16 WC 7214; 16 WC 7215
20 IWCC 448
Page 1

STATE OF ILLINOIS) BEFORE THE ILLINOIS WORKERS' COMPENSATION
) SS COMMISSION
COUNTY OF COOK)

Rose Yurik,
Petitioner,

vs. NOS. 16 WC 7214; 16 WC 7215
20 IWCC 448

Alexian Brothers Medical Center,
Respondent.

ORDER OF RECALL UNDER SECTION 19(F)

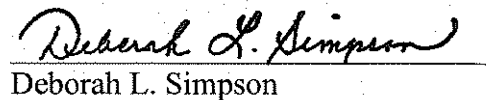
This matter comes before the Commission on its own motion to correct a clerical error in the Decision and Opinion on Review of the Commission filed August 6, 2020, *sua sponte.* After reviewing the Decision on Review, the Commission recalls the Decision for the purpose of correcting the clerical error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated August 6, 2020, is hereby recalled pursuant to Section 19(f).

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

DATED: AUG 14 2020

DLS/rm
46



Deborah L. Simpson

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROSE YURIK,

Petitioner,

vs. NO: 16 WC 7214 & 16 WC 7215
20 IWCC 448

ALEXIAN BROTHERS MEDICAL CENTER,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of casual connection, medical expenses, temporary total disability, permanent partial disability, and Respondent's §8(j) credit, and being advised of the facts and law, modifies the Decisions of the Arbitrator as stated below and otherwise affirms and adopts the Decisions of the Arbitrator, which are attached hereto and made a part thereof.

The Arbitrator issued two separate Decisions in Petitioner's consolidated cases, 16 WC 7214 and 16 WC 7215, both of which awarded Respondent a §8(j) credit of $65,017.91. Following a careful review of the entire record, the Commission finds that awarding Respondent the §8(j) credit in both cases was erroneously duplicative. The $65,017.91 in medical expenses relates to the treatment Petitioner received after her December 12, 2015 work accident; and therefore, the credit for this amount corresponds only with 16 WC 7215. Accordingly, the Commission modifies 16 WC 7214 to remove the duplicative §8(j) credit of $65,017.91 and finds that this credit was properly attributed only once to 16 WC 7215.

In all other respects, the Commission affirms and adopts the Decisions of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decisions of the Arbitrator dated March 25, 2019 are modified as stated herein. The Commission otherwise affirms and adopts the Decisions of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is not entitled to any §8(j) credit under 16 WC 7214. The Commission finds that Respondent remains entitled to the §8(j) credit of $65,017.91 under 16 WC 7215.

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

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

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

DATED: AUG 14 2020

Barbara N. Flores

Marc Parker

DLS/met
O: 6/18/20
46

DISSENTING IN PART, CONCURRING IN PART

I concur with the Decision of the majority on all issues except for the nature and extent of Petitioner's low back injury. As to the award of permanent partial disability benefits, I respectfully dissent from the Decision of the majority and would have found that Petitioner sustained a 20% loss of use of the person as a whole as a result of her December 12, 2015 work accident.

Following her second work accident, Petitioner returned to full duty work on September 16, 2016. Although Petitioner testified that she has since changed the way that she performs her job duties, she continues to work in her same pre-accident position without any medical restrictions or formal accommodations. She does not require any orthopedic device or back brace, nor is she currently taking any prescription medication. Given that Petitioner was able to return to her regular physically demanding job with no formal restrictions and Dr. Yadla noted that Petitioner had made good progress post-surgery with resolved radicular symptoms, I would have found that Petitioner established permanent partial disability of 20% loss of use of the person as a whole. I would have modified the award accordingly for the December 12, 2015 accident.

DLS/met
46

Deborah L. Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

20IWCC0448

YURIK, ROSE
Employee/Petitioner

Case# **16WC007214**

16WC007215

ALEXIAN BROTHERS MEDICAL CENTER
Employer/Respondent

On 3/25/2019, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 2.45% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

2208 CAPRON & AVGERINOS PC
NICK J AVGERIONS
55 W MONROE ST SUITE 900
CHICAGO, IL 60603

0075 POWER & CRONIN LTD
JOHN P FASSOLA
900 COMMERCE DR SUITE 300
OAKBROOK, IL 60523

20IWCC0448

20IWCC0448

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

ROSE YURIK
Employee/Petitioner

v.

ALEXIAN BROTHERS MEDICAL CENTER
Employer/Respondent

Case # **16** WC **7214**

Consolidated cases: **16 WC 7215**

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 **MARIA BOCANEGRA**, Arbitrator of the Commission, in the city of **CHICAGO**, on **February 19, 2019**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **October 30, 2014**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$31,692.40**; the average weekly wage was **$609.47**.

On the date of accident, Petitioner was **45** years of age, ***married*** with **2** dependent children.

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

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

Respondent shall be given a credit of **$3,038.01** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$3,038.01**. Respondent is entitled to a credit of **$65,017.91** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **$406.31**/week for **6-5/7th weeks**, commencing **October 30, 2014** to **November 6, 2014**, **December 23, 2014** to **December 24, 2014**, **February 19, 2015** to **March 29, 2015**, and **April 30, 2015** to **May 4, 2015** as provided in Section 8(b) of the Act. Respondent shall be given a credit of **$3,038.01** for the payment of temporary total disability benefits paid.

Respondent shall not pay Petitioner permanent partial disability benefits because the injuries sustained did not cause Petitioner any disability.

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

3-25-2019
Date

MAR 25 2019

FINDINGS OF FACT

Petitioner was born on May 1, 1968. (T. 11). Following high school graduation, Petitioner attended college and earned her license in practical nursing. *Id.* Petitioner is CPR certified and CNA certified. *Id.* at 12. Petitioner's entire employment history has been in the health care field. *Id.*

Upon receiving her license, Petitioner worked at Lexington Nursing Home and The Arbor of Itasca. *Id.* After five years of employment, Petitioner began to work for Alexian Brothers in 1993 as a certified nursing assistant. As a certified nursing assistant, Petitioner was required to engage in physical work such as pulling and lifting *Id.* at 13. Prior to beginning employment with Alexian Brothers, Petitioner testified that she did not have any back issues. *Id.* at 15.

Before the October 30, 2014 work injury, Petitioner testified that she sustained back strains. *Id.* at 16. On March 1, 1995 Petitioner felt a pulling sensation in her back as she was assisting a worker turning a 250lb male patient. (RX 2). On August 27, 2000 Petitioner slipped and fell on her buttocks on an empty clear plastic EKG pad at work (RX 3). On December 31, 2006 Petitioner sustained an injury at work while lifting a patient. (RX 4). In regard to the above-referenced incidents, Petitioner received minimal treatment, all of which was brief and conservative. Following these incidents, Petitioner was able to continue performing her regular job duties. Petitioner testified that she never experienced any accidents or injuries outside of her workplace. *Id.* at 19. As it relates to the above-referenced incidents, Petitioner never filed a workers' compensation claim with the Illinois Workers' Compensation Commission. *Id.* These incidents were also reviewed by Respondent's Section 12 doctor. See, Rx1.

Prior to the October 30, 2014 work injury, Petitioner was not under the care of any health care professional for her low back. *Id.* Furthermore, Petitioner was not experiencing any pain or problems with her back and was not taking any medication or under any work restrictions. *Id.* at 20.

On October 30, 2014 Petitioner was performing her regular work duties when she pulled a 250lb patient. *Id.* at 20-21. As Petitioner was pulling the patient up, she felt low back pain around the midline. *Id.* at 21. When comparing this pain to her prior incidents, Petitioner stated "[i]t felt, like, pressure, like, somebody was weighing me down or sitting on my shoulders, like just weighing me down. It was a pressure pain." *Id.* at 22. Furthermore, Petitioner testified that she had not felt this type of pain in the past. *Id.* Petitioner notified her supervisor and received medical care. *Id.*

On November 20, 2014 Petitioner presented to Barrington Orthopedics and came under the care of Dr. Richard Rabinowitz. (PX 1, Pg. 1-5). Petitioner complained of low back pain that was deep and dull and radiated to her right lateral thigh. *Id.* at 1. An MRI of the lumbar spine showed Grade I spondylolisthesis at the L5-S1 level with diffuse bulging disc contributing to neuroforaminal stenosis. *Id.* at 3. After this initial evaluation, Dr. Rabinowitz recommended physical therapy and sedentary work/activity. *Id.* at 4-5. After six weeks of physical therapy, Petitioner did not experience any relief in pain. *Id.* at 18.

On February 19, 2015 Petitioner returned to Dr. Rabinowitz with ongoing low back pain. *Id.* at 22. Dr. Rabinowitz ordered additional physical therapy and took Petitioner off work. *Id.* at 25. On February 25, 2015 Petitioner received an epidural injection. *Id.* at 30. Following the March 26, 2015 appointment, Dr. Rabinowitz released Petitioner to return to work full duty on March 30, 2015. *Id.* at 34. On April 30, 2015 Petitioner

returned to Dr. Rabinowitz with increased back and leg pain. *Id.* at 36. After taking Petitioner off work from April 30, 2015 to May 4, 2015, Dr. Rabinowitz released Petitioner to return to full duty work on May 4, 2015. *Id.* at 38. Petitioner returned to full duty work on May 4, 2015, and testified that there was no change in her work duties or responsibilities. (T. 26-27).

For seven months, between May 4, 2015 and December 11, 2015 Petitioner was not receiving any medical attention for her back. *Id.* at 27. Also, Petitioner was not taking any medication. *Id.* Petitioner did not have any accidents or injuries either at work or outside of the workplace during this time period. *Id.*

CONCLUSIONS OF LAW

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

The Arbitrator incorporates the foregoing findings of fact and conclusions of law as though fully set forth herein. Having considered all evidence, the Arbitrator concludes that Petitioner has proven by a preponderance of the evidence that her condition of ill-being is causally related to her work accident of 10/30/14. In so finding, the Arbitrator relies on Petitioner's credible testimony and on the treatment records of Dr. Rabinowitz.

ISSUE (K) What temporary benefits are in dispute?

The Arbitrator incorporates the foregoing findings of fact and conclusions of law as though fully set forth herein. Having considered all evidence, the Arbitrator concludes that Petitioner has proven by a preponderance of the evidence that she is entitled to TTD as a result of her injuries.

The parties stipulated that Respondent paid temporary total disability from October 30, 2014 to November 6, 2014, February 19, 2015 to March 29, 2015, and April 30, 2015 to May 4, 2015 totaling $3,038.01. However, as a result of the subject accident, Petitioner was also unable to work on December 23, 2014 and December 24, 2014. After obtaining an understanding of Petitioner's job duties and responsibilities, Dr. Rabinowitz stated that she was unable to work on December 23, 2014 and December 24, 2014 due to her back pain. *Id.* at 17.

Therefore, the Arbitrator finds that Respondent shall be given a credit of $3,038.01 for the payment of temporary total disability benefits in this amount. The Arbitrator further finds that Petitioner is entitled to receive temporary total disability benefits for October 30, 2014 to November 6, 2014, December 23, 2014, December 24, 2014, and from February 19, 2015 to March 29, 2015, and from April 30, 2015 to May 4, 2015. Respondent request for non-occupational credit is denied as this claim, as payments were paid following the date of the second accident. See 16 WC 7215 for that credit.

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

The Arbitrator incorporates the foregoing findings of fact and conclusions of law as though fully set forth herein. Having considered all evidence, the Arbitrator concludes that Petitioner has proven by a preponderance of the evidence that she reached MMI for this accident and any claim for permanency is ripe for adjudication.

On the date of the accident, Petitioner was a 45 years-old certified nursing assistant who had worked in the health care field her entire employment history. (T. 12). Following the October 30, 2014 accident, Petitioner

underwent an MRI of the lumbar spine which showed Grade I spondylolisthesis at the L5-S1 level with diffuse bulging disc contributing to neuroforaminal stenosis. (PX 1, P.g. 3). At this time, Dr. Rabinowitz recommended physical therapy and sedentary work/activity. *Id.* at 4-5. After not experiencing a relief in pain after six weeks of physical therapy, Dr. Rabinowitz ordered additional physical therapy and took Petitioner off of work. *Id.* at 22, 25. After a minor setback, Dr. Rabinowitz released Petitioner to return to full duty work on May 4, 2015. *Id.* at 38.

Petitioner returned to full duty work on May 4, 2015, and testified that there was no change in her work duties or responsibilities. (T. 26-27).

Petitioner testified that between May 4, 2015 and December 11, 2015 Petitioner did not receive any medical attention for her back. *Id.* at 27. Petitioner was not taking any medication for her back. *Id.* More importantly, Petitioner did not have any accidents or injuries either at work or outside of the workplace during this time period. *Id.*

Pursuant to Section 8.1b of the Act, the Arbitrator considers the following factors:

1. **The reported level of impairment under the AMA Guides:** The Parties did not offer into evidence any impairment ratings and there was no evidence indicating either party wished or desired to offer such evidence pursuant to subsection (a). The Arbitrator assigns no weight to this factor.

2. **The occupation of the injured employee:** Petitioner remains employed as a certified nursing assistant for the Respondent performing her regular duties. The Arbitrator assigns no weight to this factor.

3. **The age of the employee at the time of injury:** The Petitioner was 45 years of age on the date of the accident. There was no evidence presented regarding the affect her age may have with respect to disability. The Arbitrator assigns to weight to this factor.

4. **The employee's future earning capacity:** Between the months of May 4, 2015 through December 11, 2015, Petitioner was working full duty. There was no evidence indicating the Petitioner's level of earnings or earning capacity have been adversely affected by the October 30, 2014 accident. The Arbitrator assigns no weight to this factor.

5. **Evidence of disability:** There is no medical evidence of disability as it pertains to the October 30, 2014 injury. The Arbitrator assigns the greatest weight to this factor.

The Arbitrator finds no disability as it relates to the October 30, 2014 injury given that Petitioner sustained a subsequent injury to the same body part resulting in a second claim. Therefore, any permaenancy benefits will be awarded under that second claim. However, the Arbitrator incorporates by reference the findings of fact and conclusions of law set forth in the companion case 16 WC 7215 that was consolidated for hearing with the subject claim.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

20IWCC0448

YURIK, ROSE
Employee/Petitioner

Case# **16WC007215**

16WC007214

ALEXIAN BROTHERS MEDICAL CENTER
Employer/Respondent

On 3/25/2019, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 2.45% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

2208 CAPRON & AVGERINOS PC
NICK J AVGERINOS
55 W MONROE ST SUITE 900
CHICAGO, IL 60603

0075 POWER & CRONIN LTD
JOHN P FASSOLA
900 COMMERCE DR SUITE 300
OAKBROOK, IL 60523

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

ROSE YURIK
Employee/Petitioner

Case # **16** WC **7215**

v.

Consolidated cases: **16 WC 7214**

ALEXIAN BROTHERS MEDICAL CENTER
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **MARIA S. BOCANEGRA**, Arbitrator of the Commission, in the city of **Chicago** , on **February 19, 2019**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **December 12, 2015**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$31,692.40**; the average weekly wage was **$609.47**.

On the date of accident, Petitioner was **46** years of age, ***married*** with **2** dependent children.

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

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**4,496.28** for other benefits, for a total credit of $**4,496.28**. Respondent is entitled to a credit of **$65,017.91** under Section 8(j) of the Act.

ORDER

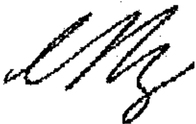
Respondent shall pay Petitioner temporary total disability benefits of **$406.31**/week for **16** weeks, commencing **12/15/15** through **12/22/15** and **4/19/16** through **8/1/16**, as provided in Section 8(b) of the Act. Respondent shall be given a credit of **$4,496.28** for non-occupational disability benefits it paid to Petitioner from **5/3/16** through **9/30/16**.

Respondent shall pay reasonable and necessary medical services of **$32,538.23**, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit of **$65,017.91** for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act. Respondent shall reimburse Petitioner for out-of-pocket expenses totaling **$1,070.01.**

Respondent shall pay Petitioner permanent partial disability benefits of **$365.68**/week for **150** weeks, because the injuries sustained caused **30%** loss of the person as a whole, as provided in **Section 8(d)2** of the Act.

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

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



Signature of Arbitrator

3-22-2019
Date

MAR 2 5 2019

FINDINGS OF FACT

The Arbitrator incorporates by reference and adopts the findings of facts and conclusions of law set forth in the arbitration decision rendered in the companion case, 16 WC 7214.

On December 12, 2015 Petitioner was still employed at Alexian Brothers as a CNA, also known as a patient care tech. Later that night, Petitioner needed to relocate a crash cart. *Id.* at 28. In order to make the crash cart lighter, Petitioner picked up a defibrillator and put it on the counter. *Id.* In transferring the defibrillator to the counter, Petitioner testified that she "felt a pop, like, a rubber band snapping." *Id.* Due to the immense pain, she was unable to relocate the crash cart. *Id.* at 29. Immediately following the injury, Petitioner notified the nurse and went to Alexian Brothers Emergency Department. *Id.* When asked at arbitration whether the symptoms Petitioner was experiencing were anything she had experienced before, she testified, "[n]o. It was so painful. I couldn't even walk. It was excruciating pain, a 10." *Id.*

On December 12, 2015 Alexian Brothers Emergency Department ordered Petitioner to not return to work. (PX 6, Pg. 5). On January 15, 2016 Petitioner presented to her primary care physician, Dr. Palosha Ahmed. Petitioner stated that she was carrying a defibrillator from the cart to the counter. (PX 3, Pg. 11). The wires got caught on the crash cart, and she was struggling to pull it to the counter. *Id.* As Petitioner twisted, she felt a snap like a rubber band. *Id.* Following this appointment, Dr. Ahmed referred Petitioner to Barrington Orthopedic.

On February 11, 2016 Petitioner presented to Barrington Orthopedic Specialists. After examining Petitioner, Dr. Anubhav Jagadish recommended further diagnostic testing. (PX 1, Pg. 47.) On February 19, 2016 Petitioner had an MRI of the lumbar spine. A comparison of Petitioner's February 19, 2016 MRI with her previous diagnostic tests showed a grade 2 spondylolisthesis at L4-L5 with worsened disc space narrowing. (PX 2, Pg. 47). Dr. Jagadish recommended surgical intervention. *Id.* at 41.

On March 7, 2016 Petitioner presented to Dr. Sanjay Yadla for a second opinion. (PX 2, Pg. 4). Dr. Yadla opined that Petitioner's back pain began after a work-related injury in October 2014 and was exacerbated by another injury sustained on December 12, 2015. (PX 4, Pg. 30). Following an examination, Dr. Yadla determined that Petitioner's signs and symptoms are consistent with mechanical back pain and a right lumbar radiculopathy due to facet disease and spondylolisthesis at L3-4 and L4-5 levels. (PX 2, Pg. 4). Furthermore, the February 19, 2016 MRI demonstrated a grade II spondylolisthesis at L4-5 and severe bilateral facet arthropathy at L3-4. (PX 4, Pg. 30). Dr. Yadla opined that her work and work-related injuries contributed to the degenerative disease at these levels. *Id.* Dr. Yadla opined that the pathology on imaging had progressed at the L3-4 level compared to an MRI performed on November 11, 2014. *Id.* Dr. Yadla recommended a lumbar fusion (TLIF) at L3 to L5 from a posterior approach. (PX 2, Pg. 4).

On April 19, 2016 Petitioner underwent a transforaminal lumbar interbody fusion at L3 to L4, L4 to L5. *Id.* at 9. Thereafter, Petitioner underwent physical therapy from May 16, 2016 through August 12, 2016, and a work hardening program from August 15, 2016 to September 9, 2016.

The surgical recommendation given by Dr. Jagadish and Dr. Yadla were the first surgical recommendations that Petitioner received in regard to her low back. (T. at 33). Petitioner was able to return to work in a light duty capacity on August 1, 2016. (PX 4, Pg. 23). Roughly a month and a half later, Petitioner resumed full-duty activity on September 16, 2016. (T. at 35).

On September 28, 2016 Dr. Babak Lami prepared a record review report for the Respondent. (RX 1). After a review of the records, Dr. Lami opined that it is possible that lifting a patient on October 30, 2014 increased her preexisting back condition. *Id.* However, Dr. Lami believed that this was only a temporary

aggravation of her preexisting chronic back condition. *Id.* In regard to the December 12, 2015 injury, Dr. Lami opined that the mechanism of lifting a defibrillator is trivial and did not constitute an injury which aggravated her chronic spondylolisthesis. *Id.* Dr. Lami concluded that the spinal decompression and fusion performed by Dr. Yadla were appropriate, but unrelated to any of the work-related injuries. *Id.*

CONCLUSIONS OF LAW

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

Prior to the October 30, 2014 work injury, Petitioner testified that she sustained back strains. (T. 16). As a result of these back strains, Petitioner received minimal treatment. All treatment Petitioner received was brief and conservative. Following each incident prior to October 30, 2014 Petitioner was able to continue performing her regular job duties, and was never given any permanent restrictions.

On October 30, 2014 Petitioner sustained an injury while pulling a 250lb patient. *Id.* at 20-21. Petitioner testified that she had not felt this type of pain in the past. *Id.* at 22. After notifying her supervisor, Petitioner received immediate medical care. *Id.*

Petitioner presented to Barrington Orthopedics and came under the care of Dr. Richard Rabinowitz. (PX 1, Pg. 1-5). Petitioner complained of low back pain that was deep and dull and radiated to her right lateral thigh. *Id.* at 3. Dr. Rabinowitz recommended physical therapy and recommended sedentary work/activity. *Id.* 4-5. Following six weeks of physical therapy, Petitioner remained in pain. *Id.* at 18. Dr. Rabinowitz recommended additional physical therapy and took Petitioner off work until the next appointment. *Id.* at 25. On March 26, 2015, Dr. Rabinowitz released Petitioner to return to work full duty on March 30, 2015. *Id.* at 34. After having a minor setback on April 30, 2015, Petitioner was again released to work full duty on May 4, 2015. *Id.* at 38. Petitioner returned to full duty work on May 4, 2015, and testified that there was no change in her work duties or responsibilities. (T. 26-27).

After the October 30, 3014 work injury, Petitioner did not receive any permanent restrictions and was able to return to full duty work. More importantly, between May 4, 2015 and December 11, 2015 Petitioner received no medical attention for her back. *Id.* at 27. Furthermore, Petitioner was not taking any medication, and did not have any accidents or injuries either at work or outside of the workplace during this time period. *Id.*

On December 12, 2015 Petitioner continued to work for Alexian Brothers as a CNA. After picking up a defibrillator and using a twisting motion to put it on the counter, Petitioner testified that she "felt a pop, like, a rubber band snapping." *Id.* at 28. Petitioner testified that she had not experienced this type of symptom in the past. *Id.* at 29. This testimony was unrebutted.

On December 12, 2015 Petitioner presented to Alexian Brothers Emergency Department where she was instructed to not return to work (PX 6. Pg. 5). Following a visit with Dr. Palosha Ahmed, Petitioner was referred to Dr. Anubhav Jagadish at Barrington Orthopedics.

Dr. Jagadish recommended an MRI of the lumbar spine. As compared to Petitioner's previous MRI, the February 19, 2016 MRI showed a grade 2 spondylolisthesis at L4-L5 with worsened disc space narrowing. (PX 2, Pg. 24). Dr. Jagadish recommended surgical intervention. This was the first surgical recommendation Petitioner received for her back.

The Arbitrator finds the causal connection opinion of Dr. Sanjay Yadla more compelling than that of Dr. Babak Lami and therefore assigns greater weight to the opinions of Dr. Yadla. Dr. Yadla opined that Petitioner's work injuries have contributed to her degenerative disc disease at those levels. Similar to Dr.

Jagadish, fusion surgery was recommended. Eventually, a lumbar fusion (TLIF) at L3 and L5 from a posterior approach was performed. Dr. Yadla opined that Petitioner's pain began after a work-related injury in October 2014 and was exacerbated by the injury on December 12, 2015. *Id.* at 30. Dr. Yadla maintains that Petitioner's work and work-related injuries contributed to the degenerative disease at these levels which ultimately required surgical intervention. *Id.* The February 19, 2016 MRI demonstrated a progression at the L3-4 level compared to the MRI performed on November 11, 2014. *Id.*

Unlike Dr. Yadla, Dr. Lami did not conduct a medical examination of Petitioner. Rx1. Dr. Lami concedes it is possible that the October 30, 2014 injury may have aggravated Petitioner's preexisting back condition. *Id.* His conclusion that the December 12, 2015 accident was too trivial to cause an injury is not supported by facts. Here, the symptoms she experienced following the December 12, 2015 accident did not abate which creates a reasonable inference that the effects of the December 12, 2015 accident were permanent, not temporary and not trivial. Thus, the chronology of events, mechanism of injury and history of treatment document a change in condition. A second MRI of February 19, 2016 demonstrated a change in the underlying condition which provides further support for Dr. Yadla's opinion that the accidents aggravated the underlying condition, resulting in the need for surgery. Surgery was first discussed following this accident. Dr. Yadla's explanation and conclusions are consistent with the change in Petitioner's symptoms and conditions that followed the work accidents and, in particular, the accident of December 12, 2015. Accordingly, the Arbitrator adopts the opinion of Dr. Yadla in support of causal connection.

Therefore, the Arbitrator finds causal connection between the condition of the Petitioner's low back/lumbar spine and the accident of December 12, 2015.

ISSUE (K) What temporary benefits are in dispute?
ISSUE (N) Whether Respondent is due any credit?

There is no dispute among the parties that if there exists a causal connection between the accident and Petitioner's condition of ill-being the period of incapacity from work extends from December 15, 2015 through December 22, 2015 and April 19, 2016 and August 1, 2016. The Petitioner's testimony and medical records confirm that the Petitioner was off work on account of the accident and under medical care during the above-mentioned time periods.

Having determined the existence of a causal connection, the Arbitrator finds the Petitioner is entitled to have and receive from Respondent the sum of $406.31 per week from December 15, 2015 to December 22, 2015 and April 19, 2016 to August 1, 2016, that being the period of temporary total disability from work.

The parties stipulated the Respondent paid non-occupational disability benefits to the Petitioner in a gross amount of $5,844.12, which after taxes totaled $4,496.28. (PX 13). The benefits covered the period from 5/3/16 to 9/30/16. The Respondent is entitled to a credit against the amount of TTD for the post-tax amount received by the petitioner. *Navistar Int'l Transp. Corp. v. Industrial Comm'n (Diaz),* 315 Ill. App. 3d 1197, 1206-08 (1st Dist. 2000).

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

The Petitioner introduced evidence that indicates her group health provider paid medical bills associated with her work-accident in the amount of $65,017.91. Px7, Ax2.

The Arbitrator finds the medical services provided to Petitioner were reasonable and necessary and, therefore, finds Respondent shall be given a credit under Section 8(j) of $65,017.91 for medical benefits that

have been paid as set forth in Petitioner's Exhibit #7, and shall be responsible for satisfying all medical expenses, and shall hold Petitioner harmless from any claims by any providers of the services which Respondent is receiving this credit, including: Equian, Automated Benefit Services and Respondent as provided in Section 8(j) of the Act.

The Petitioner also introduced evidence of medical bills which remain outstanding consisting of Exhibits 8-12:

Barrington Orthopedic Specialists, Ltd.	$7.62
ATI Physical Therapy	$30,152.78
Alexian Brothers Medical Center	$ 2,263.18
Elk Grove Radiology, S.C	$114.65
Total:	$32,538.23

The Petitioner also introduced evidence of the following out-of-pocket expenses totaling $1,070.01.

Having found the existence of a causal connection between the condition of Petitioner's low back and the accident of December 12, 2015, the Arbitrator further finds the Respondent is responsible for payment of the medical bills set forth in Exhibits 8-11 pursuant to Section 8(a) and 8.2 of the Act, and further that Respondent shall hold Petitioner harmless for said bills and expenses as set forth in Exhibits 8-11 totaling $32,538.23. In addition, Respondent is responsible for reimbursement to the Petitioner for out-of-pocket expenses totaling $1,070.01.

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

On the date of the second accident, Petitioner was 46 years-old. Petitioner's entire employment history has been in the health care field. *Id.* at 12. For the past 25 years, Petitioner has been employed as a certified nursing assistant, also known as a patient care tech, at Alexian Brothers. As a certified nursing assistant, Petitioner is required to engage physically demanding work that includes pulling and lifting *Id.* at 13.

The December 12, 2015 resulted in a lumbar fusion at L3 to L5 from a posterior approach. Following Petitioner's surgery on April 19, 2016, Petitioner underwent physical therapy from May 16, 2016 to August 12, 2016. Petitioner resumed her customary duties following her full duty release, but testifies she continues to experience pain and discomfort while performing her regular duties which she described as physically demanding. The Arbitrator concludes that Petitoner has reached maximum medical improvement for this injury and that any claim for permanency is ripe for adjudication.

Pursuant to Section 8.1b of the Act, the Arbitrator considers the following factors:

The reported level of impairment under the AMA Guides: The Parties did not offer into evidence any impairment ratings and there was no evidence indicating either party offered such evidence. The Arbitrator assigns no weight to this factor.

The occupation of the injured employee: Petitioner remains employed as a certified nursing assistant, also known as a patient care tech for the Respondent performing her regular duties. However, Petitioner is taking Aleve twice a week for the continued low back pain caused by her job. Petitioner testified that sitting and walking for long periods at work cause pain. Petitioner also notices a sharp pain in her lower back while lifting at work. The Arbitrator takes note and assigns some weight to this factor.

The age of the employee at the time of injury: Petitioner was 46 years of age on the date of accident. Her age suggests perhaps a somewhat long work life expectancy remaining. The Arbitrator assigns some weight to this factor.

The employee's future earning capacity: no evidence showed her earnings were impaired. The Arbitrator assigns no weight to this factor.

Evidence of disability: Petitioner's fusion surgery was on April 19, 2016. To date, Petitioner experiences low back pain. Petitioner's surgeon, Dr. Yadla, opined that her work and work-related injuries contributed to the degenerative disease at L4-5. When asked what Petitioner notices about herself performing work activities, she stated "[w]ell just if I walk for a long period of time, it starts aggravating my back. And if you want me to rate the pain from one to 10, I would save five. When I'm at work, it's higher, eight, nine." *Id.* at 40. Petitoiner's testimony is consistent with her medical records. See, Px4:1, 23, Px5:5. The evidence shows the Petitioner's accident aggravated and/or exacerbated her pre-existing DDD, that this resulted in a two level fusion from L4 to S1 after failed conservative care, that she was released full duty and returned to her regular employment and that she experiences difficulty with prolonged walking. The Arbitrator assigns the greatest weight to this factor.

For all the reasons stated, the Arbitrator concludes the Petitioner is entitled to have and receive from the Respondent the sum of $365.68 per week for a period of 150 weeks, as provided in Section 8(d)(2) of the Act, as the accident of December 12, 2015, resulted in a permanent loss of use of a person as a whole to the extent of 30%.

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SCOTT CLUFF,
Petitioner,

vs.

No. 16 WC 31391
20 IWCC 0434

VILLAGE OF WHEELING,
Respondent.

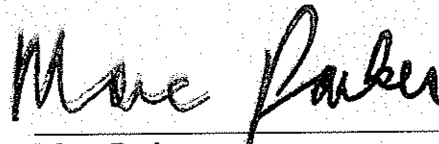
ORDER

Motion to Recall pursuant to Section 19(f) of the Act was filed by the Petitioner on August 7, 2020. The Commission finds that a clerical error exists in its Decision and Opinion on Review dated August 3, 2020, in the above captioned matter.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated August 3, 2020, is hereby vacated and recalled pursuant to Section 19(f) for correction of a clerical error contained therein.

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

DATED: AUG 17 2020



Marc Parker

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SCOTT CLUFF,
Petitioner,

vs. No. 16 WC 31391
20IWCC 0434

VILLAGE OF WHEELING,
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 duration of TTD, post-April 6, 2017 medical expenses, PPD benefit rate, and nature and extent, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.[1]

I. FINDINGS OF FACT

Petitioner testified that he was employed as a firefighter/EMT on July 30, 2016, when he stepped from the fire engine into a hole, twisting his left knee. Although in significant pain, he was able to complete his work shift. He reported his accident, obtained medical advice from Medcor, and continued to work full duty. On August 23, 2016, Petitioner sought treatment at

[1] The Commission notes that this case was consolidated with 16 WC 30632, which related to a January 1, 2014 accident in which Petitioner suffered a left knee strain. The sole issue in that case was nature and extent, and the Arbitrator awarded Petitioner 1% loss of use of the left leg. Neither party appealed that award.

NorthShore Omega on referral from Medcor. He was assessed as having a possible meniscal tear and was advised to rest, wear a knee sleeve and begin a home exercise program.

On August 28, 2016, Dr. Susan Piazza at NorthShore Omega assessed Petitioner with a left MCL strain and placed him on light duty work. A September 1, 2016 MRI revealed a complex tear of the medial meniscus and tricompartmental chondromalacia. Petitioner was referred to Dr. Steven Levin, an orthopedic surgeon at NorthShore Orthopedics, and remained on light duty with sedentary work restrictions. Respondent accommodated Petitioner's restrictions.

Dr. Levin performed a left knee partial medial meniscectomy/synovectomy on September 30, 2016. Petitioner returned to work at light/sedentary duty on October 5, 2016 and continued post-operative physical therapy through December 29, 2016. Petitioner continued to complain of knee pain and was diagnosed by Dr. Levin as having patellofemoral syndrome and prepatellar bursitis. A cortisone injection provided temporary relief, and the doctor ordered another MRI. The January 12, 2017 MRI showed a complex multidirectional tear of the medial meniscus, a new deep chondral fissuring of the femoral trochlea, and moderate joint effusion with synovitis. Dr. Levin recommended a microfracture procedure, debridement, and a possible bio-cartilage implant. This procedure was never performed due to Respondent's refusal to authorize surgery. Petitioner was taken off work on or about February 25, 2017.

At Respondent's request, Dr. Joshua Alpert performed a §12 exam on February 27, 2017. Dr. Alpert found Petitioner's first surgery was appropriate but opined that his ongoing complaints were consistent with pre-existing articular cartilage changes (probably arthritis) and not due to the work injury. He disagreed with Dr. Levin's plans for a microfracture procedure and recommended instead injections and physical therapy. Dr. Alpert did not believe Petitioner would be able to return to his job as firefighter/EMT due to his pre-existing arthritis. He opined that Petitioner could return to work for desk work and walking activities only, while he received a cortisone injection and two weeks of physical therapy. At that point, Dr. Alpert believed any work restrictions would be due to arthritis and not his work injury.

Respondent terminated Petitioner's TTD payments as of April 20, 2017. Petitioner then began receiving sickness and accident benefits. Petitioner was referred by his primary care physician to Dr. Steven Gross for a second opinion.

Dr. Gross evaluated Petitioner on May 24, 2017. He reviewed Petitioner's MRIs, determined that the meniscal tear had not been fully resected in the prior surgery and proposed a revision arthroscopic surgery. On July 10, 2017, Dr. Gross performed a partial medial meniscectomy and shaving chondroplasty. He found damaged cartilage and femoral trochlea and a large meniscal tear, which he believed was the source of Petitioner's ongoing knee pain. Petitioner's pre-operative pain resolved by July 25, 2017, and Dr. Gross released him to return to work light duty on August 29, 2017.

Dr. Michael Hanna performed a return to duty evaluation of Petitioner on September 12, 2017 and found him ready to return to full duty work, but Petitioner chose to retire on September 13, 2017.

II. CONCLUSIONS OF LAW

A. Temporary Total Disability

The Arbitrator awarded Petitioner temporary total disability benefits of $1217.94 per week commencing July 10, 2017, the date of his second surgery, through August 29, 2017, the date he was released to light duty. On appeal, Petitioner argues that he is entitled to benefits from April 21, 2017 through August 28, 2017, with the disputed period being between April 21, 2017 and July 10, 2017 totaling 11 and 4/7ths weeks. The Arbitrator found no evidence in the record indicating whether Petitioner did or did not work light duty during the disputed time period.

Evaluating the record, the Commission finds that Petitioner has established entitlement to additional TTD benefits. Respondent's Exhibit 7 is Petitioner's timesheet which indicates he was off work during the disputed time period and through August 29, 2017. Therefore, the Commission concludes that Petitioner proved that he was temporarily totally disabled from April 21, 2017 through August 29, 2017, a period of 18 and 5/7ths weeks. The Commission modifies the award to reflect the appropriate period ordering that Respondent shall pay Petitioner temporary total disability benefits commencing April 21, 2017 through August 29, 2017.[2]

B. Post-April 6, 2017 Medical Bills

The Arbitrator determined that Respondent had paid all reasonable and necessary medical expenses with no further liability as to outstanding bills. However, several medical bills incurred after April 6, 2017 remain unpaid by Respondent. Respondent contends that it has paid all reasonable and necessary charges and that the Arbitrator's decision regarding the medical bills should be affirmed. The Commission views the evidence differently and notes that the Arbitrator specifically concluded that Petitioner's second surgery was reasonable, necessary and related to his accident. He also awarded TTD benefits through August 29, 2017. The Commission agrees that the second surgery was reasonable, necessary and related to Petitioner's work accident.

The Commission also notes that prior to arbitration, the parties submitted their request for hearing form at which point Petitioner claimed that Respondent was liable for all outstanding medical bills listed on Petitioner's Exhibit 1b with the exception of five treatment dates that Petitioner admitted were not related. Respondent checked the box for "Respondent agrees." Arbitrator's Exhibit 2.

Although Respondent's counsel later stated on the record that he was disputing all post-April 6, 2017 medical expenses, the request for hearing form was not amended at the time of the hearing. Section 9030.40 of the Commission Rules provides that the request for hearing "shall

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[2] The parties did stipulate to a $10,000.00 advance by Respondent, and the Arbitrator properly acknowledged that Respondent was entitled to a credit for that amount applicable only in this case.

be filed with the Arbitrator as the stipulation of the parties and a settlement of the questions in dispute in the case." 50 Ill. Adm. Code §9030.40. Representations made on the request for hearing are binding on the parties. *Walker v. Industrial Comm'n*, 345 Ill. App. 3d 1084, 1088 (2004). Respondent is bound by its agreement with Petitioner's claim of its liability for all related medical expenses.

Based on all of the foregoing, and under §§8(a) and 8.2 of the Act, the Commission finds that Respondent is liable for all related medical expenses, including all related post-April 6, 2017 expenses, all medical bills paid any group health insurer,[3] and all Petitioner's payments to medical providers listed in Petitioner's Exhibit 1B.

C. PPD Rate

The Arbitrator awarded Petitioner PPD at $755.22, which he believed was the statutory maximum for the date of injury. However, the actual statutory maximum rate was $775.18. Thus, the Commission modifies the award to reflect the correct rate of $775.18.

D. Permanent Partial Disability

The Arbitrator awarded Petitioner 20% loss of use of the left leg (43 weeks at $755.22 per week). As discussed above, the Commission finds that the PPD rate should be $775.18 and has so modified the award. Petitioner seeks further, alternative relief from the Arbitrator's permanency award: (1) a combined award of 25% loss of use of the left leg for the two consolidated cases at the PPD rate of $775.18; or (2) 20% loss of use of the left leg at $775.18 per week for 43 weeks for 16 WC 31391 and 1% loss of use of the left leg at $721.66 per week for 2.15 weeks for 16 WC 30632.

As noted previously in this opinion, the Arbitrator's Decision in 16 WC 30632 was not appealed. Therefore, the Commission may not consider any objections to that decision or modify that decision in any way. The Commission affirms the Arbitrator's award of 20% loss of use of the left leg at the modified rate of $775.18.

In all other respects, the Commission affirms and adopts the Decisions of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 5, 2019, is hereby modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,217.94 per week commencing April 21, 2017 through August 29, 2017 totaling 18 and 5/7ths weeks, as provided under Section 8(b) of the Act.

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[3] The Arbitrator found that Respondent failed to provide a sufficient basis on which to award credit under Section 8(j).

IT IS FURTHER ORDERED BY THE COMMISSION that the award of permanent partial disability of 20% loss of use of the left leg is modified as to the rate only. Respondent shall pay to Petitioner the sum of $775.18 per week for a period of 43 weeks, as provided in §8(e) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the reasonable and necessary medical expenses incurred for treatment, including the post-April 6, 2017 treatment, all sums paid by any group health insurer, and Petitioner's out-of-pocket expenses as documented in Petitioner's Exhibit 1B and as provided under §§ 8(a) and 8.2 of the Act and subject to the medical fee schedule.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury. The parties have stipulated to a $10,000.00 advance paid by Respondent to Petitioner.

Pursuant to §19(f)(2) of the Act, every county, city, town, township, incorporated village, school district, body politic or municipal corporation against whom the Commission shall have rendered an award for the payment of money shall not be required to file a bond to secure the payment of the award and the costs of the proceedings in the court. Therefore, no appeal bond is set in this case. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: AUG 1 7 2020

Marc Parker

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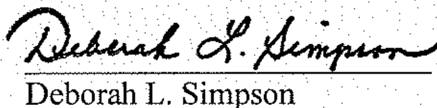
Barbara N. Flores



Deborah L. Simpson

STATE OF ILLINOIS) BEFORE THE ILLINOIS WORKERS' COMPENSATION
) SS COMMISSION
COUNTY OF LASALLE)

Lori Laidlaw,
Petitioner,

vs. NOS. 12 WC 33795
20 IWCC 419

State of Illinois Department of Corrections,
Respondent.

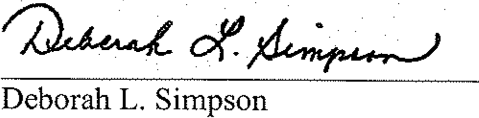
ORDER OF RECALL UNDER SECTION 19(F)

A Motion to Correct Clerical Error pursuant to Section 19(f) of the Illinois Workers' Compensation Act to correct an error in the Decision of the Commission dated July 24, 2020, having been filed by Petitioner herein, and the Commission having considered said Motion, hereby grants said Motion.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Order dated July 24, 2020, is hereby recalled pursuant to Section 19(f).

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

DATED: AUG 14 2020



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Deborah L. Simpson

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LORI LAIDLAW,

Petitioner,

vs. No: 12 WC 33795
20 IWCC 419

STATE OF ILLINOIS – DEPARTMENT OF CORRECTIONS,

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, causal connection, occupational disease, medical expenses, temporary total disability, and permanent partial disability, and being advised of the facts and law, reverses the Decision of the Arbitrator, finds that Petitioner sustained her burden of proving she suffered a repetitive trauma accident which caused current conditions of ill-being of her right arm and right hand and awards benefits.

I. FINDINGS OF FACT

A. Background and Accident

Petitioner testified that on July 23, 2012 she worked for Respondent as supervisor of the bureau of identification. She was initially hired by Respondent in 1984 as a correctional officer ("CO"). She moved to the bureau of identification in 1993 full time. While a CO, Petitioner was assigned to the bureau often to fill in. Petitioner described the office in which she worked in Dixon to be a long office with a counter measuring about chest high. Inmates are on the other side of the counter and she fingerprinted them. It was determined that the counter was about four and a half feet high. All individuals coming into the facility were fingerprinted.

Petitioner explained that fingerprinting required that she first cut down the fingerprint sheet to fit into a card using a large paper cutter fitted with a large blade. She also used the paper cutter to cut up old IDs. After cutting down the fingerprint page, she explained that one would "have to roll the thumb in the ink, and then [] roll the thumb on the fingerprint card and [] go on each fingers [*sic*], all 10

fingers, roll in the ink and then roll on the card." Then Petitioner explained that one would place full handprints at the bottom.

Petitioner testified that there are 14 total motions in the process of fingerprinting, but that number must be doubled because it is done in the ink and then on the card. She estimated that she fingerprinted 40 individuals a day on average. Petitioner also had to use hole punchers for mug shots of each inmate to be transferred. She explained that individuals being fingerprinted tended to try to force their fingers down in the ink and on the paper, so she had to lift their fingers up to get a good print. Sometimes inmates were uncooperative, which also made fingerprinting more difficult. In addition, Petitioner made IDs, issued reports, assembled and "disassembled" files, and took DNA samples.

On July 23, 2012, Petitioner began getting "electric shocks" in her wrists and hands and experienced pain while rolling fingerprints. Besides fingerprinting, as the supervisor, she had additional paperwork in terms of evaluations, training, approving time off, etc. Petitioner testified that there was also paperwork associated with every incoming inmate.

On cross examination, Petitioner testified that maybe in 1995 she was elected president of her union local. In 2010 she took several months of leave for union business and, while she did not know how long she was off, she was back at work fingerprinting inmates and making ID cards every day in 2012. Petitioner also testified that she had an assistant at that time, Barry Ogden[1], who would assist her in the fingerprinting and ID processes.

B. Medical Treatment

As her condition worsened, she sought medical attention with Dr. Risha Raven. The medical records reflect that Petitioner presented to Dr. Raven, her primary care physician, on August 1, 2012 reporting three weeks of right-elbow pain radiating to her lower arm and hand. She reported no known injury but "repetitive stress of fingerprinting at work, better on weekends." Petitioner smoked a pack of cigarettes a day and was counseled on smoking cessation.

Petitioner saw Dr. Raven on August 3, 2012. She authored a letter relating to Petitioner's treatment and work status addressed to Respondent. Therein, Dr. Raven noted that Petitioner was to be off work until August 6, 2012 and that she might need to take some time off work for physical therapy. Notably, she stated that Petitioner "has carpal tunnel and tennis elbow due to repetitive motion of fingerprinting and it is causing numbness of hand and pain."

The August 6, 2012 "Initial Workers' Compensation Medical Report" from Dr. Raven notes that Petitioner experienced "3 weeks of right elbow pain Radiating to lower arm and hand. stiffness As well. On July 23rd pt was fingerprinting And Felt sharp pain from elbow to [right] thumb." She also reported pain opening doors and lifting or stapling, with improvement on the weekends. Dr. Raven recommended physical therapy, use of support, and limited activity in the short term. Dr. Raven stated that repetitive use may increase Petitioner's problem and therapy may allow improvement. Dr. Raven estimated that Petitioner may return to work without restrictions on September 14, 2012. Until then Dr. Raven imposed restrictions to arm twisting if Petitioner felt pain.

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[1] Respondent did not call Mr. Ogden as a witness.

On September 14, 2012, Petitioner returned to Dr. Raven for seasonal affective disorder and follow up for right-arm pain from repetitive use injury. Dr. Raven diagnosed "tennis + golfer's elbow" and "fingerprinter's arm." Petitioner was instructed to use NSAISDs as needed, use braces, and apply ice.

The medical records reflect that Petitioner underwent physical therapy from August 24, 2012 through September 12, 2012 and from March 13, 2013 through June 7, 2013. During that time, she reported a consistent mechanism of injury with an onset of symptoms at work. Specifically, she reported first noticing pain in her right elbow and wrists in mid July of 2012 and that, when rolling fingerprints, she felt the most pain. Petitioner's treatment was limited to her right hand, and she is right-hand dominant.

On March 4, 2013, Petitioner presented to KSB Hospital's Prompt Care department for right elbow/forearm pain for at least six months. She had been using a "TE band" without much benefit. Dr. Lyman Tieman, diagnosed right epicondylitis and prescribed Norco, Prednisone and Ibuprofen.

Four days later, on March 8, 2013, Petitioner followed up with Dr. Raven reporting that her right tennis elbow was worsening which seemed to increase with work. Petitioner also informed Dr. Raven that she had gone to KSB's prompt care department a few days earlier and that she had been prescribed Norco and Prednisone, but she did not want to take such medications. Dr. Raven advised her to take Aleve, to use a brace, and prescribed physical therapy. Petitioner reported her pain was better after a couple of weeks of physical therapy but then she went back to work and her pain returned.

On March 27, 2013, Petitioner presented to Dr. Thomas Hernandez, a KSB Hospital orthopedic surgeon, reporting seven months of right-elbow pain. She also reported that she worked "at a prison and does a lot of repetitive wrist extension activities involving fingerprinting and computer work." On her questionnaire, Petitioner reported that pain went from her elbow to fingertips while rolling fingerprints. X-rays of the right elbow were normal. However, on physical examination Dr. Hernandez noted positive point tenderness to palpation about the right lateral epicondyle and reproduction of pain with wrist extension that was more pronounced with elbow extension than elbow flexion. Dr. Hernandez diagnosed right lateral epicondylitis and recommended an injection, which Petitioner declined, and Dr. Hernandez thought was a reasonable decision. He provided a brace and prescribed physical therapy.

On April 26, 2013, Petitioner returned to Dr. Raven reporting that her pain was less on Fridays after physical therapy. Before Friday physical therapy she reported that her pain was 4/10, it was 1-2/10 after therapy with TENS, and 6-7/10 on Monday when she returned to work. Dr. Raven imposed work restrictions taking Petitioner off work unless she could do filing only. In a letter directed to Respondent, Dr. Raven noted that Petitioner was to be off work from April 26, 2013 to May 10, 2013 due to her repetitive use injury.

On May 13, 2013, Petitioner returned to Dr. Raven and reported her pain was much better with TENS, physical therapy, and two weeks off work. She continued to have right lower arm tenderness. Dr. Raven recommended she take NSAIDS as needed, wear her brace and use ice. Petitioner was again placed off work by Dr. Raven on May 13, 2013 due to her repetitive use injury. Dr. Raven allowed Petitioner to return to work effective May 14, 2013 with limitations as Petitioner was able.

The following year, on November 17, 2014, Petitioner presented to Dr. Christopher Rhyne at KSB Hospital for follow up for an unrelated condition and he also noted she was being treated for hypothyroidism. Petitioner asked questions about treatment for chronic wrist and forearm pain secondary to repetitive use injury from rolling fingerprints. She had physical therapy previously and took two weeks off work, both of which resulted in improvement. Petitioner did not want any additional physical therapy for her bilateral CTS at that time and was advised to continue using her braces.

C. Respondent's Section 12 Examination Reports and Deposition Testimony of Dr. Fernandez

On September 2, 2016, Respondent sent Petition to a Section 12 medical examination with Dr. Fernandez. Petitioner reported the sudden onset of pain at the right elbow laterally while fingerprinting at work. She felt a "sharp stabbing pain" at the lateral epicondyle extending down into the hand and wrist. Petitioner reported that she felt her symptoms would get better but actually got worse. Squeezing a stapler and writing were causing her pain. She further reported she developed numbness and tingling in the hand and fingers. Dr. Fernandez noted that an incident report and a witness report contained the same history he received from Petitioner. She was treated conservatively with splinting and physical therapy, but she did not have injections, an EMG, or MRI. Petitioner demonstrated how she took fingerprints, which she did for 30 years. It "appeared to involve multiple digits in both hands including palm prints, in which she would be palm down, 'rolling the finger' back and forth with pressure." She reported she performed these functions repeatedly throughout the day. Her duties also included assembling and reassembling files. She would also staple and un-staple papers on a fairly repeated basis. Petitioner reported overall her pain has improved since "she had to retire" and hasn't performed her work activities in the last sixteen months. Currently, she reported 2/10 pain at rest and 8/10 pain with heavy activity. She had thyroid disease.

Dr. Fernandez concluded that Petitioner exhibited symptoms consistent with epicondylitis and CTS. Her subjective complaints were consistent with his objective findings. He opined that Petitioner's 30 years of work was a contributory cause of her conditions based on her description of her work activities due to their frequency and duration. He noted that he did not have an official job description, and his opinion held unless he received a "better contradictory description regarding her work activities." If Petitioner did not receive any additional treatment, Dr. Fernandez believed that Petitioner would be at maximum medical improvement (MMI). However, he thought injections in both the carpal tunnel and elbow would be reasonable, along with stretching exercises. If Petitioner did not improve with these additional conservative treatments, surgery could be considered.

At Respondent's request, Dr. Fernandez issued an addendum report on March 28, 2017. He noted that he was provided "what appeared to be timesheets[2] related to approximately three years." Dr. Fernandez noted he wasn't sure "of the exact timeline in terms of years those were reflecting." He was also informed after his examination of Petitioner the positions she held during her career. Respondent also provided information that for three years union activities constituted a substantial part of Petitioner's work, and a description of Petitioner's job activities as fingerprint technician supervisor. Dr. Fernandez noted that in retrospect it was "somewhat surprising" that at the time of his examination

[2] The timesheets provided to Dr. Fernandez were not submitted into evidence.

Petitioner "still had these residual symptoms and complaints" after retiring nearly a year and a half earlier. With the benefit of additional information, Dr. Fernandez answered queries.

Dr. Fernandez's diagnosis remained the same: epicondylitis and CTS, but he noted again that it was "somewhat surprising" that Petitioner's symptoms did not improve after retirement. He also indicated that the lack of significant improvement would militate against work activities causing the conditions. He particularly cited the epicondylitis which is not permanent. Also, on the issue of causation, Dr. Fernandez indicated that the job description[3] he was provided showed more varied activities and his initial impression that she was spending all her time fingerprinting and assembling/de-assembling files was inaccurate. He no longer believed the nature of Petitioner's work was sufficient to constitute an aggravating factor in her conditions. He noted her co-morbid factors as well. Dr. Fernandez believed that prospective treatment could include an EMG and MRI and injections. Any current restrictions from her ability to work would be based on her subjective complaints. The MRI and EMG could determine whether there is any objective basis to limit Petitioner's work activities.

Respondent called Dr. Fernandez as a witness and he gave testimony at an evidence deposition taken on October 20, 2017. Dr. Fernandez testified that he is a board-certified orthopedic surgeon. He examined Petitioner in August 2016 and issued a report. He also discussed her job activities with her. Dr. Fernandez testified that he understood that, essentially, Petitioner was a technician for DOC. She had various activities, but they concentrated on fingerprinting and processing files, which she did for about 30 years. She demonstrated the fingerprinting process. It was his impression that she was doing that activity "fairly constantly." She also engaged in "assembling" and "unassembling" files and "stapling" and "un-stapling, "also on a fairly constant or repeated basis." Later, he got a job description which included the job activities Petitioner described but on a less frequent basis than Petitioner asserted. According to the job description, she did less fingerprinting and more paperwork. After he received this information, Dr. Fernandez issued an addendum report.

Dr. Fernandez acknowledged that Petitioner had lateral epicondylitis and CTS, and his opinion did not change with the new information. However, he changed his opinion that there was sufficient "intensity or frequency" of the allegedly offensive activity to either cause or aggravate epicondylitis or CTS. He opined that there has to be "an element of force" to aggravate those conditions. "And if there's not as much of an element of force, there has to be an element of repetition" or use of vibratory tools or work on an assembly line.

Dr. Fernandez noted that there should be at least a half day, or four hours, of exposure to aggravate those conditions. He also noted that female sufferers of CTS outnumber male sufferers by 6 to 1. In addition, the "sweet spot" for developing the disease is between the ages of the late thirties to early sixties (Petitioner was 47 at the time of the accident). Smoking and obesity are risk factors for developing CTS and Petitioner smoked and was on the verge of being overweight, and she had thyroid disease.

On cross examination, Dr. Fernandez agreed that Petitioner was right-handed, and her right arm was being treated. However, 80% of CTS is seen bilaterally. At the time of his examination, Dr. Fernandez took Petitioner at her word about her work activities and opined that her activities were

[3] The job description provided to Dr. Fernandez was not submitted into evidence.

sufficient to cause or aggravate her neuropathic conditions. He did not believe the height of the counter was relevant but using paper-cutting and hole-punching machines could aggravate the conditions if of sufficient duration and frequency. However, moving between activities and interspersing non-offending activities would lessen the deleterious effects of those activities. Handling file folders could be offensive if they were very heavy.

On the issue of fingerprinting, Dr. Fernandez noted that it was not pinching that could be offensive, but rather the "palm-down awkwardness" of the position. The actions would also be more difficult and require more force if an inmate was uncooperative. Dr Fernandez indicated Petitioner's job activities could cause or aggravate CTS and lateral epicondylitis if done for at least 4 to 5 hours every day. Finally, in response to Respondent's counsel's question of how many months, years or days on the job would be relevant in making a causal connection for carpal tunnel and lateral epicondylitis he replied a "minimum of six to eight weeks."

D. Additional Information

Petitioner testified that she retired on March 31, 2015 because she could no longer do her job. Her condition improved after her retirement, and she continued doing work for the union intermittently. She used to paint walls when needed. She also painted furniture and did some furniture restoration.

Regarding her current condition of ill-being, Petitioner testified that currently she was a lot better, but it was still "not perfect." She cannot do things like shampoo carpets, paint walls, or paint pictures. It starts aching whenever she does repetitive activities, even things like using a screwdriver.

II. CONCLUSIONS OF LAW

A. Accident & Causal Connection

In finding that Petitioner did not sustain her burden of proving that her conditions of ill-being were causally related to her work activities, the Arbitrator stressed that Petitioner testified to performing a variety of workplace activities. He also noted that Petitioner had an assistant who could perform many of the activities about which she testified, and that Petitioner was away from the prison for a period of several months. Finally, the Arbitrator found the causation opinion of Dr. Fernandez more persuasive that that of Dr. Raven. He stressed that Dr. Raven did not have a detailed understanding of Petitioner's work activities, in contrast to Dr. Fernandez, who had the official job description. Based on a review of the totality of the record, the Commission views the evidence differently and concludes that Petitioner has established that her activities at work contributed to her development of carpal tunnel syndrome and lateral epicondylitis.

The facts must be closely examined in repetitive-injury cases to ensure a fair result for both the faithful employee and the employer. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 71 (2006). Compensation is allowable where an injury is not sudden, but gradual so long as it is linked to the claimant's work. *Durand*, 224 Ill. 2d at 66 (citing *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 529 (1987)). The Illinois Supreme Court went on to highlight that "[t]o deny an employee benefits for a work-related injury that is not the result of a sudden mishap *** penalizes an employee who faithfully performs job duties despite bodily discomfort and damage." *Durand*, 224 Ill.

2d at 66 (citing *Peoria County*, 115 Ill. 2d at 529-30). It is also well-settled that there is no legal requirement that a certain percentage of the workday be spent on repetitive tasks in order to establish the repetitive nature of a claimant's job duties. *Edward Hines Precision Components v. Industrial Comm'n*, 356 Ill. App. 3d 186, 194 (2005).

In this case, Petitioner's description of her repetitive work activities over a 30 year period, and the force and flexion necessary to execute those activities, was consistent in her testimony at the hearing, to all of her treating physicians throughout the medical records, in her incident report and Mr. Ogden's witness statement and to Respondent's own Section 12 examiner, Dr. Fernandez. Petitioner consistently reported that the increase in her symptoms coincided with her work activities, particularly fingerprinting. Her treating doctors' records support Petitioner's testimony that her repetitive work activities caused her conditions of ill-being. Indeed, in an August 3, 2012 treatment and work status letter directed to Respondent, Dr. Raven opined that Petitioner "has carpal tunnel and tennis elbow due to repetitive motion of fingerprinting and it is causing numbness of hand and pain." Dr. Raven also completed an initial workers' compensation report three days later in which she noted that Petitioner had three weeks of right elbow pain radiating to her lower arm and hand as well as stiffness culminating on July 23, 2012 when Petitioner "was fingerprinting And Felt sharp pain from elbow to [right] thumb." Petitioner also reported pain with activities including opening doors and lifting or stapling, with improvement on the weekends. Dr. Raven believed that repetitive use may increase Petitioner's problem, and she maintained the opinion that Petitioner's need to be off work, in physical therapy, and under her medical treatment due to her repetitive use injury through May of 2013.

Moreover, Respondent's Section 12 medical examiner, Dr. Fernandez, opined that Petitioner's job duties contributed to the development of her condition of ill-being. In his initial report, which was issued after an examination held years after Petitioner's symptom onset and after undergoing treatment, Dr. Fernandez noted no malingering and specifically found that Petitioner's subjective reports were consistent with his objective findings. Seven months later, Dr. Fernandez authored an addendum report at Respondent's request. Therein, he changed his opinion that Petitioner's job duties caused her condition based on his review of a job description and timesheets provided to him by Respondent. Dr. Fernandez apparently understood based on the supplemental documents that Petitioner was not fairly constantly fingerprinting, assembling and disassembling files, or stapling and un-stapling. These documents are noticeably absent from the evidence submitted by Respondent at the hearing.

Notwithstanding the omissions by Respondent, Dr. Fernandez's explanations for his change in opinion, and the bases on which he retracted his causal connection opinion, are unpersuasive in this case. Without the benefit of reviewing such documents, the Commission views his reference to the timesheets as vague and conclusory. Also, Dr. Fernandez expresses surprise that Petitioner still had residual complaints and he attributes much of his new opinion to the surprising information. However, Dr. Fernandez's first report reflects that Petitioner had told him, very clearly, that she had been retired for 16 months and had improved, but still had residual complaints.

Dr. Fernandez also conceded at his deposition that the awkwardness of the positing of Petitioner's wrist during fingerprinting could be an offensive activity. He believed the flexion of Petitioner's palm to be significant at the time that he originally opined that her job duties contributed to her conditions. Dr. Fernandez also admitted that performing those duties 4 to 5 hours a day would be sufficient to cause or aggravate carpal tunnel syndrome and lateral epicondylitis. Also, performing the

job for 6 to 8 weeks could be a cause. Petitioner had been performing the repetitive duties involving force and flexion for significantly longer. In light of the foregoing, the Commission does not find Dr. Fernandez's changed opinion to be persuasive.

Petitioner testified in detail about the motions that she had to make to execute particular activities at work, and the amount of times that she did so, at the hearing, to her treating physicians, and to Dr. Fernandez. That Petitioner conceded that she took several months of leave for union business in 2010, but was back at work in 2012 and made ID cards every day does not undermine the repetitive nature of her work or the force and flexion admittedly required to execute her work activities for the years before and thereafter. Petitioner also testified that she had an assistant, but no information was provided about the work this individual may have performed or whether it diminished Petitioner's repetitive activities in any way. Indeed, Respondent offered no witnesses at the hearing and makes no arguments related to the foregoing.

To the extent that Respondent relies on Petitioner's utilization of an assistant for a period of time to undercut the amount of time that Petitioner spent on the repetitive, awkwardly positioned, and forceful activities with her hand, the Commission is not persuaded. Respondent offered no evidence to controvert Petitioner's testimony that she engaged in the aforementioned activities to the extent that she did. While Respondent asked Petitioner on cross examination about this assistant, it did not introduce evidence undercutting the extent of Petitioner's work as she explained. Indeed, Petitioner acknowledged that she had an assistant for a time further enhancing her credibility. The Commission declines to infer, without evidence, that Petitioner ceased to perform the offending physical activities to some undefined extent giving rise to her occupationally developed repetitive trauma injury as she testified, as opined by Dr. Raven, or as opined initially by Respondent's Section 12 examiner, Dr. Fernandez.

Based on the entire record before us, the Commission finds that Petitioner sustained her burden of proving she suffered injuries to her right arm and right hand as a result of repetitive trauma and has established a causal connection based on the opinions and treating records of Dr. Raven and the initial opinion of Dr. Fernandez. Therefore, we reverse the Decision of the Arbitrator.

B. Temporary Total Disability

On the issue of temporary total disability, in her brief, Petitioner asserts the record established that Petitioner was taken off work from August 1, 2012 through August 6, 2012 and from April 26, 2013 through May 14, 2013. Respondent has not found it necessary to file a brief. Nevertheless, the only note in 2012 taking Petitioner off work was written on August 3, 2012 indicating that Petitioner would be off work through August 6, 2012. Petitioner was also taken off work in 2013 from April 26, 2013 to May 10, 2013 and on May 13, 2013. The medical records reflect Petitioner's report that she improved with two weeks of being off work. This is broadly consistent with the total period of time that she was placed off work by her treating physician. Thus, the Commission awards Petitioner temporary total disability benefits for these periods of time.

C. Permanent Partial Disability

Regarding permanent disability, section 8.1b of the Act requires permanent partial disability to be determined following consideration of five factors: (i) the reported level of impairment pursuant to

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

With regard to factor (i), no AMA impairment rating was submitted into evidence. The Commission gives no weight to this factor.

With regard to factor (ii), Petitioner was employed as a correctional officer for Respondent. Petitioner was able to return to her prior job for a period of time, but ultimately retired. The Commission gives significant weight to this factor.

With regard to factor (iii), Petitioner was 47 years old at the time of the accident. The Commission gives moderate weight to this factor.

With regard to factor (iv), no evidence was submitted indicating an adverse impact on Petitioner's future earning capacity. The Commission gives some weight to this factor.

With regard to factor (v), Petitioner developed right epicondylitis and carpal tunnel syndrome as a result of repetitive activities at work requiring conservative treatment. The record reflects that Petitioner has reached maximum medical improvement but is not symptom-free despite her retirement. The Commission gives significant weight to this factor.

Based on the above, the Commission finds Petitioner sustained a 7.5% loss of use of her right arm and 2.5% loss of use of her right hand pursuant to Section 8(e) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated September 5, 2019 denying Petitioner all benefits is reversed. The Commission finds Petitioner sustained her burden of proving a repetitive trauma accident that arose out of and in the course of her employment on July 23, 2012, and Petitioner proved by a preponderance of the evidence that her current condition of ill-being is causally related to that accident.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner temporary total disability of $925.53 for a period of 2 & 4/7ths weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay medical expenses totaling $11,880.00, pursuant to §8(a), subject to the applicable medical fee schedule in §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner $605.50 as reimbursement for out-of-pocket medical expenses she incurred.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $712.55 per week for a period of 18.975 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the loss of the use of 7.5% of the right arm, and the sum of $712.55 per

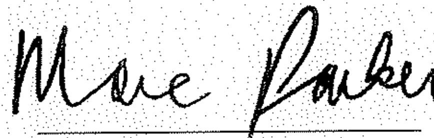
week for a period of 4.75 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the loss of the use of 2.5% of the right hand.

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

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

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

DATED: AUG 1 4 2020



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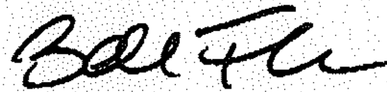

Barbara N. Flores

DISSENT

I respectfully dissent from the Decision of the Majority. The Majority reversed the Decision of the Arbitrator who found that Petitioner neither sustained her burden of proving she sustained a repetitive trauma accident nor that her condition of ill-being was causally related to her work activities, and denied compensation. I would have affirmed and adopted the well-reasoned Decision of the Arbitrator.

I agree with the Arbitrator that Petitioner did not sustain her burden of proving a repetitive trauma accident. As the Arbitrator noted, Petitioner testified to performing various job activities besides the fingerprinting which she indicated was the most offensive activity. I also agree with the Arbitrator that the causation opinion of Dr. Fernandez was more persuasive than that of Dr. Raven. First, Dr. Raven is a primary care physician while Dr. Fernandez is a board-certified orthopedic surgeon specializing in upper extremities. Therefore, he has a better understanding than Dr. Raven of Petitioner's condition of ill-being and the causation of such a condition. Second, Dr. Raven simply recited Petitioner's statement about causation without offering any independent explanation of how her activities specifically caused her condition. It is interesting that she diagnosed Petitioner with "fingerprinter's arm," a diagnosis I have not encountered previously. In contrast, Dr. Fernandez went into detail about the causes of the Petitioner's condition of ill-being. In addition, Dr. Fernandez correctly noted that Petitioner still complained of symptoms relating to her condition a year and a half after she retired. Such ongoing complaints would clearly militate against the condition being related to her work activities, especially in light of the fact that she had no definitive treatment for her condition, *i.e.* no surgery and not even any injections.

The Majority discounts the opinions of Dr. Fernandez because Respondent did not offer its official job description into evidence. In my opinion, the fact that the job description was not submitted does not completely undermine Dr. Fernandez' persuasiveness. He explained why the activities that were noted in the job description did not support the allegation that the condition was work related and he cited Petitioner's co-morbidities, of gender, history of smoking, and thyroid disease. The Majority basically reversed the Decision of the Arbitrator because Respondent failed to submit its job description into evidence. In my opinion, in so doing the Majority has effectively shifted the burden of proof in this case. Under the Act, claimants specifically bear the burden of proving every aspect of their claim, including accident and causation. Here in my opinion, the Majority has reversed the Decision of the Arbitrator and awarded benefits because Respondent had not successfully proved that Petitioner's condition was unrelated to her work activities. I do not believe that is appropriate. Therefore, I dissent from the Decision of the Majority.

I would have found that Petitioner did not sustain her burden of proving she suffered a repetitive trauma accident or that her condition of ill-being was causally related to her work activities, affirmed and adopted the well-reasoned Decision of the Arbitrator, and denied compensation. Therefore, I respectfully dissent from the Decision of the Majority.

DLS/dw
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Deborah L. Simpson