

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KENNETH BERGLIND,

Petitioner,

vs.

NO: 09 WC 44138
20 IWCC 0073

CITY OF CHICAGO,

Respondent.

ORDER


This matter comes before the Commission on Respondent's Petition to Recall the Commission Decision to Correct Clerical Error Pursuant to Section 19(f). The Commission grants Respondent's Petition.

With regard to the Petition to Correct Clerical Errors, the Commission agrees with the alleged clerical errors, and thus grants said Petition.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Decision and Opinion dated January 29, 2020, is hereby recalled pursuant to Section 19(f) of the Act. The parties should return their original decisions to Commissioner Maria E. Portela.

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

DATED: **FEB 21 2020**
MEP/ypb
049



Maria E. Portela

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KENNETH BERGLIND,

Petitioner,

vs.

NO: 09 WC 44138
20 IWCC 0073

CITY OF CHICAGO,

Respondent.

CORRECTED DECISION AND OPINION ON PETITION UNDER §19(h) OF THE ACT

This matter comes before the Commission on Petitioner's 19(h) Petition, filed on April 28, 2015, for a finding of medical causation as well as payment of temporary total disability benefits, payment of medical bills and authorization for payment for prospective medical care. A hearing was held before Commissioner Portela on April 16, 2019, in Chicago, Illinois, and a record was made.

An Arbitration hearing was held on February 6, 2013, and a decision was issued on December 12, 2014. Neither party reviewed the decision which became final. The relevant inquiry before us is whether Petitioner's condition of ill-being regarding his shoulders and right elbow remains causally related to his work injury and whether he is entitled to additional temporary total disability benefits, medical expenses, prospective medical treatment and a future hearing to determine a new amount of permanent partial disability.

At the 2013 hearing, Respondent stipulated as to causal connection pertaining to both the right and left shoulders and the September 14, 2009 work accident. At issue at the time of the Arbitration hearing was whether Petitioner's left and right elbow conditions were causally related to the work accident, medical and nature and extent. Petitioner was paid for his lost time associated with the September 14, 2009 work accident and did not seek temporary total disability benefits at the time of the original hearing. Respondent has since stipulated to temporary total disability for the time period from July 2, 2015 through May 25, 2018 and August 2, 2018 through April 12, 2019. However, Respondent disputes temporary total disability payments from May 26, 2018 through August 1, 2018.

Bilateral Shoulders

In the underlying case at Arbitration, the parties agreed that Petitioner sustained accidental injuries that arose out of and in the course of Petitioner's employment with Respondent. Respondent challenged the alleged injuries to the right and left elbows, but the Arbitrator found that the Petitioner's injuries to the left and right shoulders were causally connected to the Petitioner's accident on September 14, 2009. (Arb. Decision, p. 14)

Two days after the accident, Petitioner sought treatment from MercyWorks. Petitioner initially only sought treatment for his shoulders, but by October 7, 2009, when he went to see Dr. Wolin, he presented with complaints to his bilateral shoulders and bilateral elbows. Dr. Wolin treated Petitioner from October 7, 2009 through May 4, 2010. Dr. Wolin sent Petitioner for physical therapy, as well as diagnostic exams (MRIs and MR arthrograms) of his bilateral shoulders and bilateral elbows. Dr. Wolin causally connected the bilateral shoulders to the September 14, 2009, accident at the November 24, 2009 office visit, wherein he stated: "bilateral osteoarthritis with partial cuff tear right and labral changes on the left. While the osteoarthritis preexisted this most recent episode the partial cuff tear and the labral changes appear related to the work injury." (TA Px3)

By April 20, 2010, Dr. Wolin opined that Petitioner's options were shoulder surgery due to the condition of his shoulders, or an FCE. Petitioner wanted to avoid surgery. (TA Px3) As of May 14, 2010, Dr. Wolin noted the restrictions of the FCE were permanent but recommended that Petitioner see Dr. Goldberg for a discussion of shoulder arthroplasty. (TA Px3) Petitioner has not sought treatment from Dr. Wolin since May of 2010. Petitioner returned to work under the limitations as set forth in the FCE in June of 2010.

Petitioner was seen by Dr. Brian Coe for his bilateral shoulder injuries on December 7, 2010. He noted Petitioner sustained an internal derangement of both shoulders, right shoulder partial rotator cuff tearing and left shoulder glenoid labral tearing with aggravation of degenerative arthritis in both shoulders as a result of the September 14, 2009 work accident. Dr. Coe opined that there was a causal connection between the work accident and Petitioner's current condition of ill-being and recommended future medical treatment. Dr. Coe opined that the additional treatment would include the possibility of surgery (bilateral shoulder joint arthroplasties) as discussed by Dr. Wolin. (TA Px16)

Petitioner worked for the next 5 years, until July 21, 2015, without missing any significant amount of time from work. In that time period, Petitioner's condition continued to deteriorate. There has been no change in the bilateral shoulder condition since the prior hearing, and there was a recommendation for bilateral shoulder surgery at the time of the initial hearing. (TA Px3 and TA Px16).

Since the time of the Hearing on Arbitration, Petitioner has been under the medical care of Drs. Wolin, Goldberg and Chudik for his bilateral shoulder condition. (Px1, Px9 and Px10) Petitioner was also treating with Dr. Wolin for the right elbow condition. (Px1) At no point did any of these physicians release Petitioner to return to work or release Petitioner from medical care. Both Drs. Chudik and Goldberg recommended bilateral shoulder replacement. (Px10) The Commission considers the medical opinion of Dr. Chudik to be persuasive in finding that

Petitioner's current bilateral shoulder condition is causally connected to the September 14, 2009 work accident.

The Commission notes the fact that a referral for a contemplated bilateral shoulder replacement was made back in 2010 is most persuasive in finding that Petitioner's bilateral shoulder condition is causally related to injuries sustained in the September 14, 2009 work accident. All of the testimony in this case by Petitioner as well as the experts is consistent with the fact that it was reasonable for Petitioner to want to delay such extensive and invasive surgery.

Respondent's argument that Petitioner was able to return to work within the FCE restrictions and that is therefore indicative that his condition was further deteriorated merely by his activities of daily living has some merit. However, it is more persuasive that but for the accident of September 14, 2009, Petitioner's condition may not have been aggravated to the extent of possible surgery being recommended in the first place. The issuing of three reports by Dr. Marra, likely at the direction of Respondent, wherein it appears his causation opinion was altered, also detracts from the credibility of his opinion. All physicians agree that Petitioner's condition warrants bilateral shoulder replacement and Petitioner has met his burden that this need is causally connected to the September 14, 2009, accident.

Right Elbow

At the hearing before the Commission on April 16, 2019, Respondent did not submit any medical evidence disputing the causation of the right elbow condition. Dr. Wolin causally connected the right elbow condition to the September 14, 2009 work accident. Petitioner had proof of prior good health and a change in same immediately following and continuing after the injury. Petitioner testified that since the February 6, 2013 hearing, he had not sustained any new accidents involving his bilateral shoulders or right elbow. His symptoms persist to the present date and he has been under continuous medical treatment.

Regarding the right elbow, Petitioner met his burden of proof as to causation. Respondent's own expert agreed in 2016 that Petitioner's need for surgery was related to the original work accident (Px18), and Petitioner never seemed to fully recover from his elbow injuries despite the multiple conservative and invasive treatments. Petitioner had ongoing and continuous care as it related to the right elbow and it appears Petitioner was taken off of work due to his ongoing and consistent complaints regarding the right elbow. No physician – either treating or Section 12 – found Petitioner to be magnifying his symptoms. Additionally, Respondent's expert agreed that Petitioner's right elbow problem was a permanent condition prohibiting him from returning to his previous employment as an ironworker and at a minimum, an FCE would be required to determine new restrictions. Based on that evidence, Petitioner was clearly not at maximum medical improvement, and there was no evidence introduced to dispute Dr. Wolin's causation opinion that Petitioner's right elbow condition was related to the 2009 work accident.

Petitioner argues that he is entitled to payment of the medical bills from Dr. Wolin, Dr. Chudik and Athletico, temporary total disability benefits from July 2, 2015 through April 16, 2019, authorization of payment for the bilateral shoulder replacement recommended by Dr. Chudik and an evaluation with Dr. Gryzlo. The Commission agrees.

As Petitioner's condition has deteriorated and destabilized since the rendering of the 2014 Arbitrator decision, the 19(h) Petition is an appropriate remedy for seeking additional benefits. *Poor v. Industrial Commission*, 298 Ill.App.3d 719 (1998).

Both parties set forth persuasive arguments, but ultimately, the Commission finds that Petitioner did meet his burden of proof regarding causation as to the current condition of ill being in the shoulders as well as his right elbow. Accordingly, Petitioner should be awarded the medical expenses, prospective medical treatment, and temporary total disability and a hearing to determine a new amount of permanent partial disability should be held at a future date.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Petition under §19(h) is hereby granted as outlined above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$1,075.60 per week for a period of 197 6/7 weeks, commencing July 2, 2015 through April 16, 2019, that being the period of temporary total incapacity for work under §8(b).

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$14,523.00 for medical expenses under §8(a) of the Act, subject to the fee schedule in §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit under §8(j) of the Act for payments made by its group insurance carrier; provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

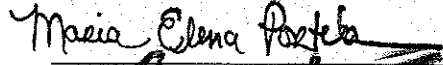
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay for prospective surgery as recommended by Dr. Chudik as well as a further elbow examination in the form of a second opinion visit with Dr. Gryzlo under §8(a) of the Act, subject to the fee schedule in §8.2 of the Act.


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

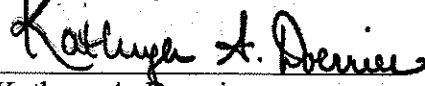
The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 21 2020

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Maria E. Portela


Thomas J. Tyrrell


Kathryn A. Doerries