.* Dr. Sokolowski diagnosed Petitioner with cervical pain and radiculopathy as well as lumbar pain and radiculopathy. *Id.* He ordered a cervical EMG to determine the etiology of Petitioner's symptoms versus peripheral entrapment process. *Id.* He also indicated that Petitioner was a candidate for a lumbar laminectomy from L3-5. *Id.*

On January 15, 2015, Petitioner returned to Dr. O'Keefe who noted the following history:

> Patient had a fall to the floor while working 10/03/13. She had shooting pain in the upper extremity as she held a 60 lb. load. She lost control of back and dropped back box which was about the height of her head. That knocked her off of her feet and she fell backward onto her arms, injuring her spine and both hands, right worse than left. We've tried to improve her with McKenzie and core strengthening exercises. She still having a high level of symptoms. She's had some pain management injections in the mid and low back with Dr. Hassan, M.D. in 2014. She's due to see him on 01/20/15. Dr. Sokolowski, M.D. assessed the patient and feels she is a candidate for some lumbar fusion needs because of this work injury. I saw the patient 12/14 and ordered a repeat MRI of the neck. That's not normal but it's not horribly abnormal. She had a repeat electrical test which was negative for neck and arm neuropathy. **It's my board-certified orthopedic opinion that she has traumatic discal injury in the next and it is causing clinical symptoms into the right arm and traumatic carpal tunnel symptoms.** We asked work comp. Several months ago for permission to do an ultrasound-guided cortisone injection. That's not been forthcoming. Will bring her back in the next week or two and do that as she's worsening and is very debilitated.

PX6 at 25-27 (**emphasis** in original). Dr. O'Keefe noted that electrical testing performed on January 7, 2015 for the neck and arm was negative for neuropathy/radiculopathy. *Id.* Petitioner's cervical MRI as noted by Dr. O'Keefe showed a mild herniation of the C5-6 disc with some thecal effacement and no apparent stenosis. *Id.*

On January 27, 2015, Petitioner returned to Dr. O'Keefe who noted that Petitioner had clinical evidence of a TFCC tear and traumatic carpal tunnel syndrome on the right. PX6 at 23-24. He also diagnosed Petitioner with DeQuervain's, traumatic carpal tunnel syndrome and a TFCC tear in the right wrist. *Id.* Dr. O'Keefe ordered a cortisone injection trial for the carpal tunnel syndrome or the DeQuervain's. *Id.*

On January 28, 2015, Dr. Hassan administered the recommended cervical medial branch block as well as an epidural steroid injection and trigger point injection. PX8 at 47-53. Petitioner returned to Dr. Hassan on February 3, 2015 reporting increased lumbar spine pain. PX8 at 43-46. He recommended a discogram and CT

scan as well as trigger point injection for myofascial pain as needed. *Id.* Dr. Hassan performed the recommended discogram and post-discogram CT scan the following day. PX8 at 10-12, 34-42. On cross examination, Petitioner testified that she was under anesthesia during the discogram.

On February 10, 2015 and March 5, 2015, Dr. Hassan recommended additional injections into the cervical spine and referred Petitioner for a surgical consult related to the low back. PX8 at 32-33. In the interim, on February 12, 2015, Petitioner underwent the recommended EMG/NCV. PX8 at 8-9. The radiologist noted the following history:

> The patient is a 48 year old female of (sic) with chief complaints of pain in her neck and lower back with pain, numbness and tingling in her arms and legs. She reports that 10/03/2013 she was at work lifting boxes and on one occasion she lifted a heavy box over her head when it came down on her, she fell back onto her knees and lower back. She had the immediate onset of pain in her neck and lower back pain, numbness and tingling in her arms and legs. She notes that she has been receiving care, with improvement; however, pain in her neck and lower back, with pain, numbness in tingling in her arms and legs persists. She noticed difficulty in sitting, bending and twisting. Her past medical history is unremarkable. ....

*Id.*

On February 26, 2015, Petitioner returned to Dr. O'Keefe who diagnosed traumatic carpal tunnel syndrome on the right. PX6 at 21-22. He ordered an ultra-sound guided cortisone injection to address DeQuervain's as well as another injection to address carpal tunnel syndrome if those symptoms did not improve. *Id.*

On March 31, 2015, Dr. O'Keefe ordered a repeat low back MRI. PX6 at 16-18. He noted that "**[i]t's my board-certified orthopedic opinion that the fall of 10/13 produced DeQuervain's symptoms in both wrists and peripheral neuritic symptoms in both arms which should be treated.** At this point, work comp. should authorize the ultrasound-guided injection of the 1st and 2nd dorsal compartments on the right. **Work comp. should authorize Dr.** Sokolowski's **request to perform spinal surgery.** She's miserable and can't work with those symptoms." *Id.* (**emphasis** in original). Dr. O'Keefe also reiterated that he reviewed Petitioner's IME report, with which he did not agree, and that the exam was not thorough. *Id.* He wrote a "prescription asking for her to have a genuine and thorough exam of her arms." *Id.* Petitioner underwent the recommended low back MRI on March 31, 2015. PX6 at 88. The interpreting radiologist noted L3-4 and L4-5 disc herniations that impinged the ventral margin of the dural sac. *Id.*

On April 10, 2015, Petitioner returned to Dr. Sokolowski. PX9 at 6. Petitioner testified that she knows that he reviewed her MRIs because she observed him reviewing her films. Dr. Sokolowski maintained his diagnoses and recommendation for a cervical EMG and lumbar laminectomy from L3-5. *Id.*

On April 14, 2015, Petitioner returned to Dr. Hassan who indicated that she was awaiting approval for surgery as recommended by Dr. Sokolowski. PX8 at 4-5, 26-28. He also recommended a surgical consultation related to the cervical spine. *Id.*

Dr. O'Keefe then ordered a right hand MRI, which was performed on August 8, 2015. PX6 at 64-65. The interpreting radiologist noted that the MRI showed a small wrist joint effusion, mild osteoarthritis most prominent in the first CMC joint, and was otherwise normal. *Id.*

Thereafter, from June 15, 2015 through September 29, 2015, Dr. O'Keefe has continued to recommend surgery to the right hand as well as the surgery recommended by Dr. Sokolowski to the low back. PX6 at 6-13. Petitioner last saw Dr. Hassan on August 18, 2015. PX8 at 1-3. He diagnosed Petitioner with cervical radiculopathy and cervical facet syndrome, lumbar radiculopathy and lumbar facet syndrome as well as myofascial pain. *Id.* Dr. Hassan maintained that Petitioner required a surgical consultation for the cervical spine, follow up with Dr. Sokolowski for the lumbar spine, and trigger point injections for her myofascial pain as needed. *Id.*

*Deposition Testimony – Dr. O'Keefe*

On November 12, 2015, Petitioner called Dr. O'Keefe as a witness and he gave testimony at an evidence deposition regarding Petitioner's medical treatment and his opinions. PX28. Dr. O'Keefe is a board-certified orthopedic surgeon. PX28 at 4-6, 72; PX28 (Dep. Ex. 1).

Dr. O'Keefe testified that traumatic carpal tunnel syndrome could occur if Petitioner fell heavily onto her wrists and he opined that she could have further torn a pre-existing TFCC tear causing an aggravation of the condition as a result of this mechanism of injury. PX28 at 14. He explained that even if Petitioner had a prior MRI showing a TFCC tear, she reported to him that she was functioning at a high level "hoisting up 60-pound boxes over her head, throwing them up over her head on her tiptoes 15 times an hour. You couldn't do that with a torn wrist." *Id.*, at 62-63. Dr. O'Keefe also opined that the treatment that he rendered to Petitioner was "absolutely connected" with her injury at work noting that she had been working for eight months before the injury without any problems. *Id.*, at 61-62, 64.

Dr. O'Keefe opined that the medications provided by Dr. Chunduri were indicated. *Id.*, at 45. Dr. O'Keefe also opined that the lumbar surgery recommended by Dr. Sokolowski was reasonable and necessary because "[w]e've had a cooperative patient that has tried therapy and medicines and restricted activity and injections, and she's not nearly good enough." *Id.*, at 58. He further opined that the treatment rendered by Dr. Hassan was reasonable and necessary. *Id.*, at 58-59. As of the date of his deposition, Dr. O'Keefe wanted to perform an arthroscopic "assessment" surgery of the sprain of the ulnar aspect of Petitioner's right wrist. PX28 at 59.

Dr. O'Keefe also disagreed with the opinions of Dr. Weber noting that she "doesn't have a real clue on this patient." PX28 at 65-66.

On cross examination, Dr. O'Keefe testified he performs surgery on "toes, fingers, hands, ankles, hips, knees," and that the spine is "the one I don't do." PX28 at 72. He testified half his patients have workers' compensation claims and that Petitioner found him through the "Hoya" newspaper[4]. *Id.*, at 72-73.

Dr. O'Keefe testified that Petitioner presented for a second opinion in April of 2013 reporting repetitive activity and treatment by Dr. Vender. PX28 at 73. He explained that Petitioner's bilateral wrist complaints from April of 2013 and October of 2013 were not the same. *Id.*, at 73-74. Dr. O'Keefe explained that "[t]he glaring difference is that she didn't have an explicit trauma for the treatment she had in 5 of '11. She did work activities. And I think she was told by Dr. Vender it was just kind of a repetitive use situation. But let me get to the actual note. I'm going for 4 of '13. Here we go. Cortisone injections that were beneficial, so she's just kind of asking what's going on and not saying I need surgery or anything. She's just saying, what do you think what

[4] *Hoy* is a Spanish language newspaper based in Chicago. http://www.vivelohoy.com/ (last visited May 10, 2016).

my physical exam is?" *Id.*, at 74. He maintained that Petitioner's bilateral hand symptoms were "[h]ugely" different in October of 2013 from those in April of 2013. *Id.*, at 75-76.

On cross examination, Dr. O'Keefe refused to directly respond to questioning about whether Petitioner had reached maximum medical improvement or if her condition had resolved between her visit in April of 2013 and her return to him in October of 2013. PX28 at 76-77. He explained that Petitioner had a mild overuse condition in April of 2013 and that he was not aware that Petitioner had a prior injury in April of 2013. *Id.* Rather, he testified that he did not know of a prior injury and that Petitioner had "so much trauma in October that that would have completely overwhelmed this April 13 assessment. She had mild symptoms there with no restrictions needed and not even for sure she needed medicines. When I saw her the first time, she's badly hurt and needs narcotic medicines and can't work. So I can't - - she was supposed to come back if she was having significant symptoms, at which I would feel more comfortable with them saying an injury in April of '13. I don't think it was an injury in April of '13 that I saw her for." *Id.*, at 77. Dr. O'Keefe further explained that Petitioner did not return to see him after April of 2013, which she was supposed to do, so he thinks she did well based on the lack of a follow up appointment. *Id.*, at 78-79.

Also on cross examination, Dr. O'Keefe testified regarding his physician's assistant's notations of the mechanism of injury and Petitioner's condition on October 8, 2013. PX28 at 80-83. He understood that Petitioner "was on her toes trying to push the box to stack it on the seventh row of a pallet…[a]nd it got hung up or hooked up and came back at her, hitting her in the chest and knocking her back onto her hands and her butt." *Id.*, at 80. He testified that the height of the box involved was significant because "she's probably not in very perfect balance[,]" she "is extremely extending" and the box at that height is "probably very capable of knocking her back onto her feet." *Id.*, at 81. Dr. O'Keefe also testified that the weight of the box as reported by Respondent was significant because a 50-60 pound box, or even a 40 pound box, would have been a third of Petitioner's body weight and enough to knock her off her feet. *Id.*, 79-80. With regard to a potential inaccuracy in Petitioner's accident history, Dr. O'Keefe explained that "[s]ome women don't know the right amount of a weight." *Id.*, at 98. Regardless, Dr. O'Keefe acknowledged that his physician's assistant's note of October 8, 2013 does not reflect a report by Petitioner that she injured her right shoulder, hyperextended her arms, or of any complaint of neck or right shoulder pain. *Id.*, at 81-83.

Dr. O'Keefe maintained that Petitioner had traumatic carpal tunnel syndrome, ulnar tunnel symptoms and a TFCC tear. *Id.*, at 86-89. He maintained that these diagnoses would be clinically diagnosed and that diagnostic tests, which in Petitioner's case were all negative, was unnecessary to accurately diagnose the conditions. *Id.* He maintained that Petitioner's symptoms were also caused by a cervical disc issue despite the lack of evidence of cervical radiculopathy or peripheral entrapment neuropathy at the time of Petitioner's cervical EMG in January of 2015. *Id.*, at 92-93.

Dr. O'Keefe was clearly and repeatedly asked what specific surgery or surgeries he recommended for Petitioner and what conditions such treatment was intended to address. PX28 at 94-95. In an evasive and generalized manner, he testified that "[w]e're putting in to do an arthroscopy of the wrist[,]" and that he was looking for perform an arthroscopic "assessment" of the TFCC tear and possibly, in two other surgeries, repair Petitioner's carpal tunnel syndrome and DeQuervain's syndrome. *Id.* He added, "[w]e would not - - this lady has got a complex problem here. She has carpal tunnel findings. What I would do is say, hey, Rosa, what is your worst symptoms right now, which of these three things. And I would try to go for that. But any of these things could be surgical and probably will. We'll probably work on one of them, have an improvement there, and then go to the next most-troublesome thing." *Id.*, at 95-96.

*Continued Medical Treatment*

On November 17, 2015, Petitioner returned to Dr. O'Keefe. PX6 at 4-5. He reiterated that Petitioner was hurt at work in October of 2013 and that she had severe mechanical symptoms in her right wrist. *Id.* Specifically, Dr. O'Keefe noted that "[w]e've asked to perform an arthroscopic procedure as an outpatient with probable open repair of the triangular fibrocartilage complex (TFCC) ligament. She has carpal tunnel symptoms and cubital tunnel symptoms on the ipsilateral side, even in the face of normal electrical testing. If we do the wrist scope and deal with the mechanical symptoms but the neuritic symptoms persist, she may well require nerve releases." *Id.*

*Deposition Testimony – Dr.* Sokolowski

On December 7, 2015, Petitioner called Dr. Sokolowski as a witness and he gave testimony at an evidence deposition regarding Petitioner's medical treatment and his opinions. PX29. Dr. Sokolowski is a board-certified orthopedic surgeon specializing in the spine. PX29 at 4-5; PX29 (Dep. Ex. 1).

Dr. Sokolowski testified that Petitioner's cervical and lumbar spine conditions as of Petitioner's first visit with him were causally related to her injury at work on October 3, 2013 based on the correlation between the event and onset of symptoms, the lack of pre-existing pathology in those regions, his physical examination findings and corroborative diagnostic studies. PX29 at 11-12. He maintained his opinions as of Petitioner's second visit on April 10, 2015. *Id.*, at 15-16. Dr. Sokolowski specifically opined that Petitioner's lumbar radiculopathy, disc herniation at L4-L5 and annular tear at L3-L4 were more likely than not caused by the incident at work. *Id.*, at 16-17. With respect to the neck, Dr. Sokolowski ordered an EMG, if one had not already been performed, as well as a lumbar laminectomy surgery. *Id.*, at 15-16.

On cross examination, Dr. Sokolowski testified that he believed the mechanism of injury described by Petitioner caused her cervical and lumbar findings. PX29 at 20-21. Specifically, he understood that Petitioner was extending a box weighing 60 pounds overhead and that she fell on her buttocks. *Id.* Dr. Sokolowski trusted Petitioner with regard to the reported history. *Id.*, at 21.

Dr. Sokolowski also testified that disc pathology in the cervical spine was not causing Petitioner's right arm symptoms. PX29 at 23. He explained that "[w]e have excluded disc pathology because I did not observe a herniation. Based on her symptoms, she more likely has peripheral entrapment." *Id.* Dr. Sokolowski also testified that the etiology of Petitioner's cervical symptoms was unclear. *Id.*, at 30.

With regard to the lumbar spine, Dr. Sokolowski testified that Petitioner's central findings were a probative cause of her central symptoms. PX29 at 26. He acknowledged that it was not typical for a left-sided herniation to cause symptoms on the right side, but he explained that Petitioner had central and left-sided herniation so there was a reasonable expectation of bilateral nerve root involvement. *Id.*, at 27. Dr. Sokolowski acknowledged that Petitioner had pre-existing pathology (i.e., disc desiccation) at L3-L4 and L4-L5. PX29 at 28.

*Continued Medical Treatment*

On December 31, 2015, Dr. O'Keefe indicated that Petitioner had a severe right wrist sprain from her work injury in October of 2013 with an abnormal MRI showing a TFCC injury, which was tremendously alleviated for a few hours after an ultra-sound guided cortisone injection. PX6 at 3. Dr, O'Keefe noted that "[t]his

**patient needs to have the outpatient arthroscopic procedure performed. There is little I can do to get her back to being functional as a worker who is supposed to handle 50-60 lb. loads when she has a torn ligament in her wrist that's causing painful weakness and arc of motion. Work comp. needs to authorize this immediately or else set her up with a new IME with a hand surgeon to assess this genuine and severely injured patient after the work injury of 10/13."** *Id.* (emphasis in original). He kept Petitioner off work. *Id.*

*Deposition Testimony – Dr. Weber*

On January 13, 2016, Respondent called Dr. Weber as a witness and she gave testimony at an evidence deposition regarding Petitioner's conditions and the relatedness, if any, of her conditions to an injury at work. RX1. Dr. Weber is board-certified in internal medicine and sports medicine. RX1 at 5-8; RX1 (Dep. Ex. 1).

Dr. Weber explained Petitioner's back examination was within normal limits with the exception of subjective complaints with lumbar range of motion, and had no neurologic abnormalities. RX1 at 13. She did not diagnose lumbar radiculopathy because Petitioner exhibited no symptoms which suggested neural tension, such as a straight leg or cross leg raise, and a negative slump. *Id.*, at 15. Dr. Weber stated that although Petitioner reported some decreased sensation in the distal right thigh, the exam was normal. *Id.*, at 15-16. Dr. Weber also reviewed Petitioner's low back MRI report noting degenerative changes in the lumbar spine, which were not symptomatic at the time of her examination. *Id.*, at 13, 26.

Dr. Weber testified that she reviewed Petitioner's bilateral wrist MRI reports, which suggested chronic scapholunate abnormality and preexisting degenerative changes. RX1 at 13, 26. Dr. Weber explained she did not diagnose a TFCC tear because Petitioner had no tenderness over the TFCC and provocative testing of the TFCC did not reproduce any symptoms. RX1 at 14. Though Petitioner had MRI findings at the scapholunate, her physical exam yielded no scapholunate pain or instability. *Id.* Dr. Weber also testified that she did not diagnose carpal tunnel syndrome because Petitioner "had no findings that would suggest carpal tunnel in the sense that she had negative Tinel's and negative Phalen's bilaterally at the wrist[]" with no evidence of atrophy. *Id.* Dr. Weber further explained she did not diagnose Petitioner with DeQuervain's syndrome because Petitioner did not have an unequivocal Finkelstein's and because the mechanism of injury described by Petitioner would not have caused it. *Id.*, at 14-15.

Ultimately, Dr. Weber maintained that Petitioner's presentation was wholly subjective and did not correlate to any objective findings. RX1 at 15-16. "Based on the described mechanism of injury it appeared that she more probable than not sustained a mild wrist and lumbar back strain." *Id.*, at 16. Dr. Weber testified that "there is a suggestion of non-physiological causes for ongoing subjective complaints as her exam was normal." *Id.*, at 22. Dr. Weber testified that the accident as described by Petitioner did not aggravate any pre-existing scapholunate or degenerative lumbar spine findings. *Id.*, at 18.

Dr. Weber testified that a reasonable course of treatment for Petitioner's condition resulting from the October 3, 2013 accident would have been a short course of physical therapy and medications lasting 4-6 weeks. RX1 at 19-20. She explained that injections were not necessary because there was nothing in the record to suggest any true radicular-type symptoms. *Id.*, at 29. She also explained that epidural injections are not indicated for numbness, but rather for radicular type symptoms, and she noted that the Central Medical Specialists records showed nothing to suggest positive straight leg raises or slump tests. *Id.*, at 20. Dr. Weber testified that Petitioner had a normal exam and no further medical treatment was necessary. *Id.*, at 21.

On cross examination, Dr. Weber testified that if Petitioner fell backwards on her buttocks and hands she could aggravate a TFCC tear, increase a scapholunate tear and increase symptoms in the lumbar spine. RX1 at 26-27. Dr. Weber acknowledged that she did not evaluate Petitioner for a cervical spine condition. *Id.*, at 27.

*Continued Medical Treatment*

Petitioner testified that she has continued to see Dr. O'Keefe through March 31, 2016 and he has continued to keep her off of work. On March 31, 2016, Dr. O'Keefe continued to recommend surgery to repair a right wrist TFCC tear and requested authorization of the back surgery recommended by Dr. Sokolowski. PX7 at 1-2. He noted the following in pertinent part:

> ... [Petitioner] was hurt so badly in 10/13 that she wasn't able to go back without restrictions. We did try to have her go back but work wouldn't have her. She's been a very compliant patient on maximum doses of medications, including NSAIDs, Aciphex, Hydrocodone, and Neurontin. She had gastric symptoms and even had an endoscopy which that doctor said was probably related to the prescription medicines we've been providing. **Ideally we'd be allowed to do the surgery so that we wouldn't be trying to suppress these high symptoms with medications. Work comp. should authorize the requested surgeries ASAP (the back surgery with Dr. Sokolowski, M.D. was requested 04/15 and the right arm surgery was requested 08/15). It's my board-certified orthopedic opinion that the patient was hurt with work activities 10/13 and had a back injury and discal symptoms with right radiculitis which should be authorized for Dr. Sokolowski to performing back surgery on.** Her right arm remains problematic with numbness and tingling in the ulnar and median nerves. We asked for ultrasound-guided cortisone injection of the wrist back in 08/15. That occur from a 7/10 level to a 0/10 for a brief time. The triangular fibrocartilage complex (TFCC) ligament needs to be addressed with arthroscopic exam as requested 08/15.

*Id.* (**emphasis** in original). Petitioner testified that she wishes to undergo the surgery recommended by Dr. O'Keefe and the low back surgery as recommended by Dr. Sokolowski.

Prior to October 3, 2013, Petitioner testified that she did not have any low back problems. She also testified that she has not had any accidents thereafter. On October 13, 2012, Petitioner testified that she was involved in a motor vehicle accident and she underwent CT scans of her neck and her thorax and chest. She also had CT scans of her abdomen and hips. She was treated and released from the emergency room on that date, but did not have any further follow up care thereafter as a result of her accident.

Regarding her current condition, Petitioner testified that she does not engage in any activities at 100%. She explained that this is due to her right wrist pain and her low back pain. While walking, Petitioner testified that her whole right side becomes numb, her right knee does not allow her to descend stairs easily and her right big toe is always numb. Petitioner explained that she can walk for about 15 minutes before her pain starts.

While ascending or descending stairs, Petitioner testified that there is no time when she does not feel pain in her right knee. Petitioner described that she has to adjust her right knee when she ascends or descends stairs because she does not have strength. She also has low back pain and she cannot sit for long periods of time in one position or any position. Petitioner testified that, at the time of the hearing, she had been sitting for over an hour and 15 minutes and she felt a lot of pain in the right buttock and low back.

With regard to her right hand, Petitioner testified that her fingers become numb. She experiences pain and feels cracking with movements of the right wrist such as while using a knife, washing dishes, or stirring food while

cooking. Petitioner testified that she uses a wrist brace on both wrists at night and she uses a brace on her right wrist most of the time. Petitioner takes Tylenol and pain medication prescribed by Dr. Smith, her primary care physician, for her right wrist pain sometimes three times per day.

On cross examination, Petitioner testified that Dr. Smith told her that the medications are for her nerves, but she could not recall the names of the medications. She also testified that her right hand pain is now stronger than it was in 2011 and she has different symptoms in the left hand compared to the right hand. On the left, Petitioner testified that she feels wrist pain, but no numbness in the fingers. Petitioner testified that she has not had any subsequent accidents to her hands.

*Mitchell Silva*

Respondent called Mitchell Silva (Mr. Silva) as a witness. Mr. Silva testified that he is currently employed by Respondent as a Plant Manager and has worked there for 15 years. Mr. Silva oversees all three shifts, primarily overseeing machines.

Mr. Silva testified that Petitioner was a second shift Operator. He explained that Petitioner's main responsibility was to check quality and pack envelopes inside cartons measuring 21¼ x 12¼ x 9⅞ that weighed an average of 30 pounds when full. Mr. Silva testified that he knew the dimensions and weight of these boxes because he ordered 20,000 every month. Mr. Silva testified that Petitioner was to place filled boxes onto pallets and complete a production sheet with totals for the day. Pallets held 36 cartons and were stacked six cartons wide and six cartons high. Each full pallet measured about 54 inches tall including the height of the pallet, which is 4-5 inches. Mr. Silva testified that the cartons were not supposed to be stacked seven cartons high because the weight would crush the bottom cartons.

On October 2, 2013, Mr. Silva testified that he was working with Petitioner and he observed the alleged accident. He explained that he was walking toward her machine and noticed her pick up a box and walk toward a center aisle. She lifted the carton chest high on the skid, paused, then awkwardly and slowly went down to her left side and made a quick yelp. He testified that Petitioner landed on her left wrist and elbow. Mr. Silva testified that Petitioner was putting the box onto the fifth level of boxes on the skid at approximately chest height at the time of this incident and that he was only 10 feet from her when he witnessed the incident.

Mr. Silva testified that he asked Petitioner if she was ok and she grabbed her right wrist and elbow. Although he testified that he saw Petitioner land on her left wrist and elbow, Petitioner told him that she fell on her right wrist and elbow. Mr. Silva testified that he did not recall helping Petitioner up from the floor.

Mr. Silva then reported the accident to Kelly Mueller (Ms. Mueller) in the Human Resources department. Mr. Silva told Ms. Mueller that there was an incident where an employee said she was hurt. He testified that Petitioner landed on her butt and her left hand was down and when he went over to her she was holding her right hand. He did not observe her on her right hand and he did not observe Petitioner's right hand hit the ground.

Respondent offered into evidence a compilation of photographs taken by Mr. Silva of the pallet involved in the incident from different angles. RX7. Mr. Silva testified that these photographs were taken the day after the incident.

On cross examination, Mr. Silva testified that the photographs show the pallet stacked five cartons high and he explained that a pallet can be stacked up to six cartons high. He testified that each carton weighed about 30 pounds. He testified that, if someone is only 5'2 tall, that person would not have to lift a carton over shoulder level to get it onto the fifth level of cartons. Mr. Silva testified that he actually observed Petitioner putting the box up on the pallet. He explained that he was looking at Petitioner from her left side. He explained that Petitioner put the box on the pallet, hesitated and then fell. He also testified that he did see where Petitioner's right hand was during this incident. Mr. Silva explained that he observed Petitioner the entire time and he maintained that Petitioner put the box on the pallet, hesitated, and then fell. He explained that Petitioner did not exhibit any pain symptoms. He also testified that the box that Petitioner was lifting did not fall.

*Rebuttal Testimony of Petitioner*

Petitioner testified that she is 5'2 tall and that the boxes photographed in Respondent's Exhibit 7 are like the boxes with which she was working. Petitioner testified that on October 3, 2013 she is sure that she was stacking boxes seven levels high and the box that she was stacking was over her head at the seventh level.

## ISSUES AND CONCLUSIONS

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

**In support of the Arbitrator's decision relating to the admissibility of Respondent's Exhibit 9, the Arbitrator finds the following:**

Petitioner objected to the admissibility of Respondent's Exhibit 9 based on either lack of foundation or the hearsay nature of the exhibit. Petitioner's objection on the basis of foundation is overruled. Petitioner's objection on the basis of the hearsay nature of the exhibit is sustained. Respondent's Exhibit 9 is a prior consistent statement. Respondent's Exhibit 9 is not admitted into evidence, but will remain with the Commission's file as a rejected exhibit.

**In support of the Arbitrator's decision relating to Issue (C), whether Petitioner sustained an accident that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds the following:**

An employee's injury is compensable under the Act only if it arises out of and in the course of the employment. 820 ILCS 305/2 (LEXIS 2011). The "in the course of employment" element refers to "[i]njuries sustained on an employer's premises, or at a place where the claimant might reasonably have been while performing his duties, and while a claimant is at work...." *Metropolitan Water Reclamation District of Greater Chicago v. IWCC*, 407 Ill. App. 3d 1010, 1013-14 (1st Dist. 2011). Additionally, Petitioner must establish the "'arising out of' component [which] refers to the origin or cause of the claimant's injury and requires that the risk be connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Metropolitan Water Reclamation District*, 407 Ill. App. 3d at 1013-14 (*citing Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989)). A claimant must prove both elements were present (i.e., that an injury arose out of and occurred in the course of her employment) to establish that her injury is compensable. *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910 (1st Dist. 2006).

It is undisputed that Petitioner sustained an accident at work on May 4, 2011. AX1. The disputed issues of causal connection and Respondent's liability for payment of medical bills in that case are addressed in the concurrent decision issued in Case No. 11 WC 25277. In this case, Petitioner claims that she aggravated her pre-existing condition sustained as a result of her first accident at work while lifting a box onto a pallet on October 3, 2013. Respondent asserts that Petitioner did not sustain any accident at work on that date. After careful review of the record as a whole, the Arbitrator finds that Petitioner did sustain an injury at work on October 3, 2013.

Petitioner testified that she fell backwards onto the ground at work on October 3, 2013. She was sent for immediate medical care at the company clinic that day. Petitioner's reports to every other medical provider that she saw, as well as to Respondent's Section 12 examiner, Dr. Weber, is consistent to the extent that she was handling a box at work and placing it onto a pallet then, through some mechanism involving the box, she fell on the ground at work. This incident was witnessed by her supervisor, Mr. Silva. Based on the foregoing, the Arbitrator finds that Petitioner sustained an accident at work on October 3, 2013 as claimed.

**In support of the Arbitrator's decision relating to Issue (F), whether Petitioner's condition of ill-being is causally related to the injury, the Arbitrator finds the following:**

While Respondent asserts that Petitioner did not sustain a compensable accident, the issue rests squarely on whether Petitioner's fall to the ground at work is causally connected to any physical condition in either the neck, low back, bilateral upper extremities, bilateral lower extremities, or bilateral wrists as claimed. After careful review of the record as a whole, the Arbitrator finds that Petitioner's accident caused only a bilateral wrist sprain and lumbar sprain as opined by Respondent's Section 12 examiner, Dr. Weber. In so concluding, the Arbitrator does not find the testimony of Petitioner to be credible. Petitioner's testimony is controverted by the testimony of Mr. Silva as well as her own reports as reflected in the medical records.

Petitioner described the accident of October 3, 2013. She explained that she was working for Respondent and her arm was hurting her a little bit when she filled up a box that weighed 65-70 pounds and was placing it onto a skid stacked seven boxes high. Petitioner repeatedly maintained that the skid was stacked seven boxes high. She explained that she lifted up a particular box, but she felt pain in her hand and her hand was not stable after which the box came toward her and made her fall down. Of note, on cross examination Petitioner was unable to remember if the pain she experienced on October 3, 2013 was different from the pain that she felt in 2011 causing her to seek medical treatment. Regardless, according to Petitioner's testimony, she let the box go because her right hand did not "respond" and both she and the box fell. She explained that she fell onto her buttocks such that her hands and buttocks hit the floor. The testimony of Mr. Silva, who observed the incident, is quite different.

Mr. Silva testified that the boxes that Petitioner handled weighed an average of 30 pounds each when full. He knew this because he ordered 20,000 boxes every month. If Petitioner's testimony that she was handling 65-70 pounds is to be believed, she was placing two boxes of envelopes on a pallet overhead when she fell. Regardless of the accuracy of Petitioner's estimation of the weight of each box, Mr. Silva explained that the boxes were not supposed to be stacked seven levels high because the weight would crush the boxes on the bottom.

Mr. Silva also described the accident. He explained that it occurred while he was walking toward Petitioner's machine. At that time, he noticed her pick up a box and walk toward a center aisle. She lifted a box to her chest level on the skid, paused, then awkwardly and slowly went down to her left side and made a quick yelp. He testified that Petitioner landed on her left wrist and elbow. Mr. Silva explained that he was only 10 feet from Petitioner when he witnessed the incident and that he was located to her left. He took photographs of the particular skid the following day, which were submitted into evidence and showed boxes stacked five levels high with a section stacked only four levels high. On cross examination, Mr. Silva reiterated that Petitioner put the box on the pallet, hesitated and then fell. Of note, he also testified that the box that Petitioner lifted did not fall to the ground.

After careful consideration of the testimony, in light of the remainder of the record, the Arbitrator finds the testimony of Mr. Silva to be more credible than the testimony of Petitioner. Notwithstanding, Petitioner's own reports about the mechanism of injury, and the increase in reported symptoms and affected body parts during years while she was off of work, as documented in the medical records brings her credibility into further question. While some of Petitioner's recitation at the hearing about the mechanism of injury is corroborated by the medical records, the testimony of Mr. Silva taken in conjunction with the evolving mechanism of injury documented in the medical records paint an ever-changing picture not only of the mechanism of injury, but also of the body parts affected by the fall at work.

Initially, on October 3, 2013, Dr. Sisson noted a relatively consistent report from Petitioner that "... she was lifting a box up onto an overhead area when she experienced pain in her right wrist that resulted in her losing control of the box, which then began to fall and she attempted to arrest that fall using her hands." She reported bilateral wrist pain that radiated up her arms toward her shoulders, but no neck or low back pain.

Petitioner testified that the following day, on October 4, 2013, she was in such a condition that she could not get out of bed. She did not go to work thereafter. After her one time, second opinion visit to Dr. O'Keefe on April 9, 2013 after her repetitive trauma injury in 2011, Petitioner returned to his office on October 8, 2013. Petitioner's report about the mechanism of injury on October 3, 2013 was documented in a handwritten note. Specifically, that Petitioner "went to move 60# box of paper that was above her head for the machine to make envelopes, felt her (R) hand give and the box fell off, patient fell into a seated position hitting buttox + using both hands to break her fall." Dr. O'Keefe's assistant, Ms. Kirsch, PA-C, also noted Petitioner's report that "[s]he was injured on 10/03/13 when she was moving a 60 lb. box that was stacked higher than her head to load it into the machine. She felt her right wrist give way as she was trying to move the box, causing her to lose balance. The box fell onto the cement floor to her left and she fell backwards onto her buttocks into a seated position. She used her two hands to break her fall on either side of her. ... She also has a history of bilateral wrist tendinitis in 2011 that was treated by Dr. Vendor. She states her wrist pain was virtually resolved until the injury at work 10/03/13 re-aggravated those problems. She has no prior history of back pain or pathology." Notably, Petitioner's report to Ms. Kirsch that her bilateral wrist pain had resolved is contrary to her report to Dr. Sisson on October 3, 2013 that her previous wrist pain "never got better." Regardless, Petitioner did not report any neck pain or shoulder pain to Ms. Kirsch.

When Dr. O'Keefe first saw Petitioner on October 17, 2013 he noted a history that "[h]er job as a machine operator and envelope manufacturer requires that she work at a very rapid pace. 15x an hour she lifts 50-60 lb. loads. They stack boxes well above the height of her head with that load. On 10/03/13, she was up on her toes trying to shove a box mostly with her right shoulder up above her head (it was the 7th row). Her arm popped with pain. The box fell towards her chest, knocking her to the ground. She fell backwards onto the concrete with her arms hyperextended. She had intense pain in her back, right shoulder, and both hands at that point." Dr. O'Keefe immediately provided an opinion that Petitioner's physical condition—as he found it on that date—was related to her fall at work.

Petitioner continued to see Dr. O'Keefe through 2016. At each visit, Dr. O'Keefe noted Petitioner's report of the mechanism of injury and her reported symptoms. By the time she last saw him on March 31, 2016, Dr. O'Keefe had opined that Petitioner's cervical spine, bilateral upper extremity, bilateral wrist, lumbar spine, bilateral lower extremity and myofascial symptoms as well as her gastrointestinal intolerance for medications were all related to the fall at work on October 3, 2013. A review of the mechanism of injury as reported by Petitioner to Dr. O'Keefe, Dr. O'Keefe's physician's assistant, the physicians at the company clinic, Dr. Chunduri, Dr. Hassan and Dr. Sokolowski reflect an increase in Petitioner's description about the intensity of the fall with injury to or symptoms in additional and fluctuating body parts as her treatment progressed. With her increasingly complex subjectively reported symptomatology, Dr. O'Keefe offered a corollary opinion that the symptoms and affected body parts were related to the fall at work despite negative diagnostic test results or minimal findings related to the neck and low back, which he nonetheless maintained were traumatically induced at work.

Ultimately, Dr. O'Keefe diagnosed Petitioner with some combination of bilateral wrist sprains, a lumbar sprain, traumatic bilateral carpal tunnel syndrome, cervical and lumbar disc injuries with associated bilateral

radiculopathy into both upper and lower extremities, DeQuervain's syndrome and a scapholunate and/or TFCC tear in one or both wrists as a result of her fall at work. Dr. O'Keefe refuted the proposition that Petitioner had any pre-existing condition in the wrists—or elsewhere—that were not caused by the October 3, 2013 fall and, if she did, that they were aggravated by the incident at work. However, Dr. O'Keefe's opinions reflect a desire to treat the subjectively reported symptoms of a patient whose reliability as a historian has been previously questioned by her own treating physician, Dr. Vender, and whose subjective reports could not be corroborated by the overwhelming majority of repeatedly administered diagnostic tests. The diagnostic tests that produced some pathology, such as in the cervical spine and lumbar spine, were mild and can be attributed to degenerative changes as noted by Dr. Weber. Even Dr. Sokolowski declined to ordered treatment to the neck in contravention of Dr. O'Keefe's steadfastly maintained opinion to that point that Petitioner sustained severe and traumatic discal injuries as a result of the fall at work. It was only after evaluation by Dr. Sokolowski that Dr. O'Keefe noted that Petitioner's previously severe cervical condition was uncorroborated by the then "not horribly abnormal" cervical MRI. The Arbitrator finds the opinions of Dr. O'Keefe in this case to be wholly unpersuasive and assigns them no weight.

Petitioner also relies on the opinions of Dr. Sokolowski in support of her claims. However, his opinions are based on an inaccurate history, at best. Dr. Sokolowski relied on a history that Petitioner was lifting a 60 pound box onto a skid above eye level when she developed a shooting pain from her wrist through her right arm to her neck as well as left-sided hand pain and, as the box started to slip, she lost her balance and fell backwards landing on her buttocks, catching herself on the ground with both arms. Petitioner's report to Dr. Sokolowski is controverted by her own reports to other medical providers. She did not report an onset of neck pain or left-sided hand pain to either Dr. Sisson, Dr. O'Keefe's physician's assistant, Ms. Kirsch, or Dr. O'Keefe. Moreover, on cross-examination, Dr. Sokolowski also acknowledged that Petitioner had pre-existing pathology (i.e., disc desiccation) at L3-L4 and L4-L5. He also acknowledged that it was not typical for a left-sided herniation to cause symptoms on the right side, but explained that Petitioner had central and left-sided herniation so there was a reasonable expectation of bilateral nerve root involvement. Such an opinion might be plausible, but not in light of his understanding of the mechanism of injury as reported by Petitioner which are controverted by her own reports to others. With regard to the cervical spine, Dr. Sokolowski initially testified that Petitioner's condition was causally related to the fall at work, but later acknowledged that the etiology of Petitioner's cervical symptoms was unclear. Based on all of the foregoing, the Arbitrator does not find the opinions of Dr. Sokolowski in this case to be persuasive and assigns them no weight.

The more plausible medical opinions in this case were rendered by Respondent's Section 12 examiner, Dr. Weber, who provided reasonable explanations supported by objective medical evidence. Dr. Weber diagnosed Petitioner with bilateral wrist sprains and lumbar back sprain. In so concluding, she also noted that Petitioner's reported mechanism of injury changed throughout the medical records. She explained that Petitioner presented to her with no objective findings or abnormalities on physical examination and determined that Petitioner's subjective complaints did not correlate with objective clinical findings.

At her deposition, Dr. Weber testified that Petitioner's bilateral wrist MRI reports suggested chronic scapholunate abnormality and preexisting degenerative changes, which were not related to her fall at work. She acknowledged that a fall could aggravate scapholunate or TFCC tears, but explained that Petitioner had no tenderness over the TFCC and provocative testing of the TFCC did not reproduce any symptoms. Dr. Weber also testified that she did not diagnose Petitioner with carpal tunnel syndrome because Petitioner "had no findings that would suggest carpal tunnel in the sense that she had negative Tinel's and negative Phalen's bilaterally at the wrist[]" with no evidence of atrophy. She further explained she did not diagnose Petitioner with DeQuervain's syndrome because Petitioner did not have an unequivocal Finkelstein's and, regardless, the

described mechanism of injury would not have caused it. Ultimately, Dr. Weber maintained that Petitioner's medical records and physical presentation at the time of the independent medical evaluation was wholly subjective and did not correlate to any objective findings other than a mild wrist and lumbar back strain. Dr. Weber testified that "there is a suggestion of non-physiological causes for ongoing subjective complaints as her exam was normal."

Although Dr. Weber only examined Petitioner on one occasion, her explanations correspond to objective medical evidence. Dr. Weber's opinions are also buttressed by the inability of two of Petitioner's own treating physicians, Drs. Vender and Sokolowski, to determine the cause of her symptoms whether it related to the bilateral wrists after the 2011 accident or the cervical spine after the 2013 accident. Dr. Weber did not examine Petitioner with regard to the cervical spine, but Dr. Sokolowski could not determine the etiology of her cervical complaints. In this case, objective diagnostic tests and Petitioner's clinical presentation throughout treatment simply do not correspond to her confusing and increasing subjectively reported symptomatology coupled with an increasingly volatile and severe accident. In the absence of clearly, contemporaneously and consistently reported symptoms in specific body parts plausibly resulting from an accident, which in this case was awkward and mild as witnessed by Mr. Silva, there is insufficient credible evidence to rely on the opinions of treating physicians who relied primarily on a poor historian's reports and her ongoing diffuse complaints to render treatment. The Arbitrator opinions of Dr. Weber to be persuasive.

Based on all of the foregoing, the Arbitrator finds that Petitioner has established a causal connection between her accident at work and current condition of ill-being to the extent opined by Dr. Weber; namely, that she sustained bilateral wrist sprains and a low back sprain.

**In support of the Arbitrator's decision relating to Issue (J), whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds the following:**

Petitioner claims entitlement to payment of reasonable and necessary medical bills from medical providers that administered care after her accident at work. As explained above, the opinions of Dr. O'Keefe and Dr. Sokolowski are not persuasive. With regard to her medical treatment, the Arbitrator does not find that the treatment rendered to Petitioner is reflective of reasonable or necessary medical treatment to alleviate her of the effects of the injury she sustained. In so concluding, the Arbitrator relies on the opinions of Dr. Weber as well as the utilization reviews submitted into evidence. As opined by Dr. Weber, Petitioner suffered a lumbar strain and bilateral wrist strains as a result of the October 3, 2013 work accident. Treated conservatively, Petitioner's care should have ended approximately six weeks later as opined by Dr. Weber ending on November 13, 2013 at the latest. Therefore, the Arbitrator finds that any medical treatment rendered after November 13, 2013 is neither reasonable, necessary, nor related to the work accident. Petitioner's claim for payment of any medical bills after November 13, 2013 is denied.

**In support of the Arbitrator's decision relating to Issue (K), Petitioner's entitlement to prospective medical treatment, the Arbitrator finds the following:**

As explained above, the opinions of Dr. O'Keefe and Dr. Sokolowski are not persuasive. With regard to her medical treatment, the Arbitrator does not find that the treatment rendered to Petitioner is reflective of reasonable or necessary medical treatment to alleviate her of the effects of the injury she sustained. In so concluding, the Arbitrator relies on the opinions of Dr. Weber that Petitioner sustained bilateral wrist sprains and a low back sprain. The prospective treatment recommended by Drs. O'Keefe and Sokolowski is denied.

**In support of the Arbitrator's decision relating to Issue (L). Petitioner's entitlement to temporary total disability benefits, the Arbitrator finds the following:**

Petitioner requests temporary total disability benefits from October 4, 2013 through April 12, 2016. "The period of temporary total disability encompasses the time from which the injury incapacitates the claimant until such time as the claimant has recovered as much as the character of the injury will permit, i.e., until the condition has stabilized." *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 886 (2nd Dist. 1990). The dispositive test is whether the claimant's condition has stabilized, i.e., reached MMI. *Sunny Hill of Will County v. Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 130028WC at *28 (June 26, 2014, Opinion Filed); *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003). To show entitlement to temporary total disability benefits, a claimant must prove not only that he did not work, *but also that he was unable to work. Gallentine*, 201 Ill. App. 3d at 887 (*emphasis* added); *see also City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (5th Dist. 1996).

As explained above, the opinions of Dr. O'Keefe and Dr. Sokolowski are not persuasive. With regard to her medical treatment, the Arbitrator does not find that the orders placing Petitioner off work or on light duty is reflective of the injury that Petitioner sustained— bilateral wrist sprains and a low back sprain. In reliance on the opinions of Dr. Weber, the Arbitrator finds that Petitioner was temporarily totally disabled from October 4, 2013 through November 13, 2013 and denies[5] any claim for temporary total disability benefits thereafter.

[5] In addition, the Arbitrator notes that Petitioner is not entitled to temporary total disability benefits from January 6, 2014 through May 19, 2014 as claimed. Petitioner failed to comply with Respondent's request that she submit to an examination pursuant to Section 12 of the Act. Section 12 states that "[i]f the employee refuses so to submit himself to examination or unnecessarily obstructs the same, his right to compensation payments shall be temporarily suspended until such examination shall have taken place, and no compensation shall be payable under this Act for such period." 820 ILCS 305/12. Petitioner was initially unable to recall at the hearing why she failed to appear for the exams and the evidence reflects an explanation on one occasion from Petitioner's prior attorney that she encountered bad weather. The foregoing, in light of Petitioner's unreliable testimony, is insufficient to adequately explain her repeated failure to comply with Respondent's request pursuant to Section 12 of the Act.