09WC030456
09WC030457
20IWCC0335

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

Catherine Jacobs,

Petitioner,

vs. NO. 09WC030456 & 09WC030457
20IWCC0335

Echo Joint Agreement, and the Rate Adjustment Fund,

Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

A Petition under Section 19(f) of the Illinois Workers' Compensation Act to Correct Clerical Error in the Decision and Opinion on Review dated June 17, 2020 has been filed by Petitioner's herein. Upon consideration of said Petition, the Commission is of the opinion that it should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated June 17, 2020 is hereby vacated and recalled pursuant to Section 19(f) for 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.

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

DATED: JUN 2 9 2020
SM/sj
44

Stephen J. Mathis

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CATHERINE JACOBS,

Petitioner,

vs.

NOS. 09WC30456 &
09WC30457
20IWCC0335

ECHO JOINT AGREEMENT,and THE RATE ADJUSTMENT FUND,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of and being advised of the facts and law, modifies the Decision of the Arbitrator in case number 09 WC 30457 as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission affirms and adopts the Decision of the Arbitrator in 06 WC 30456.

09 WC 30456

The Commission hereby affirms and adopts the Arbitrator's denial of benefits in this consolidated matter.

09 WC 30457

The Commission notes that on February 26, 2014 Petitioner's treating physician, Dr. Lubenow reported that Ms. Jacobs was able to return to light duty with a 20- pound weight restriction. Dr. Lubenow found that Petitioner achieved maximum medical improvement

effective February 26, 2014. Petitioner was a Special Education teacher working in an elementary school. Petitioner was limited to a 4- hour workday with incremental monthly increases of 1 hour per day, up to 8 hours per day. Restrictions on lifting, carrying and other physical activities i.e. kneeling, crouching and stair climbing were maintained. Lisa Helm, the certified vocational counselor with Vocamotive who evaluated Petitioner concluded in her report that Petitioner was not employable by virtue of her restrictions. Based upon this evidence the Commission hereby reclassifies the award of benefits to conform to the evidence.

Based upon the foregoing the Commission hereby modifies the Arbitrator's award of temporary total disability benefits in part to commence October 28, 2010 through February 26, 2014, that being the date Petitioner achieved maximum medical improvement according to Dr. Lubenow. Petitioner shall be awarded maintenance commencing February 27, 2014 through June 17, 2014. The award of permanent total disability benefits is hereby modified to commence June 18, 2014. The denial of penalties and fees is affirmed.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services of $321,368.95, as provided in Section 8(a) of the Act, and subject to Section 8.2 of the Act where applicable.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $717.97 per week for a period of 228.287 weeks, commencing March 24, 2009 through January 13, 2010; June 1, 2010 through August 23, 2010; and October 28, 2010 through February 26, 2014 that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary partial disability benefits of $464.06 per week for 28 weeks, commencing January 21, 2010 through May 31, 2010, and August 24, 2010 through October 27, 2010, as provided in Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner maintenance benefits of $717.97 per week for 15.857 weeks, commencing February 27, 2014 through June 17, 2014, as provided in Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner permanent and total disability benefits of $717.97 per week for life, commencing June 18,2014 as provided in Section 8(f) of the Act. Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the *Rate Adjustment Fund,* as provided in Section 8(g) of the Act.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit

of $43,653.35 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 credit, as provided in Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's denial of penalties under Sections 19(k) and 19(l) and fees under Section 16 is hereby affirmed.

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: JUN 2 9 2020
SJM/msb
O:5/6/20
44

Stephen Mathis

Douglas McCarthy

L. Elizabeth Coppoletti

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

JACOBS, CATHERINE M Case# **09WC030457**

Employee/Petitioner

09WC030456

20IWCC0335

ECHO JOINT AGREEMENT

Employer/Respondent

On 3/7/2019, 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 2.46% 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:

0311 KOSIN LAW OFFICE LTD
DAVID X KOSIN
134 N LASALLE ST SUITE 1340
CHICAGO, IL 60602

0863 ANCEL GLINK
W BRITTON SALY
140 S DEARBORN ST 6TH FL
CHICAGO, IL 60603

20IWCC0335

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Catherine M. Jacobs
Employee/Petitioner

v.

ECHO Joint Agreement
Employer/Respondent

Case # **09** WC **30457**

Consolidated cases: **09 WC 30456**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago**, on **1/10/2018** and **2/22/2018**. After reviewing all of the evidence presented, **Arbitrator Brian T. Cronin** 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?
[x] TPD [x] Maintenance [x] TTD
L. [x] What is the nature and extent of the injury?
M. [x] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On **3/23/2009**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**38,770.20** for **a 36-week school year**; the average weekly wage was $**1,076.95**.

On the date of accident, Petitioner was **45** years of age, ***single*** with **1** dependent child.

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

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

Respondent shall be given a credit of $**217,550.50** for TTD, $**12,993.64** for TPD, $**0.00** for maintenance, and $**8,272.45** for other benefits, for a total credit of $**238,816.59**.

Respondent is entitled to a credit of $**43,653.35** under Section 8(j) of the Act for medical benefits paid through their group carrier.

ORDER

Respondent shall pay reasonable and necessary medical services of $**321,368.95**, as provided in Section 8(a) and subject to Section 8.2 of the Act where applicable.

Respondent shall be given a credit of $**43,653.35** for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $**717.97**/week for **244-1/7**weeks, commencing **3/24/2009** through **1/13/2010**, **6/01/2010** through **8/23/2010**, and **10/28/2010** through **6/17/2014**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner temporary partial disability benefits of $**464.06**/week for **28** weeks, commencing **1/21/2010** through **5/31/2010** and **8/24/2010** through **10/27/2010**, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner temporary partial disability benefits of $**549.99**/week for **3** weeks, commencing **1/11/2016** through **1/31/2016**, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner maintenance benefits of $**717.97**/week for **83-3/7** weeks, commencing **6/18/2014** through **1/10/2016** and **2/1/2016** through **2/12/2016**, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent and total disability benefits of $**717.97**/week for life, commencing on **2/13/2016**, as provided in Section 8(f) of the Act.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the ***Rate Adjustment Fund***, as provided in Section 8(g) 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

3/6/2019
Date

MAR 7 - 2019

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CATHERINE JACOBS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case Nos. 09 WC 30457
	)	Consolidated with
	)	09 WC 30456
ECHO JOINT AGREEMENT,	)	
	)	
Respondent.	)	Arbitrator Steven Fruth

ADDENDUM TO ARBITRATION DECISION

I. Findings of Fact

Introduction/Procedural History

On July 22, 2009, Catherine Jacobs ("Petitioner") filed an Application for Adjustment of Claim and then an Amended Application for Adjustment of Claim and was assigned a case number of 09 WC 30457. In both the original and Amended Applications, Petitioner alleged that on March 23, 2009, she sustained an accident while working for Echo Joint Agreement ("Respondent") when she was assaulted by a mentally challenged student and injured her "neck, head, shoulders, mid back, low back and bilateral legs" as a result.

Respondent's Exhibit 14 shows that Respondent last paid Petitioner TTD/maintenance benefits on January 8, 2016 for the period ending that day. Petitioner then worked in an accommodated, modified-duty job for Respondent. On February 12, 2016, Dr. Lubenow opined Petitioner was permanently and totally disabled. In a letter dated April 4, 2016, written by Bonnie Jordan of Respondent, and sent to Petitioner, Ms. Jordan stated that Petitioner's position was terminated based on Dr. Lubenow's opinions.

Thereafter, the parties prepared this case for trial. Respondent made a PPD advance to Petitioner in the amount of $8,272.45.

Before Arbitrator Fruth, Petitioner and Respondent proceeded to trial on January 10, 2018 and closed proofs on February 22, 2018. Commission records indicate that on August 9, 2018, Arbitrator Fruth recused himself from writing the decision for this case and submitted the case to the Commission for reassignment. The Commission reassigned the case to Arbitrator Cronin. Arbitrator Cronin was on medical leave from July 24, 2018 through October 8, 2018 and was first made aware of this reassignment sometime after his return to the Commission. The parties did not object to Arbitrator Cronin carefully reviewing the evidence and writing the decision. The parties sent their proposed findings to Arbitrator Cronin on October 24, 2018.

Testimony of Petitioner, Catherine Jacobs

Petitioner testified that in March 2009, she was 45 years old, is currently 54 years old, and was born on March 30, 1963. (T. 23)

Prior to March 2009, the condition of her low back, legs, torso, shoulders, mid-back, upper back and lower back was completely fine and healthy. (T. 24) Before March 2009, she had had no problems with those body parts. (T. 24) Likewise, she had never had any condition of chronic pain in her life prior to March 2009. Prior to March 2009, her activities included walking at least 5-7 times per week with her girlfriends for 1-3 hours, motorcycle riding with her boyfriend, Bill Izzo, 3-4 times a week, boating in the summer, playing volleyball 2-3 times per week 9 months out of the year in a competitive league. (T. 25) Petitioner testified that none of these activities caused any sort of pain or discomfort. Also prior to March 2009, she had no restrictions as to the length of time or distance that she could drive a vehicle. (T. 26) Likewise, with standing, walking, and sitting, she had no limitations. (T. 26) In March 2009, she was employed by Respondent, which educates children with special needs. (T. 26-27) Her job title was Special Education Teacher, meaning that she was hired to teach children who had an IQ of

70 or below, and her children were even lower functioning than that, in the 50 – 60 range of IQ. (T. 27) The end of the school year, 2009, would be the end of her fourth year working for Respondent. In March 2009, she was assigned to the Academy for Learning (AFL) facility at ECHO, located in Dolton, Illinois, at 306 East 144th Street, Dolton, Illinois. (T. 28-29) Her students were aged 13 - 21 years old. (T. 29) Although high schools and grammar schools already have special education programs, if the children have any gang affiliation, problems with guns, violence, behavioral, or severe emotional problems, then they would be brought over to ECHO. (T. 29-30) The behavioral problems of these children include throwing desks, chairs, books, or hitting other students or teachers. (T. 30) The size of the students was between 5' and 100 lbs. and 6'3" and 300 lbs. (T. 31) Petitioner was 5'6" tall and weighed 122 lbs. (T. 31)

Her job description required her to participate in lifting students and the physical restraint of students. (T. 32, *see* Px. 26) She would either hold the student down in a chair, get him on the floor and put his hands behind them and wait for someone to come to the classroom, or if two children were fighting, an Aide would take 1, she would take the other, they would physically pull the 2 students apart. (T. 34) Her aide at the time was Judy Daniels and she was 180 – 200 lbs. and 5'6" and about 12 years older than her. (T. 34-35) If she did not have access to an Aide, she would need to complete the restraint on her own, which was a requirement of her job. (T. 35)

Petitioner further testified that 98% of her job involved her being on her feet and moving about. In March 2009, her work was not confined to activities at the Academy of Learning but included off-campus activities such as grocery shopping, banking, and recycling. For example, they would visit Sam's Club or Ultra Foods to learn functional life skills, which included money handling.

On March 23, 2009, a little after 10:00 a.m., Petitioner was at Ultra Foods along with her Aide, Judy Daniels, and her students, which included Kevin. (T. 45-47) She testified that Kevin was behind her in the store and she felt things being thrown off the shelves, so she turned around and then he threw her onto a pallet jack. (T. 47) She landed with her rear end caught between the two forks of the pallet jack; the underpart of her thigh was caught on one side and her back was caught on the other side. (T. 48) She felt that she had been struck extremely hard by Kevin. She remembers her feet coming up entirely off the floor. (T. 49) She got up with the assistance of her Aide and because she saw another lady shopping, she needed to restrain Kevin. She restrained him with Judy, which took about 10 minutes, in a bed of lettuce. It took them about 20 minutes to calm him down and then they were able to get him back on the bus. (T. 50) Once on the bus, she remembers saying to her Aide that her back was really bothering her and that she felt like she had the flu. (T. 51) Everything was aching from her neck, her left shoulder, and then her lower back. She was also bleeding on her left hand from where he bit her. (T. 51)

Once back at the Academy, she provided notice that she had been involved in this incident, with the nurse. (T. 52)

Petitioner first went to MacNeal Hospital with complaints of left shoulder and lower back pain. (T. 53) She was advised to stay off work and to seek further treatment from her family physician and an infectious disease doctor because of the bite to her hand. (T. 53) On March 25, 2009, she saw her family physician, Dr. Hsieh, with complaints of low back and shoulder pain. She noticed that her pain was getting worse than ever. He advised her to stay off work and to consider physical therapy. (T. 54)

She also saw Dr. Levin, an infectious disease specialist, and he tested her since she had been bitten. The test results came back negative. (T. 55)

On March 26, 2009, she was seen by Dr. Lorenz at Hinsdale Orthopaedics. (T. 56) At that time, her pain symptoms had not changed. Dr. Lorenz advised her to stay off work, provided her with medications and recommended physical therapy. He also asked her to see his associate, Dr. Kirincic. (T. 56)

Her first round of physical therapy was 2-3 time a week at ATI. (T. 57) While going to physical therapy, Petitioner complained that she was tender to the touch, which meant that when her back was touched, it hurt. (T. 58)

On April 9, 2009, Dr. Kirincic first saw her and recommended that she continue physical therapy and use a TENS unit. Petitioner testified that the TENS unit did not provide any benefit. Dr. Kirincic also performed a myofascial release and administered acupuncture and injections. However, Petitioner had issues with sensitivity, so the doctor placed the needles about her shoulder blade and closer to the sides of her back than to the mid back. She was able to tolerate this. (T. 58-60)

Petitioner continued to see Dr. Kirincic once a week thereafter. Petitioner started to feel a burning sensation for the first time in her lower back and her buttocks. (T. 61) At that point, Dr. Kirincic suggested that she stop formal physical therapy and go to a facility run by Dr. Gelband, a chiropractor. (T. 61) She treated with Dr. Gelband for about 8 months; he performed chiropractic care and therapies, which were very limited therapies. (T. 62) On May 11, 2009, Dr. Kirincic ran a rheumatological battery on her that came back negative. (T. 63) Dr. Kirincic also ordered MRIs of her shoulders, thoracic spine and lumbar spine. On May 21, 2009, Petitioner had an MRI of her left shoulder. (T. 63)

On June 1, 2009, she was sent for an examination by Respondent's Section 12 physician, Dr. Wehner. (T. 63-64)

Petitioner continued to have pain in her back, particularly between her shoulder blades and down to her belt buckle. She was feeling more intense pain in her "sit" bones, i.e., her pelvic bones. (T. 66) Also, it was hard putting clothes on because she could not be touched. She was having troubles wearing anything like a bra or anything with elastic in it. (T. 66) She felt severe pain and if someone touched her, she would start crying. (T. 67) It would take a while for her nerves to calm down and then her back would feel okay after she wore clothes. (T. 67)

Around July 13, 2009, her benefits were terminated based on Dr. Wehner's reports. However, it was eventually worked out that her back benefits would be paid, and she continued with her treatment. (T. 69)

On July 16, 2009, Dr. Kirincic referred Petitioner to Dr. Zindrick for a work up on her spinal condition. (T. 69) During that entire time, her doctors continued to take her off work. (T. 70) Petitioner testified that she was having problems with the two joints in the top of her hips whenever she would walk. (T. 72) Dr. Zindrick then prescribed an MRI of the hips. On July 30, 2009, she was examined by a general surgeon to rule out any sort of internal pathology of the hips. (T. 72)

On August 3, 2009, she returned to Dr. Zindrick who referred her to his associate, Dr. Louis. On August 4, 2009, she saw Dr. Louis, who saw her only that one time. He indicated that there may be a condition of RSD involved. (T. 73)

She continued under the care of Dr. Kirincic at Hinsdale Orthopedics and in September 2009, Dr. Kirincic ordered an EMG, which was administered on September 2, 2009. (T. 74) On September 8, 2009, she began treatment at the Rehab Institute of Chicago, which Dr. Kirincic recommended. (T. 75) While at RIC, Dr. Rader interviewed her. Based on his initial assessment, RIC allowed her in an in-patient program there for 1 month. This program included

physical therapy, occupational therapy, psychiatry, mind/body training, and other modalities to handle the pain without medication. (T. 76) She found that the program was beneficial in that they taught her how to pace herself with her pain by using relaxation techniques and therapies. However, the program did not make her condition go away. (T. 77)

About that time, she was also seen by Dr. Citow, the employer's Section 12 physician. (T. 78)

Around this time, she also moved her residence from Brookfield, Illinois to Indiana. She moved because she had a 5-story house with lots of stairs with no bathroom or bedroom on the first floor, so it was exhausting to go up and down the stairs and to keep up a household. (T. 79) In Indiana, she moved to a single-level apartment. (T. 79) The distance from the apartment to the Academy for Learning was 15 minutes. (T. 80) Based on Dr. Citow's January 14, 2010 report, she was advised to return to work full duty. She made a good faith attempt to return to work at that point. (T. 80) However, the pain was just increasing, and every day just seemed harder and harder to get up and go to work. By the end of the day, she was physically exhausted, and the pain was unbearable. On January 21, 2010, she returned to Dr. Kirincic, at which point the doctor recommended a reduced-hour return to work: 4 hours per day. (T. 81) She also referred her to Dr. Gruft, a pain psychologist, and Dr. Tumlin.

On January 21, 2010, Petitioner returned to work. Respondent allowed her to work 4 hours a day as a Special Education Teacher. (T. 83) She had a 15-minute drive to school but sometimes her Aide, Judy Daniels, would pick her up. (T. 83) The accommodations given to her by Respondent included not having a first period and going home for lunch. She could teach everything within those 4 hours. Respondent also set her up at u-shaped desk, so she was always on one side of the desk and her students were on the other side. She was also allowed to sit on

the floor with pillows and teach the class. (T. 84) While she was teaching, she was also paid a differential for the hours that she was losing. (T. 84)

On January 22, 2010, she saw Dr. Tumlin on one occasion. Between February 3 – March 2010, she was seen by Dr. Gruft on about 5 occasions. Dr. Gruft was trying to rule out celiac disease. (T. 85) She was referred to Dr. Demeo at Rush in March 2010 to determine whether celiac disease was a cause of her complaints. A biopsy was taken that ruled out celiac disease. (T. 85)

Petitioner testified that she noticed, upon returning to work for 4 hours/day in the beginning of 2010, that the pain she experienced on Monday was just as bad as it was on Friday. She was also having pain from sitting while driving to and from work. (T. 86-87) However, she kept working through May 31, 2010, which was the end of the school year. (T. 88)

In August 2010, she returned to work with a limited 4-hour schedule. (T. 90) Dr. Kirincic referred her to Dr. Lubenow at Rush Pain Center. The parties agreed to such referral. (T. 90)

On October 14, 2010, Petitioner saw Dr. Lubenow for her initial evaluation. He took a detailed history and conducted a physical examination of her as well as a visual examination of her entire body. (T. 91) During the course of care with Dr. Lubenow, he measured temperature differences in various parts of her body mechanically. Dr. Lubenow also referred her to his pain psychologist, Dr. Patricia Merriman. (T. 92)

On October 27, 2010, she saw Dr. Lubenow again and also saw Dr. Merriman. (T. 92) Dr. Lubenow performed a full examination of her body, made notations of her temperature differentials, and took her off work completely. Eventually, her TTD weekly benefits were restarted. (T. 93)

On December 6, 2010, Dr. Lubenow prescribed a 5-day infusion of medication to be administered at Rush Medical Center. Such infusion was to be followed by an aggressive physical therapy program. Petitioner recalled receiving very little benefit from the 5-day infusion of medication. Each time Dr. Lubenow saw Petitioner, he would conduct a physical examination.

On January 12, 2011, Dr. Lubenow prescribed a trial of a spinal cord stimulator. Dr. Lubenow was treating her with oral medication, which, Petitioner testified, was helping the pain or decreasing, maybe, some of it - - but she was not very functional at that time. (T. 95-96)

On April 18, 2011, a trial spine cord stimulator was implanted while she was at Rush. Petitioner testified that it definitely benefited her in that she was able to walk longer distances but the stimulation up her back was painful. Her legs seemed more functional, but the stimulator was hindering her back. (T. 96-97) During that period, they would try to change the settings on the stimulator to see if she would get any additional benefit. She also saw either Dr. Lubenow or one of his associates, Dr. Jaycox.

By May 5, 2011, Dr. Lubenow suggested the trial of an intrathecal pump because she was not getting sufficient benefit from the trial of a spinal cord stimulator. (T. 97) An intrathecal pump is a pump that delivers medication internally into her spine. (T. 98) Petitioner testified she felt she was getting a benefit from the intrathecal pump since it delivers medication to the spine rather than enduring the side effects of the oral medication that goes through her liver. (T. 98)

On June 7, 2011, Petitioner testified, she received a letter from Debra Hooks at Echo Joint Agreement. The letter advised her that they would need a physician's statement for her to return to work that school year and required a full-duty release without any restrictions. (T. 100)

On July 7, 2011, she was sent for another examination, this time by Dr. Noren, Respondent's Section 12 examining physician.

On July 21, 2011, Dr. Lubenow prescribed a motorized scooter for her. Petitioner, not Respondent, paid for that scooter. She finds it helps her get to the store, follow her children in the mall, and save her strength for walking. (T. 102) By the end of 2011, she was only able to walk a quarter of a block and would notice that the pain would go from a 3-4 and spike up immediately as soon as she walked a certain distance. (T. 103) Also at that time, she was unable to drive so she needed someone else to drive her places. (T. 104)

Petitioner received a letter, dated August 3, 2011, from Debra Hooks. (See Px. 28) Ms. Hooks wrote that they wanted her back for a full contractual day. Petitioner testified that, to her understanding, that meant her employment was terminated. (T. 105) Although she could not return to work, she continued to receive her weekly workers' compensation benefits from Respondent. (T. 105)

Around February 27, 2012, following a "Utilization Review for Authorization of Placement of the Intrathecal Pump," she had the permanent pump installed. (T. 106) However, she initially had an adverse reaction to the pump that included severe headaches and a puncture of the sac around her spine. She lost spinal fluid as a result. (T. 107) Petitioner testified that the permanent intrathecal pump definitely benefits her. Prior to the pump, the pain was out of control and she felt pain greater than an 8 out of 10. But now, she can control the pain between 4 and 7. She also uses a device called a bolus, which allows her to receive a little more medicine 4 times a day. She can use the bolus whenever she chooses, but after 4 times in 1 day, she is blocked from using it. (T. 108)

After she had the pump installed, she continued under the care of Dr. Lubenow and his associates at Rush. She returned to them every few weeks for titration of the medications. During those visits, for a majority of the time, the Rush staff increased the medication. (T. 108-109) During those visits, when Dr. Lubenow would increase her medication, she would notice a corresponding decrease in her pain. She also continued to receive workers' compensation benefits during that time.

On May 23, 2012, Petitioner was sent to Dr. Konowitz, one of Respondent's Section 12 physicians. (T. 110)

On August 1, 2012, at Dr. Lubenow's request, Petitioner underwent an initial Functional Capacity Evaluation ("FCE") at ATI. After the FCE, she remembers having a hard time getting up and out of the ATI facility. Petitioner testified that she feels that it was just too much and that the pain was really severe in her back and her legs. (T. 111)

On August 16, 2012, she returned to Dr. Lubenow and advised him of her increased pain after the FCE. At that time, he discussed taking a driving exam. Petitioner testified that she wanted to drive. Dr. Lubenow also referred her to Dr. Merriman for another psychological evaluation. (T. 112)

In August and September 2012, Petitioner was seen by Dr. Obolsky, one of the Respondent's Section 12 physicians, for a psychological evaluation. (T. 113-114) Dr. Obolsky saw her for 2 days - - first for a written test and then for an interview that he conducted. (T. 114)

In May 2013, she was seen at Marianjoy for a specialized driving evaluation. (T. 114) It involved her getting into a car and driving. When she was evaluated, the evaluator never asked her to proceed with further testing or training and did not say that she needed the use of hand controls or alternate vehicle controls. (T. 115)

On July 25, 2013, Petitioner saw Dr. Lubenow. He recommended an update of her FCE. Her FCE was updated on October 17, 2013 at ATI. (T. 116)

While under the care of Dr. Lubenow, the parties agreed that she would undergo vocational rehabilitation, which was based on the doctor's plan of having her attempt a return to work. Petitioner chose Steven Blumenthal as a vocational counselor, but Respondent would not authorize it. Respondent indicated that they would only pay for Vocamotive, Inc., to be Petitioner's vocational counselor. (T. 117-118)

On April 28, 2014, she was evaluated by Vocamotive. The initial evaluation took a couple of hours. After that evaluation, there were no further requests that she return for any training or job placement. Petitioner received a report that indicated she had lost access to any viable labor market with her condition. (T. 118)

On May 2, 2014, she saw Dr. Lubenow, and he provided her with various permanent restrictions that included working a 3-4-hour work day, driving for no more than 15 minutes, sitting 30 to 40 minutes and then changing positions, standing only 10 to 15 minutes at a time, using a scooter for local transport, and using a cane to walk short distances. All this was in addition to a 20-lb. lifting restriction. (T. 119) The staff at Vocamotive, never asked her to return there or to conduct a job search. She continued to receive her workers' compensation benefits as she was off work and was having her medications titrated by Dr. Lubenow. (T. 120)

Respondent then chose to have Petitioner evaluated by a forensic rehabilitation specialist named "EVR, Inc." Petitioner initially objected to undergoing an additional vocational evaluation but agreed to sit for the first meeting. Such meeting took approximately 40 – 45 minutes. After the meeting, no one from EVR or any other vocational facility asked her to perform a job search. (T. 120-121)

On October 10, 2014, she was examined again by Dr. Konowitz, who was one of Respondent's Section 12 physicians. This was his second examination of her. (T. 122)

By 2015, Petitioner continued to receive workers' compensation benefits and continued under the care of Dr. Lubenow. Regarding her intrathecal pump, they arranged to use an outside source to come to her home and fill the pump. The pump must be refilled with opioids every 6-7 weeks. Meanwhile, she would see Dr. Lubenow every 6-9 months. (T. 123) During this period of time, her condition remained stable. (T. 124) What she noticed about herself is that she always had to decide what she would do that day. If she extended herself, she would be "out of it" the next day. Petitioner testified she is in bed for a lot of the day because of the pain and has only so many boluses to use throughout the day. So, she has to plan what she is going to wear. She usually wears light flannel pajamas because she cannot wear elastic. She doesn't wear a bra, and showering is no longer a necessity. (T. 124-125) Showering was difficult because she can't have the water touch her back. So, washing her hair is difficult and showering is exhausting. As for cleaning the house, if she cleaned the bathroom, she wouldn't be able to do anything the next day. She cannot do the floors or vacuum as it is too painful and increases the pain. (T. 126)

On March 26, 2015, she went back to Dr. Konowitz, Respondent's Section 12 physician, for another examination.

The EVR report suggested that Petitioner may benefit from a second driving evaluation, which she underwent on June 30, 2015. (T. 127) She was at Marianjoy for an hour or so and was in the vehicle for 20 minutes. She thinks she did 10 minutes with her feet and then 10 minutes with her hands using the hand controls on the vehicle. The use of hand controls did not extend the length of time she was able to drive, and the evaluator never recommended full-time use of

the hand controls. The evaluator only continued to recommend local driving. He did not recommend any further sessions of driving instruction after that. (T. 128)

Petitioner testified about a December 16, 2015 letter she received from Bonnie Jordan of Echo Joint Agreement. (Px. 29, T. 131-132) In that letter, Ms. Jordan directed her to come back to work at sedentary duty, which would include sitting, standing and walking, for 8 hours a day. Ms. Jordan offered her 1 of 2 positions: a PAEC School Teacher or an AFL Instructional Assistant. (T. 133) In other words, 1 job offer was that of a Special Education Teacher at the elementary school and the other job offer was that of an Aide at the Academy for Learning.

Based upon the letter, Petitioner met with Ms. Jordan, Carlida Goodley, and her boyfriend, William Izzo. During the meeting, the AFL aide's job was offered to her, but the teacher's position was not offered to her. (T. 134) The restrictions listed in the letter did not come from Dr. Lubenow. Dr. Lubenow, her treater, continued to restrict her to a 3-4 hour work day with 15 minutes of driving, 30 – 45 minutes of sitting at a time, 10 to 15 minutes of standing at a time, use of her scooter for local transport and use of her cane for walking short distances. However, none of these restrictions were listed in the letter. (T. 135)

Petitioner testified that she returned to work with restrictions. (T. 138) On the first day, it took her 1 hour and 15 minutes to drive to the school because she needed to stop since she was unable to sit that long. She had pain from pushing the pedal. (T. 139) Her attempt to return to work lasted approximately 5 weeks during which she was able to drive to work 8-10 times. (T. 140) It would always take her in excess of an hour to get to the school. When she would drive home, it would take her 1 hour and 15 minutes and sometimes over 2 hours due to traffic stops and her own stops. (T. 141) On the dates she needed to get to school and get home without driving, she would ask either her sister Beth, who works at AFL, to drive her there, or one of her

kids, or her boyfriend. Once at the facility, she used a wheelchair or her cane or received assistance from an Aide. The type of assistance she used depended on how far around the building she needed to go. Her sister, Beth, would also help her during the day as she also worked at AFL. (T. 142)

On January 11, 2016, she had a meeting with Wayne Dendler, the principal of the Academy for Learning. (T. 144) Mr. Dendler had direct supervision over her and told her that she would be assigned as an Aide's position in the art room of Hugh Cannon, the Art Teacher. (T. 144) Mr. Dendler restricted her in that he didn't want her in the hallway with the children and did not want her to have any contact with the students whatsoever. In the art room, she was positioned in the back of the classroom with a desk surrounded by boxes that were higher than the desk and between her and the students. (T. 145)

Petitioner was shown Petitioner's Exhibit 30, which is a job description for an "Instructional Paraprofessional". (T. 146) The restrictions of an Instructional Paraprofessional included lifting the students and participating in the physical restraints of students. She was also required to stay there from the beginning of the first period to the final period of the day. (T. 153) During the second period, she would often put up her feet in a reclining type chair that they gave her or else go to the nurse's office where there was a bed that she was able to use. She needed to get the weight off her feet in order to control some of her pain. (T. 154) While assigned to Hugh Cannon's classroom, she was told by Mr. Cannon that he didn't want her doing anything but sitting behind her desk and having conversations with her students in the classroom. She could tell them that they were doing a nice job and ask them to get off their phones. (T. 156-157) She had actual physical contact with 4 students and she came from behind her desk and would help them with their projects. This was 1 period 5 times a week. (T. 158) She noticed

that her pain was increasing and that she was having a harder time sitting and standing. She was also having a hard time getting her pain to decrease from the 7-8 level. (T. 159) For Mr. Cannon, she probably wrote up 2-3 behavior reports based on student's misbehavior during the class. (T. 159) She also worked with the laminating machine and a copier, which involved reading the manual and teaching Mr. Cannon. During the first week, she was able to work 4 out of the 5 days but by Friday, she had to take off work because she could not get out of bed. (T. 160) She was unable to get out of bed due to the pain and the fact that she could not sleep during the night.

On January 13, 2016, Petitioner testified, her sister's nose was broken during a fight in the hallway with a student. (T. 162) Petitioner testified that she was in tears and upset because of the appearance of her sister and her broken nose. She was physically feeling pain "off the charts" because she was upset. Around 11:00 that morning, she saw Bonnie Jordan for approximately 3 to 4 minutes in her classroom. (T. 166 – 167) During that time, her emotional state was that she was upset although she was not crying anymore. (T. 167) Ms. Jordan made a comment about how great she looked and how well she was doing in the classroom.

During the second week of her return to work, Martin Luther King Day was celebrated on the Monday. She was only able to work 2 out of the 4 remaining days that week due to pain and her inability to get out of bed. (T. 168) At that time, she was unable to get the pain under control like she usually could on a regular day.

In the third week, she worked the entire week, 5 days. (T. 169-170) During this final week, her condition changed in that she started to get headaches and started getting sick to her stomach. When she got home from work, she went directly to bed to prepare herself for the next day at work. (T. 170) Also, during the final week, she was not sleeping more than 1-2 hours a

night and was vomiting. She could not bring her pain down, even to a 5. The pain escalated all the time - - even on weekends. (T. 171)

Mr. Dendler had an opportunity to see her on a daily basis while she was at the school. (T. 172)

On February 12, 2016, she saw Dr. Lubenow and described to him her condition during her attempt to return to work. Dr. Lubenow opined that she was permanently and totally disabled. Petitioner provided the report of that visit to her employer. Since February 12, 2016, Petitioner has not returned to work in any capacity and has not received any pay from workers' compensation or from ECHO. (T. 173-174)

In a letter dated April 4, 2016, from Bonnie Jordan at ECHO to her, she was notified that her position was terminated based on Dr. Lubenow's opinions. (Px. 32, T. 174)

Since she was terminated from her employment with Respondent, she has been maintaining her regimen of using the intrathecal pump and getting it filled by an outside facility that comes to her home. She testified that she returns to Dr. Lubenow in 9 months ... or sees him every 6 months to a year. (T. 175) Dr. Lubenow gives her oral medications and gives her prescriptions for the in-home pump refill. (T. 175) She gets refills every 6-7 weeks. Around December 28, 2016, she had an unfortunate incident: the pump shut down, which caused her to go into withdrawal and required her to have the pump replaced by Dr. Lubenow at Rush. (T. 177) Since that time, her regimen of intrathecal pump use has continued. She continues to this day to be on the same schedule. The benefit she receives from the intrathecal pump is that she is more functional with it, although it does not take away her pain. The pump gives her 2-5 hours in the day to maintain her pain and keeps her from going to an 8/10 on the pain scale. (T. 178)

Petitioner testified that she notices that everything is a chore. She must limit her activities and if she does something one day, she cannot do it the next day. She has a hard time sleeping, sitting, and standing and does a lot of TV watching. Her social life is gone. With regard to the pain in her body, she notices that the backside of both of her legs are constantly burning, and that the more she does, the greater the burning, to the point that it feels like the area is on fire. (T. 179) In her sit bones, she feels like she is sitting on concrete all the time and that she can actually feel the bones rubbing on the concrete if she sits for 5 minutes. Therefore, she brings cushions with her wherever she goes. As for her lower back, she notices that the pain goes straight across the lower back and is constant. (T. 180) The constant pain feels like stabbing and sometimes like electrical pain. She feels sensitivity from her shoulder blades down to her lower back so that if someone comes from behind and touches her, her nerves just scream and will make her cry because of the severe shock of pain she feels. (T. 181) Likewise, putting on clothing is painful. It is not worth the pain to put on a bra. The last time she drove a car was in 2016. Instead, her daughter, her boyfriend, her sister or her mom drives her where she needs to go. If the drive is within a local area, for example to Walmart, she can do it but if it is for longer than a 10-minute period, she notices that the pain increases, and she eventually loses her concentration. (T. 183) With regard to her ability to walk, she finds that it depends on the day. Now, she forces herself to walk 3 times a week with her usual trip going to, and walking through, Aldi's. She walks through the aisles and walks with a cane. If she needs to go farther distances, she uses her scooter. She typically uses the scooter on a weekly basis. (T. 184-185)

For sitting, she can sit 15-20 minutes before she starts to shift and then she has less and less time to sit during the rest of the day because the pain slowly increases. Her pain is in her sit bones and in the lower back. With regard to standing, she can stand for 10-15 minutes. The pain

slowly increases when she is standing; she can start feeling the pain after probably 5 minutes of standing.

With regard to her sleep, she wakes up because of the pain and needs to continue repositioning herself. (T. 186)

She and her boyfriend, William Izzo, have not had sexual intercourse for 3-4 years. Before March 2009, they were able to have sexual intercourse and be physical with each other. (T. 187) Today, they cannot touch or hug or lay on each other because the pain is too great; that pain has stayed the same to the present time. (T. 187)

According to Respondent's union contract, which is in effect, Petitioner would be earning $66,626.00, as a Special Education Teacher. (T. 190) As a Teaching Assistant, (an "Aide",) she would be earning $23,727.00. (T. 192, Px. 35)

On cross-examination, Petitioner agreed that after her March 23, 2009 accident, she was able to get up from the pallet jack without any help. (T. 196) She did not start to feel something in her body until she got on the bus and rode back to school. (T. 197)

Since the 2009 accident, the pain, which started in her back and went down to her legs, has been the same. With the use of the intrathecal pump, she notices that the intensity of the pain is different because the pain now ranges between a 4 and a 7. (T. 202)

When Dr. Konowitz, Respondent's Section 12 physician, initially examined her, he had her walk a straight line. He also examined her hands. Dr. Konowitz examined her 2 or 3 times. He personally examined her for about 10 minutes each time. (T. 204)

When she saw Dr. Obolsky, she had a 2-day exam. She reiterated that on the first day, there was a written test, and the second day, Dr. Obolsky interviewed her for approximately 1 hour. (T. 206)

When she returned to work in January - February of 2016, she had a conference with Principal Dendler about the restrictions she had been given. (Px. 31) In fact, the School District honored those restrictions and did not go beyond any of the restrictions stated in Px. 31. (T. 212) Those restrictions included using cushions when seated, using a cane when walking, as needed, using a wheelchair for long distances, using an electric scooter, taking breaks, as needed, laying down in the nurses office, as needed during the plan period or duty-free lunch period, staying out of the hallways when the students are present, not physically managing the students, and not performing any heavy lifting. (T. 212)

While she worked with Mr. Cannon in the Art Room, she, in fact, performed work for him that included speaking with students. (T. 213)

With regard to the modified-duty job given to her in February 2016, she does not think she could handle that job, even with the restrictions, today. She cannot handle the modified-duty job because of the number of hours she must work and the drive to and from work. (T. 214)

The pain from driving comes from using her leg to continuously push down the pedal and sitting. The pain from driving is in her back, her bottom, and her legs, but not in her arms or her shoulders. (T. 216) As a passenger in a car, she can ride for a few hours depending on the day. (T. 217)

Petitioner testified that Dr. Lubenow has never discussed the idea of weaning her off the medicine in her intrathecal pump. (T. 219 – 220) They have discussed lowering some of her oral medications although those medications do not do the same thing as the medicine in the pump, as they work in 2 different ways. (T. 220)

On redirect examination, after reviewing Px. 27, a letter to her from Respondent that was dated June 7, 2011, Petitioner testified that it was her understanding Respondent terminated her

employment and would not allow her to return to work with any restrictions. (T. 220-221) She did not continue to receive benefits from Respondent. The letter indicates that if she did wish to return to work for Respondent, she would have to reapply for employment and was not guaranteed a position. (T. 222) Petitioner further testified that given the accommodations made by Mr. Dendler (Px. 36, Dep. Ex. 2, or Px. 31), she was unable to continue working for Respondent after 5 weeks. (T. 222-223) Petitioner further testified that she underwent 2 driving tests and after using the hand controls on at least 1 test, found that she was not able to drive any farther with the use of hand controls. After the instructor tested her with the hand controls, he did not recommend that she use hand controls to continue to drive and did not say she needed to return for further testing or training. (T. 223-224)

On recross examination, Petitioner testified that she was unable to continue working after 5 weeks in the modified position due to the pain. Before that 5-week period, she had not worked 8 hours a day and had not driven. Petitioner testified that the pain she experienced during the 5-week period was getting worse. She was experiencing headaches. By the last week of the 5 weeks, Petitioner testified, she was vomiting and was having a hard time eating. So, there were other symptoms beyond the pain. (T. 225-227)

Testimony of Elizabeth Piersialla

Elizabeth Piersialla, a Special Education Teacher at ECHO Joint Agreement and Petitioner's sister, testified on Petitioner's behalf. (T. 230 – 231) Ms. Piersialla testified that in the 5 years leading up to Petitioner's accident in 2009, Petitioner was active in high school. She played on the softball team in college, continued to play softball, and regularly played volleyball in a weekly league. (T. 232) Ms. Piersialla found Petitioner to be mentally fit and sharp prior to

March 2009. (T. 232) Ms. Piersialla noticed that from the time of the accident to the beginning of 2016, she noticed that Petitioner seems to tire much more quickly and is always in pain if anyone touches her. (T. 232) There have been occasions when someone who hasn't seen her goes up to give her a hug and she will yell for quite a while afterwards. She appears to be in a lot of pain from the hug. (T. 233)

Ms. Piersialla was present for Petitioner's attempted return to work for 5 weeks in early 2016. Specifically, Ms. Piersialla recalled an incident on January 13, 2016 where she herself was struck by a student in the hallway. The student broke Piersialla's nose. While Piersialla waited to go to the hospital, she was visited by Petitioner. Ms. Piersialla testified that Petitioner appeared to be very frantic and emotionally upset at that time. (T.235)

On February 12, 2016, Ms. Piersialla drove Petitioner to her appointment with Dr. Lubenow due to increasing pain. Since that appointment to the present time, she has never known Petitioner to be able to drive herself. Either Bill, Petitioner's boyfriend, or Ms. Piersialla drives Petitioner around. (T. 239)

Ms. Piersialla notes that Petitioner is better able to control her pain since the insertion of the intrathecal pump. (T.240) She further testified that with the benefit of her intrathecal pump, Petitioner can sit in a chair for 3-4 hours with the family and she will be okay, she will tolerate the pain. (T. 240) Ms. Piersialla testified that Petitioner's mental acuity is not as good as it was before the accident and that a lot of the time, the medication does not help. (T.240) As a passenger in a car, Petitioner is able to ride along with her for 30 – 45 minutes. (T. 242)

On redirect, Ms. Piersialla testified that Petitioner must move positions a lot, which would include going from sitting to standing. (T.244)

Testimony of William Izzo

William Izzo, a police officer for the Village of Lyons, also testified on behalf of Petitioner. Mr. Izzo testified that for almost 12 years, he has been Petitioner's boyfriend. (T. 245-246) Up until March 2009, he would see her almost every day, although they were not living together. (T. 246) During the time he saw her, up until March 2009, the two of them would do everything from boating, motorcycling, laying patio blocks, painting, scraping fences, painting inside rooms, and walking with the kids and her friends. He had a hard time keeping up with her. (T. 247) Also prior to March 2009, they had a sexual relationship. (T. 247) Since her second injury, their sexual activity has gotten less and less until there is none. (T. 253-254) From March 2009 to January 2016, her condition progressively deteriorated. From her first injury, she had pains in her chest and from her second injury, she had pains in her back going down into her buttocks. (T. 248) Since the second injury, he believed, they could not do anything sexually, she couldn't go on the motorcycle, she couldn't go boating, she couldn't walk or do all the physical activities she used to do. (T. 248) When they tried to do physical activities together, she would say that it was painful. (T. 248-249) She was frustrated, both emotionally and physically, because she never really bounced back after the injury. (T. 249)

During the 5 weeks she went back to work, she was reaching for the bolus all the time while laying down. He was forced to get up at a certain time and had a lot of trouble getting her ready for work. When she came home, she had a breakdown. He could tell that she was "spent" and had nothing left in her. (T. 251)

Since being home from work, Petitioner is able to get out of bed, although she does not do so until 10:00 or 11:00. Now she can avoid overstressing or overworking. She can control her pain a lot better now and she can take a break if she needs to lay down. She is able to cook

and clean a little bit. (T. 252) Depending on the day, she can use a light little vacuum on the floor for 10-15 minutes. (T. 261) If she does too much, she pays for it later. (T. 261-262) Mr. Izzo noticed that since Petitioner attempted to return to work in 2016, he has not known her to drive herself anywhere. (T. 252)

Mr. Izzo testified that he takes her to the grocery store and to do errands. When he drives her, he often brings her scooter with him. When she is walking, she needs to have her cane. (T. 253) There are times that she walks with her cane rather than ride her scooter, such as when she is in the grocery store. (T. 258) They have been out of state with each other to Benton Harbor, which was about a 1½ hour drive. (T. 256-257) When he drives her, there are times that he must stop to let her get out and walk. (T. 259-260) They would have to stop 2-3 times so that she could get out and walk. As long as she can stop and take breaks and lay down, they can drive 1-2 hours together.

Deposition Testimony of Marie Kirincic, M.D.

Dr. Kirincic is a physician who is board-certified in physical medicine and rehabilitation, as well as in pain management. (Px. 23, Dep. Ex. 1) Dr. Kirincic completed her Pain Fellowship at the Rehabilitation Institute of Chicago Chronic Pain Care Center. Dr. Kirincic began treating Petitioner on April 9, 2009, within weeks of her March 23, 2009 injury. She continued to treat Petitioner through the time that Dr. Lubenow took over Petitioner's care.

Dr. Kirincic ordered an EMG of her lower extremities, and interpreted the findings as follows:

"The needling part was abnormal on her bilateral and paraspinal. So, it was suggestive of S1, the sciatica. The true sciatica of S1 bilateral, lateral and then right at least inflamed nerve or some irritation to the nerve. (Px. 23, p. 61)

Dr. Kirincic testified that Petitioner was not able to return to work in a full-duty capacity in 2009. (Px. 23, p. 41) Further, Petitioner was not at MMI, and required additional pain management treatment. (Px. 23, p. 89) Dr. Kirincic diagnosed Petitioner as suffering from atypical CRPS that was causally related to the March 23, 2009 injury. (Px. 23, pp.76, 103) She opined that Petitioner had degenerative changes at L5-S1 and a probable disc injury and that the discogenic component of her pain started a couple of months post injury. The EMG was positive for some irritation from the sciatic nerve on both sides. (Px. 23, p. 106) Dr. Kirincic testified that CRPS can affect a patient's torso (Px. 23, p. 52) and that Petitioner's condition is causally related to the March 23, 2009 incident, blunt trauma being the most common cause of CRPS. (Px. 23, pp. 37-38) During her examinations, Petitioner complained of allodynia, hyperpathia, burning pain and radiating pain. Dr. Kirincic documented weakness (Px. 23, p. 14), multiple trigger points (Px. 23, p. 72), limited lumbar range of motion (Px. 23, p. 60), hyperhidrosis/abnormal sweating (Px. 23, p. 76) and temperature dysregulation. (Px. 23, p. 76)

Dr. Kirincic further testified that the treatment performed by Hinsdale Orthopaedic Associates, Dr. Gelband, Dr. Tumlin, Dr. Gruft and RIC was reasonable and necessary. (Px. 23, p. 90)

On cross-examination, Dr. Kirincic testified that the staff at RIC thought there was a temperature difference, but never really documented it. She testified that an EMG is not a test for CRPS, but for a nerve injury. She testified that a trigger point injection can serve as an

objective test. Dr. Kirincic testified that Petitioner has CRPS in the torso. Lastly, Dr. Kirincic testified that Petitioner is still able to work at least part time. (Px. 23, pp. 91-115) On redirect examination, Dr. Kirincic testified that Petitioner favors the RIC treatment regimen versus the Rush Pain Center regimen. (Px. 23, pp. 120-121)

Deposition Testimony of Timothy R. Lubenow, M.D.

Dr. Lubenow is board-certified in anesthesiology as well as pain management. (Px. 24, p. 5, Px. 24, Dep. Ex. 1) He has been working in a private practice and in a teaching capacity at Rush University Medical Center. (Px. 24, p. 12) He is a Full Professor of anesthesiology at Rush Medical College. (Px. 24, Dep. Ex. 1) He is trained in the use of opioid medication and medication delivery systems. (Px. 24, p. 14) Dr. Lubenow's 28-page curriculum vitae is extensive and includes research on CRPS and lectures on the management of RDD/CRPS. Dr. Lubenow testified that CRPS is diagnosed by utilizing criteria of the patient showing 3 symptoms and having 2 physical findings on exam. (Px. 24, p. 11) Dr. Lubenow testified that CRPS is a neurological pain disorder that is characterized by the presence of such things as complaints of hypersensitivity, complaints of swelling, complaints of discoloration, limited range of motion, difference in hair and nail growth and asymmetrical temperature findings. (Px. 24, p. 20)

Dr. Lubenow testified that he has worked over 30 years at the Rush Pain Center. (Px. 24, p. 12) He testified that he has treated tens of thousands of patients with chronic pain conditions. He has treated 1000 to 2000 patients with the use of an intrathecal pump. He further testified that he currently has approximately 250 patients that he treats with use of an intrathecal drug delivery system. (Px. 24, p. 16)

Dr. Lubenow has been Petitioner's treating pain specialist since October 2010. (Px. 24, p. 17) Dr. Lubenow was the physician agreed upon by Petitioner and Respondent after Respondent denied the referral to Mayo Clinic. During his physical examinations of Petitioner, he noted she had significant diffuse allodynia (hypersensitivity) from her lumbar to lower cervical spine, significant allodynia of her lower lumbar vertebral region, and sensitivity to the posterior aspect of her thighs. (Px. 24, pp. 18, 25) He also noted abnormal hair growth on Petitioner's thighs as well as mechanically measured temperature differences of 1.5°C to 1.8°C. (p. 26) Dr. Lubenow testified that this did meet the criteria for CRPS. (Px. 24, pp. 74, 100) Dr. Lubenow testified that allodynia was a constant finding and that the others were not always present at all examinations. Therefore, he has always referred to Petitioner's diagnosis as atypical CRPS. (Px. 24, p. 104)

Petitioner also had positive findings of S1 radiculopathy in her low back. Dr. Lubenow testified that Petitioner was vulnerable to this type of nerve injury from the March 23, 2009 accident. (Px. 24, p. 19) Dr. Lubenow testified:

> Her current condition of ill-being is atypical complex regional pain syndrome, or alternatively one may refer to it as a neuropathic pain condition of the low back lumbar spine and legs bilaterally, she has a secondary diagnosis of bilateral S-1 radiculopathy. (Px. 24, p. 72)

Dr. Lubenow noted that the EMG was objective evidence of a neuropathic pain due to the S-1 Radiculopathy. (Px. 24, p. 72)

On February 27, 2012, Dr. Lubenow implanted a permanent intrathecal pain pump in Petitioner, which was authorized by Respondent after utilization review. (Px. 24, pp. 38-40) The intrathecal pump allows opioid medication to bypass Petitioner's GI system and

cardiovascular system. (Px. 24, p. 42) Thereafter, he and his associates continued to titrate Petitioner's medications to achieve the best pain control. (Px. 24, p. 59)

In August 2012, Dr. Lubenow referred Petitioner for an FCE that was found to be valid. The FCE evaluator limited Petitioner to 4 hours of work per day and limited her to light-duty work. (Px. 24, p. 45) He ordered a driving evaluation at Marianjoy. The tester concluded that Petitioner could only safely drive for periods of 20 minutes locally due to sitting tolerances without the use of adaptive gear or additional training. (Px. 24, p. 51) A subsequent FCE, though conditionally valid, demonstrated the same general restrictions. Based on these results, Dr. Lubenow advised vocational rehabilitation. (Px. 24, p. 51) He recommended a strict 3-hour work day limitation and 15-minute local driving limitation. (Px. 24, p. 60) Petitioner was allowed to use a cane for short distances and a scooter for longer distance. (Px. 24, p. 57) During that period Dr. Lubenow allowed refills of the pump to be done in Petitioner's home via various providers. (Px. 24, p. 58)

On February 12, 2016, Petitioner returned to Dr. Lubenow after having attempted a return to work for the previous five weeks. (Px. 24, p. 64) Dr. Lubenow noted Petitioner complained of increasing pain in her back and legs with new pain in her mid-thoracic area and burning in her buttocks. (Px. 24, p. 64) Her pain was increasing and was no longer under control. Dr. Lubenow noted that Respondent's examining physician, Dr. Konowitz, had removed any driving restrictions and work hour restrictions even though Dr. Konowitz had previously agreed with such restrictions. Dr. Lubenow disagreed with the removal of those restrictions and discussed with Petitioner her attempted return to work. He noted that Petitioner was having difficulty controlling her pain while driving beyond the restrictions he imposed. Petitioner was to be allowed to lay down at work for over an hour per day. At work she had no contact with students

and performed little to no actual work. (Px. 24, p. 65) During his examination of her, Dr. Lubenow noted limping, slow gait, increased allodynia on Petitioner's low to mid back and sacral area. (Px. 24, p. 65) He noted increased sensation to the application of an alcohol pad on Petitioner's legs, which he found to be confirmation of nerve dysfunction. (Px. 24, p. 66) Dr. Lubenow found Petitioner's condition to be consistent with chronic atypical CRPS, worse since her return to work. (Px. 24, p. 66) He offered a secondary diagnosis of bilateral S-1 radiculopathy. Based upon his course of care, Dr. Lubenow found Petitioner to be permanently and totally disabled. (Px. 24, p. 67)

Dr. Lubenow testified that Petitioner does not have opioid induced hyperesthesia. (Px. 24, pp. 66, 81) He bases his conclusion on the small dose of opioid Petitioner is receiving (Px. 24, p. 66), the fact that he has specifically tested Petitioner for this condition (Px. 24, pp. 82, 97), and his experience treating patients with opioid induced hyperesthesia numerous times in his career (Px. 24, p. 80). Dr. Lubenow found that Petitioner is at MMI (Px. 24, p. 86), that she is unable to return to gainful employment (Px. 24, p. 86), that she will require continuing treatment with use of the intrathecal pump and oral medications (Px. 24, p. 87), that the continued use of opioids in the intrathecal pump is within the guidelines of evidence-based medicine (Px. 24, p. 79), and that Petitioner's condition is causally related to the March 23, 2009 work accident. (Px. 24, p. 75)

On cross-examination, Dr. Lubenow testified that he could alternatively diagnose Petitioner with neuropathic pain syndrome. (Px. 24, p. 90) Dr. Lubenow testified that as of January 2011, the objective sign for Petitioner was an abnormal EMG. (Px. 24, p. 91) He also testified that the first time he evaluated Petitioner, he found that she did not meet the Budapest criteria for CRPS. At some later visits, however, he found that she did have sufficient physical exam findings to have met the Budapest criteria. (Px. 24, p. 100) On redirect examination, Dr.

Lubenow testified that from the time he implanted the intrathecal pump in Petitioner, he has given her small doses of the opioid. (Px. 24, p. 105) With regard to the issue of opioid-induced hyperalgesia, during that time frame, Dr. Lubenow reduced some of the medications. (Px. 24, p. 90)

Report of Patricia Merriman, Ph.D.

In a report dated March 23, 2016, Petitioner offered the response of Dr. Patricia Merriman, Petitioner's treating pain psychologist. (Px. 22) Dr. Merriman first notes that the testing procedure documented by Dr. Obolsky is inappropriate to rely upon in reaching his final conclusions. (Px. 22, p. 2) Likewise, many of the tests used are inappropriate to apply to Petitioner. Many of the other conclusions are incorrectly interpreted given the facts surrounding Petitioner's medical history. For example, there is no indication in her history that Petitioner was experiencing psychological problems prior to her injury. Petitioner had not sought treatment, she was working in a demanding job, and her relationships with family and friends appear to have been good. Petitioner has stated that her life at the time of the injury was good. She would like to return to that life, but the pain interferes. Dr. Obolsky's report purports to test for malingering which, according to Dr. Merriman, is not possible to test for because it is not a diagnosis. Somatoform disorders can play a role in legitimate pain conditions. Dr. Merriman also opined that Petitioner has been diagnosed as having a legitimate medical condition that causes severe pain, which is not psychogenic, but that this type of pain, more than most, can be affected by stress. Dr. Merriman found that Petitioner's report of distress has been congruent with her situation. (Px. 22)

Report by Vocational Rehabilitation Counselor at Vocamotive, Inc.

At the request of Respondent's TPA, on April 28, 2014, Petitioner presented to vocational rehabilitation counselor Lisa Helma, CRC, at Vocamotive, Inc., for vocational rehabilitation and possible placement services. (Px. 21, p. 13) Ms. Helma stated that she reviewed numerous medical records but will only discuss in her report those records that pertain to the employability Petitioner. (Px. 21, p. 17) She reviewed the May 2, 2014 restrictions by Dr. Lubenow, the February 26, 2014 medical note from Dr. Lubenow, the October 17, 2013 FCE, which was considered to be a "conditionally valid" representation of Petitioner's physical capabilities, and the March 2, 2011 psychological evaluation by Dr. Patricia A. Merriman. (Px. 21, pp. 17-18) The Arbitrator notes that Ms. Helma made no mention of, *inter alia*, the opinions of Dr. Alexander E. Obolsky, Dr. Mary L. Moran, Dr. Richard L. Noren, and Dr. Howard S. Konowitz. In addition to considering Petitioner's employability based on her physical capabilities, she considered Petitioner's age, educational status, vocational history, and socioeconomic status. (Px. 21, pp. 19-21) Ms. Helma found that given Petitioner's driving restrictions, and without transportation assistance, she would be limited to searching for employment in a small radius around her home. Ms. Helma concluded that Petitioner has lost access to her usual and customary line of occupation of Special Education Teacher. She further concluded that given the medical documentation available, Petitioner has lost access to any viable labor market and thus, found that her disability is total. (Px. 21, pp. 24-25)

Deposition Testimony of Former Principal Wayne Dendler

Petitioner offers the testimony of Wayne Dendler. (Px. 36) Mr. Dendler was in the employ of Respondent as the Principal at AFL from July 1, 2006 through June 30, 2017. (Px. 36,

p. 5) During his tenure, he had the opportunity to observe Petitioner performing her job duties on a daily basis. He described Petitioner as a competent and active Special Education Teacher with no limitations prior to her 2009 accidents. (Px. 36, pp. 7-8) Mr. Dendler testified that when Petitioner attempted to initial return to work as a Special Education Teacher in 2010, she had little energy, used a wheelchair to get around and had limited capacity to teach her students and engage in activities. Mr. Dendler described the students at AFL as having severe emotional and control issues, which teachers at regular schools could not control. Violence by students was a common occurrence. (Px. 36, pp. 10-11)

Mr. Dendler testified that he first learned that Petitioner was coming back to AFL in 2016 from Bonnie Jordan, Respondent's Assistant Director and Leanne Frost, Respondent's Director. He was advised that Petitioner was still being paid by ECHO and, therefore, they were to find a way to bring her back to work. Mr. Dendler testified that he objected to Petitioner's return because AFL was not appropriate due to safety concerns. (Px. 36, p. 16) Mr. Dendler identified the necessary duties of an Aide to include the lifting of a student, but more importantly, the active participation in physical restraint of a student. (Px. 36, p. 14) Further, an Aide is expected to continually interact with students even if they are violent. (Px. 36, p. 15)

Mr. Dendler observed Petitioner on January 11, 2016, the day she returned to AFL as an Aide. He described her as weak, tired and worn out. (Px. 36, p. 18) Petitioner was assigned to the art classroom and placed at a desk behind the students and advised to avoid any interaction with the students. (Px. 36, p. 18) Petitioner had no contact with the students of the classroom. Petitioner was not performing the duties of an Aide. (Px. 36, p. 20) He is aware of the January 13, 2016 incident when Petitioner's sister, Elizabeth Piersialla, was struck in the face by a student and sustained a broken nose. (Px. 36, p. 21) Mr. Dendler testified that he was directed by

Bonnie Jordan and Leanne Frost to deliver the list of accommodations to Petitioner. (Px. 31) Regardless of the accommodations, Mr. Dendler testified, Petitioner's physical condition deteriorated over the 5 weeks she attempted to return to work. He noted that during his tenure as Principal of AFL, no other employee was provided such significant accommodations and still was allowed to work as a Teacher or an Aide. When he was eventually advised that Petitioner was unable to continue working at AFL, Mr. Dendler testified, he was not surprised as he felt she did not belong in that environment due to her health. (Px. 36, p. 25)

On cross-examination, Mr. Dendler testified that although Respondent never put anything in writing similar to what they did with Petitioner, they have taken people back to work with job accommodations. Mr. Dendler testified that Petitioner provided minimal help to the art teacher. He knew that Petitioner had pain due to her injury and he was not sure if she had a pain pump in her or not. Mr. Dendler did not think Petitioner could come back to work with her restrictions because of the nature of the students in Respondent's building. It does not matter where you are because the students don't care - - or, they could get in a physical altercation. He also thought Petitioner could not perform the duties of a Paraprofessional such as circulating a classroom, supervising a hallway, or supervising the bus areas. (Px. 36, pp. 25-28)

On redirect examination, Mr. Dendler testified that the minimal paperwork Petitioner performed in the art classroom consisted of taking attendance and maybe recording assignments in the computer. (Px. 36, p. 29)

Deposition Testimony of Julie M. Wehner, M.D.

Respondent offered the evidence deposition of Dr. Wehner. (Rx. 3) Dr. Wehner is a board-certified orthopaedic surgeon who concentrates on spine surgery. (Rx. 3, p. 7) Dr. Wehner

noted that Petitioner had no prior history of chronic pain. (Rx. 3, p. 11) Dr. Wehner examined Petitioner on June 1, 2009, which was less than 3 months after the March 23, 2009 incident. (Rx. 3, p. 9) Dr. Wehner found mild pain with light palpation at the right paraspinal area at approximately T12 and pain underneath the bra area of her chest. (Rx. 3, pp. 11-12) She noted that Petitioner self-limited her range of motion. (Rx. 3, p. 12) Petitioner complained of a diffuse pattern of pain in her thoracic, lumbar, chest and upper abdominal areas. (Rx. 3, pp. 13-14) Dr. Wehner's impression was that Petitioner had soft tissue contusions and sprains that would be related to the accident, but continued complaints of pain that were not explained by the accident. (Rx. 3, p. 14) Dr. Wehner noted the MRI report indicated disc desiccation at L5-S1 that was mostly an anatomic variant or a normal aging process, but not pathologic or clinically significant (Rx. 3, p. 15) Based upon her examination of Petitioner, as well as a review of limited records, Dr. Wehner opined Petitioner could return to full-duty work. (Rx. 3, p. 18) Dr. Wehner advised ceasing chiropractic and acupuncture treatments, (Rx. 3, p. 19) and recommended she should perform home exercises.

On cross-examination, Dr. Wehner testified that she conducts §12 examinations 100% of the time for Respondents. (Rx. 3, p. 26) Dr. Wehner testified that, as of June 1, 2009, Petitioner's condition of ill-being did appear to be causally related to the March 23, 2009 work injury. (Rx. 3, p. 28) Dr. Wehner testified to reviewing records that were for another patient. (Rx. 3, p. 28) She reviewed no treating records other than those submitted at the initial examination 11 months prior to her deposition. (Rx. 3, p. 29) Dr. Wehner felt that Petitioner did receive some benefit from chiropractic treatment, that 6-12 visits would be reasonable for patients with soft tissue injuries, but that 4-6 weeks would be reasonable for patients with a chronic, underlying condition. (Rx. 3, p. 36) Dr. Wehner did not find that Petitioner deliberately misrepresented her

symptoms. (Rx. 3, p. 36) Dr. Wehner knew that Petitioner treated with the staff at RIC, whom she finds to be qualified and competent. (Rx. 3, pp. 41, 31) Dr. Wehner was unaware of the specific treatment at RIC, including any FCE results. (Rx. 3, pp. 41, 31)

On redirect examination, Dr. Wehner testified that in formulating her opinions, she did not rely on the few documents that were for another patient. Such records were sent to her by ATI. (Rx. 3, pp. 44-45) On June 1, 2009, when Petitioner presented to her, she did not have chronic pain. (Rx. 3, p. 45)

On recross examination, Dr. Wehner testified that soft tissue injuries can turn into chronic pain. (Rx. 3, pp. 46-47) Dr. Wehner testified that as of June 1, 2009, she did not think that Petitioner was a candidate for the RIC program. (Rx. 3, p. 47) However, Dr. Wehner has no treating records or test results for anything that occurred after June 1, 2009 (Rx. 3, p. 47). For a condition to be chronic, Dr. Wehner testified, the pain has to last at least 6 months. (Rx. 3, p. 48) At the time she examined Petitioner, Petitioner was 3 months post-accident. (Rx. 3, p. 48)

On redirect examination, Dr. Wehner testified that a person can complain of pain for 6 months and have nothing wrong with him. (Rx. 3, p. 51) She testified that Petitioner's injury was not like a crushing injury or something that would lead you to believe she had such soft tissue injuries that she would end up with chronic pain. She was knocked down. There was no bruising and she had a full range of motion. (Rx. 3, pp. 51-52)

On redirect examination, Dr. Wehner testified that Petitioner sustained a trauma on March 23, 2009, but it was not enough to cause a chronic pain syndrome. (Rx. 3, p. 54)

Deposition Testimony of Richard L. Noren, M.D.

Dr. Noren is board-certified in pain management and anesthesiology (Rx. 9, pp. 5-7) He was Professor in the Department of Anesthesiology between 1992 – 1993 at Emory University School of Medicine. Currently, Dr. Noren is in private practice at Pain Care Consultants from 1995 to the present. (Rx. 9, p. 6)

On July 7, 2011, Dr. Noren testified that he saw the Petitioner for the first time for a physical examination. She was 47 years old, left-hand dominant, weighed 136 lbs., and reported that in March 2009, a student pushed her over a forklift while at a grocery store, so she hit the back of the forklift. She fell so she was sitting on the forklift between the bars. She reported treatment that included a 5-day epidural infusion at Rush Presbyterian Hospital. She was unable to get of the bed for the first 2 days and did not complete any physical therapy. She was also scheduled for a trial of an intrathecal pump. She personally denied any upper or lower extremity nail changes, though she reported sweating from her knees to her thighs and at times, her whole body sweated. She denied any color changes. She states that her thighs were swollen, and they had gone up a pants size. (Rx. 9, pp. 10-12) Regarding her activities, she testified that she was limited to walking for 5 to 15 minutes. When sitting, she frequently needed to change positions, and was not able to drive due to medications and intermittent confusion with the medications. She said that she last drove in the fall on 2010. (Rx. 9, p. 12) She reported that she uses a wheelchair when going grocery shopping and has severe body aches with prolonged distances of walking. Her current medications are Gabapentin, Cymbalta, Hydrocodone, 3 to 6 tablets per day, Tramadol, 2 to 4 tablets per day, Amitza, Synthroid and Trazodone. (Rx. 9, p. 13)

During his physical examination, Dr. Noren testified, her gait was normal. She had difficulty standing on her toes and reported pain over the lateral portion of her hips, over the

trochanteric region when standing on her toes. There was no allodynia in the upper extremities and the lower extremities with repeated testing. Her back had severe allodynia in the thoracic and lumbar region to slight touch. No color changes or swelling was noted. (Rx. 9, pp. 14-15) On the motor exam, she had normal motor strength in both upper and lower extremities, symmetric reflexes, and negative straight leg raising. There were equal temperatures in the upper and lower extremities. There was no swelling in the upper or lower extremities and no nail changes. Her legs appeared to be shaved. She had normal pulses. There was an equal vein pattern in both of her feet. And specific measurements of the upper and lower extremities showed no measurable edema. (Rx. 9, p. 15) At the end of her physical examination, he reached the conclusion that he was unclear what her diagnosis was. He recommended that she see a rheumatologist for further evaluation as a source of explanation for pain syndromes. (Rx. 9, p. 16) The subjective complaints she made, including the allodynia, were all related to her fall on March 23, 2009. (Rx. 9, p. 17)

Dr. Noren also had the opinion that there were no objective findings of complex regional pain syndrome during his examination of the Petitioner on July 7, 2011. (Rx. 9, p. 17) Dr. Noren testified that of the Budapest criteria to diagnosis CRPS, she had the subjective finding of allodynia, but there were missing signs such as no temperature changes, edema, and no vasomotor or sudomotor changes. Her complaints of allodynia in and of itself could be any disease, but to draw the conclusion that it is CRPS or atypical CRPS is merely conjecture. (Rx. 9, p. 18) Regarding work, Dr. Noren testified that it was his opinion that she was able to meet her job description based upon the exam findings he had received. (Rx. 9, pp. 20-21)

Dr. Noren also provided opinions following a medical records review of all of Dr. Lubenow's notes, dated October 14, 2010 through August 4, 2016, both FCEs dated August 1,

2012 and August 17, 2013 and the IME report of Dr. Alexander Obolsky, dated June 7, 2013. (Rx. 9, pp. 21-22) Dr. Noren disagreed with Dr. Lubenow's diagnoses of either atypical CRPS or neuropathic pain condition with an S1 radiculopathy. When Dr. Noren saw her on July 7, 2011, he found that she had no exam findings of an S1 radiculopathy. (Rx. 9, pp. 22-23)

Dr. Noren also addressed Dr. Lubenow's diagnosis of "atypical CRPS", which Dr. Noren believed is just an opinion based on Dr. Lubenow's own choice to use this term. However, there is no such clinically acceptable diagnosis as atypical complex regional pain syndrome and that the pain management community in its text books, its journals, and its clinical practice does not, in any place, recognize a diagnosis of atypical CRPS. (Rx. 9, p. 24)

As to whether the intrathecal pump therapy is currently necessary and causally related to her March 23, 2009 accident, Dr. Noren believed that it was not. She had undergone a surgical procedure for no specific diagnosis, an interventional invasive treatment into her spinal canal for no specific pathology. He did not believe the records showed that it resulted in any functional improvement. (Rx. 9, p. 25) It also made no anatomic or physiologic sense that a doctor would conduct a surgery, with an incision and dissection down to the ligaments along her spine, in the same region as her neuropathic pain. It is contraindicated due to her description of allodynia over her entire back. So, performing surgery in the same region as the complained pain would be contraindicated because it would likely exacerbate or worsen the syndrome. However, that would be for someone who actually has CRPS. (Rx. 9, pp. 25-26)

Currently, he found Ms. Jacobs to be at maximum medical improvement. He based that opinion on having multiple medications, some of which she has responded to. She had a spinal cord stimulation trial and she has had an unnecessary intrathecal pump, which has not improved her condition. (Rx. 9, p. 28) Petitioner also was likely functioning at a light physical demand

level following the August 2012 functional capacity evaluation, and Dr. Noren did not see anything in the records to suggest she was capable of a higher level of function. (Rx. 9, p. 30) Based on the FCEs, it was Dr. Noren's opinion that she was able to return to work as a Teacher at ECHO Joint Agreement. (Rx. 9, p. 33)

On cross-examination, Dr. Noren testified that he has conducted 20-50 examinations for MES Solutions, for whom he conducted an examination in this case. (Rx. 9, p. 40) He testified that he no longer has the records he reviewed before he examined Petitioner on July 7, 2011. (Rx. 9, p. 41) He testified that he performs about 2 legal-medical exams per week, and almost all of them are done on behalf of the employer. (Rx. 9, pp. 43-44) He charges $1,500.00 per examination. (Rx. 9, p. 44) Dr. Noren testified that he last published in 1994; none of his 3 publications deal directly with the treatment of CRPS/RSD. (Rx. 9, p. 47) CRPS is a diagnosis of exclusion. (Rx. 9, p. 49) Dr. Noren did not agree that an opinion from someone who is qualified to make a CRPS diagnosis holds more value and more weight if that person has a long-term relationship, i.e., spends more time with the patient over a longer period of time. Rather, he would say that on that specific visit, the patient might have met the criteria. (Rx. 9, p. 50) Dr. Noren testified that the Budapest criteria is the best criteria we have at the current time for an undiagnosable, non-specific disease. (Rx. 9, p. 51) Dr. Noren then identified some of the symptoms and signs of CRPS. (Rx. 9, pp. 51-52) Additional records would help him in determining if, on a specific date, she had findings that met the Budapest criteria. (Rx. 9, pp. 57-58) Upon examination, Dr. Noren found severe allodynia in her thoracic and lumbar region to the slight touch. Petitioner would report extreme pain and withdraw when the doctor touched her lower lumbar area. She also reacted with a slight pilomotor change, i.e., goosebumps, with light touching to her back. This is considered a possible indicator of CRPS. (Rx. 9, pp. 60-61) Dr.

Noren tested, by touch, her upper extremities and her lower extremities for any temperature differential, but he found none. (Rx. 9, p. 61) He testified that he did not recall that Dr. Lubenow documented changes in temperature. (Rx. 9, p. 62) Dr. Noren testified that he wrote: "Catherine Jacobs provides a history and subjective exam findings consistent with neuropathic pain," that "this is an extremely unusual presentation for a complex regional pain syndrome," and that "this appears to be causally related to her injury of March 23rd of 2009." (Rx. 9, pp. 63-64) Dr. Noren testified that he reviewed records that indicated or confirmed that Petitioner consistently complained of chronic pain since March 23rd of 2009 and that he wrote that Catherine Jacobs has an atypical presentation of the syndrome, i.e., CRPS. (Rx. 9, pp. 64-65) He referred Petitioner to a rheumatologist and assumed the rheumatologist's findings were negative. (Rx. 9, p. 65) Dr. Noren has implanted 20-30 intrathecal pumps over the course of his career. (Rx. 9, p. 67) Respondent did not contact Dr. Noren after they received the results of the utilization review; he had no discussion with them between 2011 and 2017. He also mentioned he wanted an FCE. (Rx. 9, p. 68) At that time, Dr. Noren was provided with a job description but he was never informed that Petitioner's job duties included the physical restraint of disabled children and young adults. (Rx. 9, p. 70) Dr. Noren found no evidence of S1 radiculopathy during his only examination of her on July 7, 2011 and he was never sent the results of an EMG study. (Rx. 9, pp. 72-73) If positive EMG results were sent to him, they would not have been significant because they did not match his exam findings. (Rx. 9, p. 74) A diagnosis of CRPS is a well-recognized, non-fictitious medical diagnosis and is a clinical diagnosis. Dr. Noren found Petitioner to be at MMI and believed her work restrictions to be consistent with the 2 prior FCEs. (Rx. 9, pp. 75-76) Dr. Noren agreed that he is not a psychologist and that there is no finding in any record that Petitioner is malingering. (Rx. 9, pp. 78, 81) In Dr. Noren's experience, many

people who have a chronic pain condition do show issues of somatization. (Rx. 9, p. 82) He felt that Petitioner can work light-duty work for a normal workday. Such light duties would not include physically restraining the students. Dr. Noren did not know if Petitioner has any documented driving restrictions. (Rx. 9, pp. 82-84)

On redirect examination, Dr. Noren testified as part of his retention policy, he holds onto physical records for less than a year. (Rx. 9, pp. 86-87) Dr. Noren testified that his private practice is orthopedic-related, with a lot of people having spinal issues. Probably 3% to 5% of his current patients have a diagnosis of CRPS. (Rx. 9, p. 87) Early in his practice, through 2011, he personally performed insertion of intrathecal pumps and he still manages his patients with pumps and has replaced pumps in patients who have pumps implanted in them. (Rx. 9, p. 88) For at least 15 years, he was putting pumps into his patients. (Rx. 9, p. 88) He also testified that his examination of Petitioner was consistent with Dr. Lubenow's exam of Petitioner. Other than in his review of the medical records, Dr. Noren has not seen documented physical findings that would meet the criteria for CRPS. Dr. Noren reviewed 6 years of Dr. Lubenow's records from 2010-2016. (Rx. 9, p. 89) Dr. Noren testified that it was unusual for Petitioner to have had acupuncture and to have undergone an EMG since this is a woman who complains of severe allodynia, who states that it is extremely painful for wind to blow on her back. Most people with CRPS cannot tolerate needles being stuck in them. (Rx. 9, pp. 89-90) Dr. Noren testified that when he saw Petitioner, he did not specifically diagnose Petitioner with CRPS and that when he wrote "this is an extremely unusual presentation for complex regional pain syndrome," he would have been commenting on what Dr. Lubenow had opined. (Rx. 9, pp. 89-90) Dr. Noren testified that there is not a body of medical literature that discusses atypical complex regional pain syndrome. (Rx. 9, p. 92)

On recross examination, Dr. Noren testified that one either meets the criteria for the diagnosis of CRPS, or one does not. (Rx. 9, p. 93)

Deposition Testimony of Howard S. Konowitz, M.D.

Dr. Konowitz, one of Respondent's Section 12 physicians, is board-certified in anesthesiology and pain management. (Rx. 8, p. 5, Rx. 8, Dep. Ex. 1) Between 2010 and 2015, Dr. Konowitz served as the clinical Assistant Professor for the Department of Anesthesiology at Loyola University Medical Center. (Rx. 8, p. 6, Dep. Ex. 1) Dr. Konowitz has maintained his own practice in Glenview, Illinois since 2001. (Rx. 8, p. 7)

Dr. Konowitz examined the Petitioner on three different occasions, producing a total of eight IME reports or addendum reports. (Rx. 8, p. 10) His first appointment with Petitioner on May 23, 2012. His examination included having the Petitioner fill out a 6-page pain questionnaire as well as three Scantron questionnaires. These questionnaires provide a screening test among other screening tools, in order to determine treatment and proper medication prescriptions. (Rx. 8, p. 12)

Dr. Konowitz reported Petitioner's active medications including Gabapentin, Cymbalta, Tylenol, Levothyroxine, Colace, Fleet enema, Amitiza, Flovent, and multivitamins. (Rx. 8, p. 13) Dr. Konowitz also performed a physical examination of her. When assessing for complex regional pain syndrome, there was hyperalgesia, (an increase in pain to a noxious stimuli). However, she had no color changes, no temperature changes, no edema, no trophic or nail changes. (Rx. 8, p. 15) These are all signs and symptoms in the Budapest criteria for complex regional pain syndrome ("CRPS") In her case, one criterion, hyperalgesia, was not sufficient to meet the Budpest criteria, which requires meeting 3 out of 4 symptoms.

The Budapest criteria, which were published around 2006, were developed by 30 physicians. The condition has had many names over the years. Complex regional pain syndrome used to be reflex sympathetic dystrophy, which used to be causalgia. There is renaming of the condition which goes back to the 1800s. There were also earlier criteria for this disease, which is called a syndrome because there is no specific blood test, such as with diabetes or hypertension, in which blood can be drawn to prove the condition. With complex regional pain syndrome, you must meet the Budapest criteria because there is no specific test that confirms the diagnosis. (Rx. 8, p. 17)

The Budapest criteria include the following four symptom categories: (1) reports of hyperalgesia or allodynia; (2) reports of vasomotor changes, i.e., temperature asymmetry or skin color; (3) reports of sudomotor changes, i.e., sweating changes or edema on exam; and finally (4) reports of motor/trophic changes, i.e., any loss of hair, increased hair, changes in the nails and see changes to the skin along with specific temperature changes in areas. (Rx. 8, p. 18, Rx. 8, Dep. Ex. 12: "Complex Regional Pain Syndrome: Treatment Guidelines, June 2006, published by Reflex Sympathetic Dystrophy Syndrome Association, containing the "Revised CRPS criteria proposed by the Budapest Consensus Group") Here, in Petitioner's situation, Dr. Konowitz testified, he only found 1 of the Budapest criteria, that being the subjective complaints of mechanical allodynia. However, in order to render a diagnosis of CRPS, one needs to have at least 1 symptom in 3 of the 4 categories, and at least 1 sign in 2 or more of the categories. (Rx. 8, Dep. Ex. 12, Rx. 8, p. 20) The sign categories are the same as the symptom categories except there must be confirmation via objective test at the time of evaluation. (Rx. 8, Dep. Ex. 12) Additionally, the criteria are based on what is examined on the patient on the day they had the complaints and symptoms. So, either the patient has full Budapest signs or symptoms on that

day, or not. It cannot be a piecemeal diagnosis with signs from one day to the next. (Rx. 8, p. 21) Dr. Konowitz formed an opinion that Ms. Jacobs suffered from subjective pain complaints, but beyond that, she did not meet the criteria of complex regional pain syndrome. He therefore requested additional records including an independent psychiatric exam and an FCE. (Rx. 8, p. 22)

Unlike Dr. Lubenow, who had diagnosed Ms. Jacobs with "atypical CRPS", Dr. Konowitz testified that there is no such diagnosis of "atypical CRPS". Either you meet the criteria and have CRPS, which is the Budapest consensus, or not. There are no criteria saying that you have a diagnosis of atypical CRPS. (Rx. 8, p. 24)

Dr. Konowitz testified that after reviewing Dr. Obolsky's report, he learned that there were psychiatric and secondary pain factors that could affect the severity and main physical exam symptoms and her pain complaints so that her subjective pain complaints could not be used to validate any underlying pain severity. (Rx. 8, p. 31) On August 20, 2013, Dr. Konowitz also reviewed the Petitioner's job description and believed that she could perform all parts of the job description except for contact with physical restraint of students. (Rx. 8, p. 32)

Regarding her intrathecal pain pump, by January 17, 2014, Dr. Konowitz opined that weaning and discontinuing the pain pump would be recommended because you need to have a physical diagnosis and have met the psychological criteria to clear someone to have an intrathecal pump. In neither case was this met. (Rx. 8, p. 33) Here, the Petitioner did not have a diagnosis. Weaning her off the pump normally takes over 6 months. (Rx. 8, p. 34) The only 2 medications necessary for her treatment, as of January 17, 2014, were Gabapentin and Cymbalta and those were the only two medications related to this accident. (Rx. 8, p. 37) Additionally, at

that point, her activity restrictions were light-duty, which was based on the U.S. Department of Labor criteria, that one can lift up to 20 lbs. (Rx. 8, p. 37)

On October 10, 2014, Dr. Konowitz conducted another physical examination of Petitioner. Regarding CRPS, the only Budapest finding was hyperalgesia present in the extremities. He was not allowed to touch the upper part of her back as she would not let him examine her with the pin prick. (Rx. 8, p. 39) He did not see criteria such as edema, sweating, nail changes, hair growth changes, or temperature changes, which are things required by the Budapest criteria. (Rx. 8, p. 40) Based on his physical examination and the Budapest criteria, there was no diagnosis of CRPS. (Rx. 8, pp. 40-41) According to Dr. Konowitz, the treatment protocol provided at Rush-Presbyterian-St. Luke's through Dr. Lubenow is a very different protocol than the rest of the world. (Rx. 8, p. 43) The issue here gets down to a diagnosis. Dr. Lubenow has a CRPS treatment plan without a CRPS diagnosis. (Rx. 8, p. 44) Dr. Konowitz testified that he trained with Dr. Lubenow years ago. (Rx. 8, p. 45) During his examination of the Petitioner, Dr. Konowitz noted that there were no objective findings and so she did not meet the criteria for CRPS. (Rx. 8, p. 46) Current medications for her included Clonidine, Dilaudid, which is specifically in the pump, and the pump cannot be stopped. She also took Wellbutrin, Celebrex, Gabapentin, Cymbalta, which are all psychological medications and for the nerves so that is reasonable treatment for her. (Rx. 8, p. 47)

On March 26, 2015, Dr. Konowitz conducted another physical examination of Petitioner. (Rx. 8, Dep. Ex. 7) During his physical examination of Petitioner on March 26, 2015, from the CRPS standpoint, there was no temperature asymmetry, no edema, and no color changes found, all of which are criteria for the Budapest consensus group to make the diagnosis of complex regional pain syndrome. (Rx. 8, p. 50) Dr. Konowitz also reviewed the Marianjoy driving

evaluation, dated May 14, 2013. (MES/Marianjoy may have provided the report with a typo date of May 14, 2015, when in fact the report should be dated May 14, 2013.) (Rx. 8, p. 54) He came to the opinion that, based upon the Marianjoy report, a discussion with the patient, and her examination, that she could drive for 20 – 30 minutes at a time, get out of the car and stretch, and go back for another 20 – 30 minutes of driving. (Rx. 8, p. 52) According to Dr. Konowitz, the driving restrictions would only include being able to stretch every 20 – 30 minutes, and that she may have permanent adaptive controls available if needed. (Rx. 8, p. 58)

In his final report of November 5, 2015, his diagnosis was "mechanical allodynia". With the Petitioner, there is no other diagnosis that justifies her subjective complaints. It wasn't that there were other diagnoses that fit her, he just had her at allodynia. Allodynia is defined as a subjective experience to a non-painful experience. For example, when putting on clothing causes pain or, in her case, when rolling a pin wheel on her feels like a knife cutting her skin, those signs don't fit or justify a diagnosis. (Rx. 8, p. 59) Dr. Konowitz, while reading his answer to question 1 in his November 5, 2015 addendum report, noted that "mechanical allodynia … can be caused by intrathecal opoids, which have been medically prescribed for her pain state. This is opoid-induced hyperalgesia, which has been reported with chronic intrathecal use of opoids, but to date, frequency is intermittent. Alternatively, there is no diagnosis that justifies the subjective complaints." (Rx. 8, Dep. Ex. 10, p. 1) Here, there was no reason to install an intrathecal pump as it is not placed for subjective complaints. A diagnosis of mechanical allodynia is not a sufficient diagnosis for a pain pump. Instead, you need to have either a malignant pain state or a non-malignant pain state. In the non-malignant pain state group, you must have a definitive diagnosis. In her group, there is no definitive diagnosis. Here, we have subjective pain complaints, which do not correlate with all the lists given before about intrathecal pain pumps,

such as needing it for CRPS, mechanical back pain, or post-laminectomy pain syndrome, for example. (Rx. 8, p. 64) Here, Dr. Konowitz recommends that Ms. Jacobs can perform sedentary-duty work that includes sitting, standing, and walking for an 8-hour period.

Regarding her psychiatric examination with Dr. Obolsky on June 7, 2013, Dr. Konowitz confirmed that the Petitioner exhibited psychiatric and secondary gain factors affecting the severity and maintenance of her physical symptoms and pain. She presented with multiple psychiatric factors such as dependent personality traits and somatic reactions under stress. Somatic reactivity under stress results in functional impairment and disability in this patient; this would account for all her pain on a daily basis in addition to her potential hyperalgesia. (Rx. 8, p. 67)

On cross-examination, Dr. Konowitz testified that MES Solutions hired him to examine Petitioner and to write the reports and addendums. He charged $1,500.00-$2,000.00 per examination, and $1,250.00/hour for his deposition testimony. He further testified that he conducts approximately 2 IMEs per week. MES Solutions provided all the medical records for his review. With regard to his curriculum vitae, Dr. Konowitz testified that the last time he published was in 1999, which was during his residency. Each time he met with Ms. Jacobs, he remembers spending 1½ hours with her. So, in her case, he spent approximately 4½ hours total during his 3 exams of her. (Rx. 8, pp. 69-75) They discussed the EMG report and the Marianjoy report that includes the driving exam. (Rx. 8, p. 76) Dr. Konowitz found the results of Petitioner's Cage Questionnaire, which assesses the risk of long-term opioid use, to be negative. (Rx. 8, pp. 78-79) He also noted that Petitioner did not report pre-existing complaints of pain that were similar to those she experienced following the incident. (Rx. 8, p. 84) Dr. Konowitz also testified that he truly believes that Petitioner feels the pain she described to him. In returning her

to sedentary duty work, Dr. Konowitz testified, he was giving her the lowest possible duty from her subjective complaints. He did not see that she was going to be any less than sedentary duty, but she could be greater than sedentary duty. (Rx. 8, p. 86) Dr. Konowitz testified that he does not know the workings of Dr. Obolsky's office and does not know whether he followed the appropriate protocol. (Rx. 8, p. 89) When he referred to secondary gain, that did not equate to intentional fraud. (Rx. 8, pp. 92-93) Dr. Konowitz testified that he does not agree with the placement of the pump because of the risks involved and because one must have a diagnosis that meets the criteria. Dr. Lubenow does not have that diagnosis. (Rx. 8, pp. 103-104) Dr. Konowitz testified that he boosted Petitioner from sedentary duty to light duty based on what she told him she could do at work with her own physical state. He believes that an FCE is just a jumping-off point for him. (Rx. 8, pp. 108, 147) Dr. Konowitz agreed that Petitioner did not sustain subsequent trauma following the accident. (Rx. 8, p. 108) Dr. Konowitz further testified that she told him she was able to drive an hour and that she would get in and out of the car. (Rx. 8, pp. 121-122) He suggested additional driving sessions with and without adaptive equipment. (Rx. 8, p. 123) Dr. Konowitz opined that Petitioner's hyperalgesia, or allodynia, might be opioid-induced as a result of chronic, intrathecal use of opioids. (Rx. 8, pp. 125-126) One way to test for this is to lessen the amount of the opioid in the intrathecal pump. (Rx. 8, p. 127) Dr. Konowitz continues to recommend that Petitioner be weaned from use of the intrathecal pump. (Rx. 8, p. 134) Even if Petitioner experiences subjective pain that limits her to driving no more than 20-30 minutes, Dr. Konowitz did not feel that a 30-minute limit of driving would be appropriate. (Rx. 8, pp. 136-137) Dr. Konowitz testified that Petitioner could perform sedentary-duty work for 8 hours a day, based on his examinations of her and the records and diagnostic test results he had been given. He felt she was at MMI. (Rx. 8, p. 137) Dr. Konowitz's final opinion was that

Petitioner's current condition consists of subjective symptoms without physiological abnormality and that she exhibits psychiatric and secondary gain factors that affect the severity and maintenance of her physical symptoms and pain complaints. (Rx. 8, pp. 137-138) He testified: "All patients' subjective pain I will believe is true" and "Pain is always what one experiences." Dr. Konowitz agrees that there is no evidence of any psychological issues before the accident. (Rx. 8, pp. 138-139) Dr. Konowitz opined that there was an underlying event, but no specific pain diagnosis since she does not meet the criteria. He equates objective findings with signs, symptoms, physical exam findings. (Rx. 8, pp. 139-140)

On redirect examination, Dr. Konowitz testified that during each of the 4 physical examinations that he conducted of her, he found that she never met the Budapest criteria for complex regional pain syndrome. (Rx. 8, p. 141) He testified, in answer to question 4 in the August 20, 2013 report, that only the psychiatric exam to date has been reasonable and necessary. (Rx. 8, pp. 142-143) Dr. Konowitz defined secondary gain factors as a whole list of events that benefits you from having a pain disorder, including monetary rewards. (Rx. 8, pp. 144-145) He believed that Dr. Lubenow was violating a standard of care by installing the intrathecal pump because he did not have a valid pain diagnosis. (Rx. 8, p. 145) Dr. Konowitz testified that in answering question 9 in the October 10, 2014 report, he is simply stating the medications she was on at that time but is not recommending such medications. (Rx. 8, p. 150) Petitioner did not tell him that she needed to stretch ever 20-30 minutes when she drives. (Rx. 8, pp. 152-153) He testified that 1.3-1.5 mg. of hydromorphone in a pain pump is considered a dosage that could lead to opioid-induced hyperalgesia. (Rx. 8, p. 153)

On recross examination, Dr. Konowitz agreed that in one of his answers, he listed a continuation of the pain pump medications, and that part of the explanation was that one cannot

discontinue these 2 medications without weaning her from the pump. Then Counsel asked him if, later on, he authored an report in which he leaves off the intrathecal pump medications when answering the same question. Dr. Konowitz responded that it depends on how they asked the question. If the doctor stated they should discontinue the pump and wean it, then the medications come off. Dr. Konowitz testified that in the report he stated she is to wean off the pump and discontinue it and so, he took the medications off the list. (Rx. 8, pp. 156-158)

Section 12 Report of Mary L. Moran, M.D.

Dr. Mary L. Moran is a licensed medical doctor, who is board-certified in internal medicine and rheumatology. (Rx. 4) Between 1991 – 1996, she was an Assistant Professor of Medicine at the University of Chicago. (Rx. 4) From 1999 to the present, she has been in private practice at the Center for Arthritis and Osteoporosis, Illinois Bone & Joint Institute. (Rx. 4) On January 4, 2012, for one hour, twenty minutes, she examined Petitioner and later prepared a report of her findings and opinions. (Rx. 5)

Dr. Moran's physical examination of Petitioner on January 4, 2012 revealed that she was alert, oriented and afebrile. She is sitting comfortably in the chair. Her weight is 138 lbs. Her skin appears entirely clear. Her neck shows full and normal range of motion without provocation of pain. There is no adenopathy or thyromegaly. Her extremities were normal in appearance. There was no swelling, warmth or erythema. The joint examination showed a full range of motion of the shoulders, elbows, wrists, metacarpophalangeal and proximal interphalangeal joints, knees, hips and ankles. There is no evidence of swelling, warmth, erythema or reproducible tenderness with direct palpation of any of her joints. The patient had very well-developed musculature in the upper and lower extremities both proximally and distally. There

was no evidence of atrophy. Deep tendon reflexes were 2+ and symmetric in both the upper and lower extremities. Motor examination demonstrated 5/5 strength in the upper and lower extremities both proximal and distal. Petitioner would not allow her to directly palpate her back. When touching her around the shoulders posteriorly and along the trochanteric regions, she complained and winced with pain. (Rx. 5)

Dr. Moran provided the following opinions: it is her assessment that an intrathecal pump for medication is not indicated, though she does not have first-hand experience with the such pumps. She notes Petitioner has subjective complaints of pain, but there are no objective findings to substantiate mechanical pain or injury. (Rx. 5)

With regard to a scooter that had been recommended, Dr. Moran did not believe that Petitioner needs a scooter as she is able to ambulate. (Rx. 5, p. 1) Dr. Moran thought it was unusual that the patient was able to sit comfortably in a chair in which she is clearly experiencing the pressure of the chair directly on the areas in which she is unable to be touched. (Rx. 5, p. 3)

Dr. Moran also gave opinions regarding Petitioner's treatment to date. She summarized by stating that extensive medical management has been done, including treatment with Gabapentin, Tramadol, Cymbalta, and daily narcotics – "none of which have really resulted in significant reduction in symptom relief". (Rx. 5, p. 4) Dr. Moran did not agree with Dr. Lubenow with respect to the placement of an intrathecal pump. Dr. Moran stated: "[i]t seems extremely unlikely that this patient would respond to treatment with intrathecal medication, given that she has had little or no response to all of the previously stated medications and the spinal cord stimulator." (Rx. 5, p. 4) Dr. Moran said it was difficult to say what the diagnosis is, only saying that the patient subjectively complains of constant severe pain and hypersensitivity in an area where there is entirely normal tissue. (Rx. 5, p. 4) Regarding Petitioner's prognosis,

although she has been given very aggressive therapies, not only in terms of medical management with medications but also with rehabilitation, she has had little or no response. It seems unlikely that her subjective complaints of pain will resolve. (Rx. 5, p. 4) Dr. Moran further testified that she does not believe that further treatment is needed with respect to the original injury. She has had all reasonable treatments. Unless there was clearly a significant subjective finding on nerve testing or diagnostic imaging pointing to a particular source of her pain, she does not feel that any additional treatment is recommended. Finally, Dr. Moran stated that she believes that the patient could return to work in a sedentary job, which would be a sitting job. Dr. Moran believed she has lived with this without signs of detectable debilitation. (Rx. 5, p. 5)

Section 12 Report of Jonathan S. Citow, M.D.

Dr. Citow conducted an examination of Petitioner and later wrote a Section 12 report with his findings and opinions. (Rx. 2) Dr. Citow is a board-certified neurosurgeon. (Rx. 1) His practice is currently at the American Center for Spine & Neurosurgery in Libertyville, Illinois. (Rx. 1) Dr. Citow performed a physical examination of Petitioner on November 4, 2009. (Rx. 2) His physical examination of Petitioner revealed that her back was non-tender with full range of motion, though there was a diffuse achiness around her buttock. Range of motion was intact. Straight leg raising was negative bilaterally. Motor strength was 5/5 and sensation was grossly intact. (Rx. 2, p. 2) Dr. Citow also reviewed medical records that included MRIs of the thoracic and lumbar spine from June 11, 2009, which were essentially normal. Dr. Citow's diagnosis of Petitioner's condition was non-anatomic dysthesisas, not likely related to the injury. (Rx. 2, p. 2) He found her prognosis to be excellent, that she had reached MMI and that she

should be able to return to work full-duty without restrictions. (Rx. 2, p. 2) Dr. Citow also authored an addendum. (Rx. 2, pp. 4-5)

"Independent Forensic Psychiatric Examination" by Alexander E. Obolsky, M.D.

Dr. Obolsky is a board-certified forensic psychiatrist, licensed to practice medicine in Illinois and board certified in psychiatry and neurology from 1994 – the present. (Rx. 6) From 1999 to the present he has been the medical director of Health & Law Resource, Inc., a corporate and legal psychiatric consultations and evaluations facility. Over the years, he has also been the director of several in-patient clinics and between 1995 – 1998, was the Director of the Division of Forensic Psychiatry at the Department of Psychiatry and Behavioral Sciences, Northwestern University Medical School. From 2003 to the present, he has been the Assistant Professor of Clinical Psychiatry and Behavioral Sciences at Northwestern University Medical School. (Rx. 6)

Dr. Obolsky performed a 4-day evaluation of Petitioner for her forensic psychiatric evaluation. (Rx. 7, p. 3) Ms. Jacobs also exhibited physical discomfort and pain behaviors that worsened with the length of time she spent in the evaluation. (Id.) Dr. Obolsky opined that Petitioner presents with multiple psychiatric factors reasonably expected to influence negatively her response to the continued prospective medical care. It was also his opinion, with a reasonable degree of medical psychiatric certainty, that Petitioner did not develop any condition of mental ill-being due to any work-related events. (Rx. 7, p. 1 of 6) In her written tests, Dr. Obolsky noted that there were serious inconsistencies among various sources of data relating to the potential presence of anxiety and depressive symptoms. Her inconsistent performance on validity indicators undermine the reliability of her self-reported symptoms of anxiety and depressive symptoms. (Rx. 7, p. 3 of 6) Dr. Obolsky also noted that Petitioner scored within

failing range on the Green Word Memory Test ("GWMT") and on the Structured Inventory of Malingered Symptomology ("SIMS"). Her performance on these two tests were consistent with symptom amplification. Petitioner's scoring patterns on measures of attention and executive function (Digit Forward Trails A&B, Wisconsin Cart Sort (WCST)) were below expectation based on her educational attainment. Her pain complaints do not explicate her performance on these tests. These tests were consistent with symptom exaggeration. (Rx. 7, p. 4 of 6) It was Dr. Obolsky's opinion that she exhibits psychiatric and secondary gain factors that affect the severity and maintenance of her physical symptoms and pain complaints. (Rx. 7, p. 5 of 6) When asked whether the pain pump or medicine delivered by the pump is necessary, Dr. Obolsky believed that the subjective pain and physical complaints, without identified pathology, are an unreliable foundation for invasive procedures, unless explicitly performed to change Petitioner's verbal behaviors, i.e., to cause a decrease a in her complaints of pain. (Rx. 7, p. 5 of 6)

Deposition Testimony of Assistant Director of Respondent, Bonnie Lee Jordan

Bonnie Lee Jordan testified that she was employed by Respondent from July 1, 2015 to June 30, 2017. ECHO Joint Agreement stands for Exceptional Children Have Opportunity and it is a special education cooperative that services school districts in southern Cook County. Bonnie Jordan served as the Assistant Director for Curriculum and Instruction. (Rx. 12, pp. 4-5) Ms. Jordan was not employed by Respondent during the 2009 work accidents. However, she was present when Petitioner returned to work in 2016. (Id., p. 6) Between January 11, 2016 and April 12, 2016, she was working as Assistant Director of ECHO. (Id.) She accommodated Petitioner's work restrictions in bringing her back to work. Her accommodations in January 2016 included returning to work for 8 hours with intermittent standing and sitting. She also

ordered Wayne Dendler and Jennifer Evanetti to review with Petitioner any accommodation she may need to do her duties. Ms. Jordan had been working with all of her Principals to have this happen, so she gave some suggestions for what things could be used, such as a scooter for building travel and also a cane for the classroom and for short distances, seat cushions, no heavy lifting and no physical management. (Id., pp. 7 - 8)

Petitioner was given the job of a Paraprofessional and was assigned to the room of the Art Teacher, Mr. Cannon. (Id., p. 9) Petitioner did not object to trying the restrictions and accommodations in her return to work. (Id., p. 10) While Petitioner went back to work in January 2016, it was Ms. Jordan's recollection that Principal Wayne Dendler was saying that she was having a hard time. (Id.) Her start date of January 11, 2016 was confirmed, and she would start as a Step 5, line 4, pursuant to the collective bargaining contract. (Id., p. 11)

However, they received a letter dated February 12, 2016, from Dr. Lubenow to Petitioner's attorney, David Kosin, saying that Dr. Lubenow found her to be totally and permanently disabled and recommends that she limit her driving restrictions to 20 minutes at a time. (Rx. 12, Dep. Ex. 3) Bonnie Jordan testified that based on Dr. Lubenow's report, she sent a letter to Ms. Jacobs on April 4, 2016 in which she recommended termination of her employment due to her inability to return to work. (Rx. 12, p. 12, Rx. 12, Dep. Ex. 3) That recommendation was confirmed in a vote of termination of employment at ECHO's regularly-scheduled board meeting and reduced to writing to Petitioner. (Px. 32) Her official date of termination was April 12, 2016. (Rx. 12, p. 13)

On cross-examination, Ms. Jordan testified that she was not an employee of Respondent at the time Petitioner sustained the accident and was not an employee there when Petitioner first returned to work in 2010. (Rx. 12, pp. 15-16) Regarding Petitioner's second return to work, Ms.

Jordan agreed that she received a letter from Respondent dated December 16, 2015 that stated, per documentation from York Risk Services, Petitioner was cleared to return to work for 8 hours a day at sedentary duty. (Rx. 12, pp. 15-16) Sedentary duty meant she could sit, stand, and walk for 8 hours. Only York Risk Services is mentioned in the letter, not the name of the doctor who released her. (Rx. 12, p. 17) Ms. Jordan testified that she felt that there was an independent examination upon which those restrictions were based. (Rx. 12, p. 17) Ms. Jordan testified that she did not know the restrictions that Petitioner's treating physician had imposed on her. (Rx. 12, p. 18) Ms. Jordan agreed that there is nothing in the December 16, 2015 letter from Respondent that says Petitioner should avoid restraining students. (Rx. 12, p. 21) Ms. Jordan testified that she did recall Principal Dendler saying that he was uncomfortable with Petitioner returning to the position of Paraprofessional at AFL. (Rx. 12, p. 22) Ms. Jordan testified that Petitioner's attempted return to work began on January 11, 2016 and lasted about a month. (Rx. 12, p. 23) She recalled seeing Petitioner once for 5-10 minutes during her return to work. Petitioner was in the Art Room when Ms. Jordan visited with her. (Rx. 12, p. 24) Ms. Jordan was aware that during Petitioner's return to work in 2016, Petitioner had cause to be off work on numerous occasions to see her doctors. (Rx. 12, p. 26) Ms. Jordan testified that Petitioner's termination was based on her inability to return to work. (Rx. 12, p. 30)

On redirect examination, she testified that Petitioner was not the first Paraprofessional to be given a job accommodation such as no physical management of the students. (Id., p. 36) For example, when they did CPI training, which is Crime Prevention Training, there were people who could not participate due to pregnancy, due to lifting restrictions, or due to back issues. Respondent made sure that it was noted that they could not participate in the physical management of students. (Id., p. 37) When Ms. Jordan saw Petitioner the one time during her

return to work in 2016, she remembers seeing her sitting in the back of classroom working on papers. They both said hello. Ms. Jordan said she would also stop and talk to the kids and be disruptive. Ms. Jordan further testified that Petitioner did not seem to be in any kind of distress at that time. (Id., p. 38)

On recross examination, Ms. Jordan testified that the only Paraprofessional who was given the restrictions Petitioner was given was Petitioner, Catherine Jacobs. (Rx. 12, pp. 38-39)

EVR Vocational Assessment, Transferable Skills Analysis and Labor Market Survey

Respondent offered into evidence the forensic EVR Vocational Assessment & Transferable Skills Analysis along with the EVR Labor Market Survey. (Rx. 10, Rx. 11) On August 19, 2014, Petitioner met with the vocational counselor for an interview at Petitioner's Counsel's office. (Rx. 10, p. 1) The medical records and reports that Kathleen M. Dytrych, CRC, reviewed included the following: the January 4, 2012 report by Dr. Mary L. Moran, the June 7, 2013 psychiatric exam report by Dr. Alexander E. Obolsky, the August 20, 2013 report by Dr. Howard S. Konowitz, the October 17, 2013 FCE report, the November 13, 2013 work release form by Dr. Timothy R. Lubenow, the January 17, 2014 report by Dr. Howard S. Konowitz, the February 26, 2014 report by Dr. Matthew Jaycox, the August 15, 2014 work release by Dr. Matthew Jaycox, the October 14, 2014 report by Dr. Howard S. Konowitz, and the Marianjoy Driving Evaluation records that included records from May 14, 2013 and May 25, 2013. (Rx. 10, pp. 6-14) Notably missing from the records reviewed are the results of Petitioner's August 1, 2012 FCE, which the evaluator found to be valid. (Px. 4, Dep. Ex. 4, Px. 4) The evaluator limited Petitioner to 4 hours of limited work per day. (Px. 4) Ms. Dytrych sought a new FCE, which was never authorized. She also suggested that Petitioner undergo another driving

assessment, which occurred on June 18, 2015. (Px. 15) Given that Ms. Dytrych created Rx. 10 and Rx. 11 before June 18, 2015, she did not consider the results of the new driving assessment. Ms. Dytrych concluded that Petitioner may or may not have lost access to her usual and customary employment as a Special Education Teacher, and that there were various full-time or part-time jobs available to the her, depending upon which physician's opinions applied to Petitioner. (Rx. 10, p. 19) No job readiness training or job placement was authorized by Respondent.

Ms. Dytrych compiled a Labor Market Survey. The Labor Market Survey lists over 100 jobs. It is divided into sedentary v. light-duty jobs, teaching-related v. career alternatives and jobs within 15 minutes of Petitioner's residence v. those in which no driving restriction is required. (Rx. 11, p. 1)

Missing from Ms. Dytrych's analysis are the following final restrictions by Dr. Lubenow, (Px. 18, p. 267), which is dated May 2, 2014:

1) 3-4 hours of work per day
2) 15 minutes of local driving per day
3) Sitting 30-45 minutes then rest/position change
4) Standing 10-15 minutes then position change
5) Maximum lifting of 15 pounds
6) Use of scooter for local transport
7) Use of cane for short walks

As noted above, Ms. Dytrych failed to consider the valid FCE of August 1, 2012. Ms. Dytrych's analysis is also based upon Dr. Konowitz' October 14, 2015 return to light-duty work. However, Ms. Dytrych is unaware that Dr. Konowitz agreed that Petitioner could return to only sedentary-duty work at best. (Rx. 7, p. 137) Petitioner notes that the Labor Market Survey was submitted without testimony. The school districts are varying distances from Petitioner's home. None of them document the time necessary to travel to each school given traffic speed and congestion. None of the part-time positions noted on the list of school districts delineate whether they are part-time per week or part-time per day. Of all the positions listed by Ms. Dytrych, only one is "primarily sedentary" though it does require lifting. The heaviest lifting requirement would be a "box of records" at most. (Rx. 11, p. 16) However, that job is full- time and is 19 miles away. Some of the listed job opportunities fall outside of Petitioner's stated restrictions, as indicated by Ms. Dytrych. (Rx. 11, pp. 21-24)

II. Conclusions of Law

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

The Arbitrator finds Petitioner's current condition of ill-being, as diagnosed by Dr. Lubenow, to be causally related to her work injury of March 23, 2009.

Based on the clinically required Budapest criteria, neither Dr. Noren nor Dr. Konowitz was able to diagnosis Petitioner with CRPS. The Budapest criteria are recognized as the current standard upon which Petitioner's treating physician, Dr. Lubenow, would render a diagnosis. (Px. 24, pp. 8-11) Dr. Noren and Dr. Konowitz testified that Dr. Lubenow's opinion that Petitioner had atypical CRPS is not a recognized medical diagnosis.

Dr. Noren examined Petitioner on a single occasion approximately 6-1/2 years prior to trial. Dr. Noren testified that when he examined Petitioner, she exhibited severe allodynia in the thoracic and lumbar region to slight touch. Upon touching her lower lumbar region, he testified, he would remove his hand because she reported extreme pain. Dr. Noren also found that there was a slight pilomotor change with lightly touching her back. He did not note any color changes or swelling. (Rx. 9, pp. 14-15) He stated that his diagnosis of her was indeterminate and referred her to a rheumatologist. (Rx. 9, p. 16)

Dr. Noren testified that he wrote, in his initial report, the following: "as noted by Dr. Lubenow, this is an extremely unusual presentation for a complex regional pain syndrome," and that based on the history that she provided, "this appears to be causally related to her injury" of March 23, 2009. (Rx. 9, pp. 63-64) Dr. Noren diagnosed Petitioner as suffering from atypical CRPS. Dr. Noren later attempted to deny that he made these statements.

Dr. Noren found no clinical evidence of S1 radiculopathy.

The opinions of Dr. Konowitz are suspect since they rest upon an incomplete review of all the relevant medical records. Dr. Konowitz did not review the RIC records that document abnormal sweat patterns. Dr. Lubenow documented temperature variances along with abnormal hair growth, yet Dr. Konowitz never scientifically tested for temperature differences.

During his examinations, Dr. Konowitz did not find color changes, edema or temperature asymmetry.

Neither Dr. Noren nor Dr. Konowitz noted or explained the positive S1 radiculopathy documented on Petitioner's EMG because they were not given the EMG results.

Neither Dr. Noren nor Dr. Konowitz acknowledged the objective findings of CRPS as documented by Dr. Lubenow, in the RIC records, or in the treating records of Petitioner's other physicians.

The Arbitrator notes that Dr. Lubenow testified inconsistently about his findings that met the Budapest criteria. He testified in one part of his deposition that in the very beginning of her presentation to him, she had some temperature asymmetry and an increase in her hair distribution in her thighs or her legs. These signs would have provided sufficient diagnostic criteria to diagnose CRPS. (Px. 24, p. 74) Later in the deposition, Dr. Lubenow testified that at his very first evaluation of her, he found that she did not meet the Budapest criteria, but at some later point he found that she did have sufficient exam findings to meet the Budapest criteria. Those criteria were seen during only *one* exam. However, such signs and symptoms were not all there on the first day he saw her in 2010. (Px. 24, p. 100)

Notwithstanding this inconsistency in his testimony, the Arbitrator finds Dr. Lubenow to be the most qualified to render this diagnosis when considering the opinions offered by all of the physicians in this case. Dr. Lubenow's curriculum vitae reveals his expertise in the study and treatment of CRPS. Moreover, Dr. Lubenow has been Petitioner's treating physician for approximately 7 years. Doctors Kirincic, Louis and Gruft concur with Dr. Lubenow's diagnosis.

Even if one of the medical witnesses was equivocal on the question of causation, it is for the Commission to decide which medical view is to be accepted, and it may attach greater weight to the opinion of the treating physician. *International Vermiculite v. Indus. Comm'n*, 394 N.E.2d 1166, 31 Ill. Dec. 789 (1979)

Based on the foregoing, the Arbitrator finds that he agrees with the following diagnosis of Petitioner's condition of ill-being, which Dr. Lubenow offered:

> Her current condition of ill-being is atypical complex regional pain syndrome, or alternatively one may refer to it as a neuropathic pain condition of the low back lumbar spine and legs bilaterally, she has a secondary diagnosis of bilateral S-1 radiculopathy." (Px. 24, pp. 71-72)

Dr. Lubenow testified that he believed the cause of these conditions was the work injury that was described in March of 2009. (Px. 24, pp. 24-25)

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

The Arbitrator finds the medical services rendered to Petitioner from March 23, 2009 through the date of the closing of proofs, February 22, 2018, to be reasonable and necessary. The Arbitrator bases this finding on the records and opinions of Petitioner's treating physicians, as well as on Petitioner's testimony.

On behalf of Respondent, Dr. Noren testified that the medications prescribed to Petitioner, such as Gabapentin, were appropriate and reasonable. Dr. Konowitz testified that he would have prescribed Gabapentin and Cymbalta but does not agree with the placement of the pump.

On February 24, 2012, Dr. Lubenow implanted a permanent intrathecal pain pump in Petitioner. (Px. 24, Dep. Ex. 2)

In his August 20, 2013 report (Rx. 8, Dep. Ex. 4), Dr. Konowitz testified, he indicated that the treatment to date has been reasonable and customary. He testified, unconvincingly, that the treatment to which he was referring was the independent psychiatric exam that he had ordered. (Rx. 8, pp. 27-28)

The Arbitrator does not consider a psychiatric exam that was ordered by a Section 12 physician to be treatment.

Petitioner testified that the intrathecal pump alleviates her pain.

Petitioner objected to the admission of Deposition Exhibits 3-10 of Respondent's Exhibit 8 on the basis of hearsay but allowed the Arbitrator to review such reports for the sole purpose of determining whether or not the doctor has appropriately rendered opinions pursuant to *Ghere* in the appropriate time frame. (Rx. 8, pp. 154-155)

The Arbitrator's award here includes all the treatment documented in Petitioner's treating medical records as well as the total unpaid medical charges for such treatment, $321,368.95 (Px. 25), pursuant to Section 8(a) and subject to Section 8.2 of the Act.

K. What temporary benefits are in dispute? TPD, Maintenance, TTD?

The Arbitrator finds, based on Petitioner's testimony, the medical records, and the opinions of Petitioner's treating physicians, that Petitioner is entitled to the periods of temporary benefits as outlined below:

It is undisputed that Petitioner remained off work from March 24, 2009, the day after her accident, through January 13, 2010. Petitioner testified that around July 13, 2009, her benefits were terminated based on Dr. Wehner's reports. However, it was eventually worked out that her back benefits would be paid, and she continued with her treatment. On January 14, 2010,

Petitioner attempted to return to full-duty work based on the opinions of Dr. Citow. (Rx. 2) Petitioner was unable to perform her full duties, and on January 21, 2010, she began to work limited hours per day and was paid TPD.

Petitioner worked on restricted hours through the end of the school year. On June 1, 2010, summer break began with Petitioner still on restrictions. Therefore, she was entitled to TTD through August 23, 2010, after which she returned for the new school year and was paid TPD once again. Petitioner received TPD through October 27, 2010. On October 28, 2010, Dr. Lubenow took Petitioner off work completely. Petitioner was entitled to TTD through the date of June 17, 2014, which is the date on which Vocamotive determined Petitioner lost access to any viable labor market, thus concluding that her disability was total.

After June 17, 2014, Petitioner continued to receive temporary benefits. Respondent claims those represent TTD benefits. Petitioner claims that as of this date, Petitioner was entitled to maintenance benefits while she cooperated with Respondent's forensic vocational counselor, EVR.

From January 11, 2016 through January 31, 2016, Petitioner testified (3 weeks), she made a good-faith attempt to return to work in the accommodated position of Paraprofessional. Although she worked 8 hours a day, she was being paid as a Paraprofessional, not as a Special Education Teacher. Therefore, she earned TPD for this 3-week period.

From February 1, 2016 through February 12, 2016, Petitioner earned maintenance benefits after her failed attempt to return to work at that greatly accommodated position.

On February 12, 2016, Dr. Lubenow found Petitioner to be permanently and totally disabled.

Based upon the above, Petitioner is entitled to receive 244-1/7 weeks of TTD benefits at $717.97/week. The parties agree that Respondent paid TTD benefits in the amount of $217,550.50. (Rx. 2A, Section 9)

Petitioner is also entitled to 28 weeks of TPD benefits, for the period from August 24, 2010 through October 27, 2010, at a rate of $464.06/week, as well as 3 weeks of TPD benefits, for the period January 11, 2016 through January 31, 2016 when she worked as a Paraprofessional, at a rate of $549.99. Respondent is entitled to a credit in the amount of $12,993.64 for TPD paid. (Rx. 2A, Section 9)

Petitioner is also entitled to maintenance benefits from June 18, 2014 through January 10, 2016 and February 1, 2016 through February 12, 2016, a total of 83-3/7 weeks. Respond claims they have paid no maintenance benefits. Respondent shall have a credit for any overpayment of TTD as payment for maintenance.

Respondent offered into evidence Rx. 14, which is entitled "York Risk Services Individual Claim Report showing payments of TTD, TPD, and PPD, dated October 31, 2017".

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

The Arbitrator has found the opinions of Dr. Lubenow to be more persuasive than those of Doctors Noren and Konowitz.

On February 12, 2016, Dr. Lubenow examined Petitioner. He noted that she ambulates with a cane. She limps and favors the right leg. She has a slow, cautious gait. He further noted that there is allodynia in the lower back that extends up to the mid-thoracic back, as well as in the sacral area. Motor strength is 5/5 in both legs, and deep tendon reflexes are symmetric at 2+. He

found she has a decreased sensation to the cool application of an alcohol pad on the legs, and to a greater extent, on the low back and mid back to approximately the T8 dermatomal region. He noted that she has an intraspinal drug delivery system implanted, which is refilled by Stellar Home Health. (Px. 24, Dep. Ex. 8)

Dr. Lubenow opined Petitioner has chronic, persistent atypical CRPS of the lower extremities and lumbar region that is worse since her return to work. Dr. Lubenow was concerned that Petitioner was driving above her previously-stated safe driving restrictions and noted that, in reality, Petitioner was really not working at her current place of employment. He limited her driving to 20 minutes at a time. Dr. Lubenow found Petitioner to be totally and permanently disabled. (Px. 24, Dep. Ex. 8)

Based upon the opinions of Dr. Lubenow, the Arbitrator finds that commencing on February 13, 2016, Petitioner became medically permanently and totally disabled. Therefore, the Arbitrator orders Respondent to pay Petitioner permanent and total disability benefits of $717.97/week for life, which commenced on February 13, 2016, as provided in Section 8(f) of the Act.

O. Evidentiary Ruling: the *Ghere* objection

During the depositions of Doctors Wehner, Noren and Konowitz, Petitioner raised *Ghere* objections based on the Court's ruling in *Ghere v. Indus. Comm'n*, 278 Ill. App. 3d 840 (4th Dist. 1996) and Section 12 of the Act. Section 12 requires, in pertinent part, Respondent to provide Petitioner with a copy of their examining physician's report no later than 48 hours before the case is set for hearing. The *Ghere* Court held that a purpose of Section 12 was to prevent surprise medical testimony at trial. In *Ghere*, Dr. Climaco, an emergency room physician who

had previously treated claimant, but not for his heart, testified live. He offered a causation opinion regarding claimant's heart condition. Respondent objected to the admission of such opinion. The arbitrator sustained the objection. The Court agreed with the ruling of the arbitrator and the Commission that such opinion was not furnished to the employer 48 hours before the arbitration hearing. The Court found that Dr. Climaco's testimony constituted surprise medical testimony. Accordingly, based on the facts in *Ghere*, the Court applied the 48-hour rule in Section 12 to treating physicians as well.

At the deposition of Dr. Konowitz, when Petitioner raised his first *Ghere* objection, he argued that Dr. Konowitz's opinion about Dr. Lubenow's treatment had not been disclosed until the commencement of the deposition. (Rx. 8, p. 23)

Respondent pointed out that in the Notice of Deposition (Rx. 8, Dep. Ex. 2), which he had previously sent to Petitioner and to Dr. Konowitz, he wrote the following:

> "Questions will be asked during the deposition of Dr. Konowitz about Dr. Lubenow's treatment of the Petitioner and his written remarks in narrative reports about Dr. Konowitz's opinions. We will ask for Dr. Konowitz's opinions about Dr. Lubenow's written remarks. There will be no audio-visual equipment." (Rx. 8, Dep. Ex. 2)

In response, Petitioner argued that merely pointing out an area in which the doctor may formulate an opinion during the time he is rendering his testimony in an evidence deposition does not meet with *Ghere*. Accordingly, he objected and moved that Dr. Konowitz's opinion be stricken. (Rx. 8, p. 24)

The Arbitrator overruled this objection.

Later in the deposition, Petitioner's attorney stated that he never received the Notice of Deposition and objected to the admission of such document. (Rx. 8, p. 154, Rx. 8, Dep. Ex. 2) The Arbitrator overruled such objection. The Notice of Deposition shows that it was sent to Petitioner's attorney at 134 N. LaSalle Street, Suite 1340, Chicago, IL 60602, which is the same address listed for Petitioner's attorney on Ax. 1 and Ax. 2A. There is a Certificate of Service with the Notice of Deposition that indicates it was sent via regular mail before 5:00 p.m. on December 14, 2016. (Rx. 8, Dep. Ex. 2)

In *Homebrite Ace Hardware v. Indus. Comm'n*, 351 Ill. App. 3d 333 (5th Dist. 2004), claimant was injured when lifting buckets. He experienced low back pain and treated for this condition. He was found to have a herniated disc. Claimant was released to return to work with restrictions. For 4-6 weeks post-accident, there was no mention of any neck problems. Claimant testified that he never had any neck problems before the accident, but later was referred to a neurosurgeon, who treated him for low back pain and cervical pain once it developed. Before an evidence deposition, the treating neurosurgeon did not provide either claimant's attorney or respondent's attorney with a report or an opinion as to a causal connection between the current condition of ill-being of his low back and neck, and the accidental injury. At the deposition, the neurosurgeon testified, over a *Ghere* objection, that there was a causal connection between claimant's low back and neck problems, and the accidental injury. The neurosurgeon further testified that claimant was in need of neck surgery, which had not been done because respondent did not authorize it. The arbitrator found that the neck and low back were causally related to the accident and ordered respondent to authorize the neck surgery. The Industrial Commission affirmed the arbitrator's decision and the circuit court confirmed the Commission decision.

The Appellate Court in *Homebrite* noted that *Ghere* did not set forth a bright-line rule that undisclosed opinion testimony constitutes surprise.

The *Homebrite* Court disagreed with the employer's contention that the Commission cannot arbitrarily determine when an opinion constitutes surprise testimony. The Court noted that the neurosurgeon's records contained details about treatment of claimant's neck condition and hence the employer was put on notice that the neurosurgeon might testify as to the causal connection between the neck condition and the accident. Therefore, the Court rejected the employer's argument that this testimony by the neurosurgeon should have been excluded.

At Dr. Konowitz's deposition on January 5, 2017, Petitioner's attorney stated that he understands that opposing counsel and Dr. Konowitz have been in possession of Dr. Lubenow's written remarks for years. (Rx. 8, p. 24)

Petitioner's attorney had no objection to the Arbitrator reviewing Deposition Exhibits 3-10 of Rx. 8 for the sole purpose of determining whether or not the doctor appropriately rendered opinions pursuant to *Ghere* in the appropriate time frame. (Rx. 8, pp. 154-155)

M. Should penalties or fees be imposed upon Respondent?

Petitioner filed a motion claiming she is entitled to Section 19(k) penalties of $138,857.80 (= 50% of [$321,368.95 in outstanding medical charges less a Section 8(j) credit of $43,653.35]) plus Section 19(l) penalties of $10,000.00 plus Section 16 attorneys' fees of $29,771.56 (= 20% of $138,857.80). (Px. 33)

Petitioner argues that when Dr. Kirincic referred Petitioner to Mayo Clinic, Respondent declined authorization for such referral but agreed to authorize Dr. Lubenow at Rush Medical Center to treat Petitioner. When Dr. Lubenow escalated Petitioner's care by seeking

authorization of an intrathecal pump, Respondent sought the opinion of Dr. Noren who advised against the pump. When Respondent's own utilization reviewer, Ann Nikolaou, R.N., authorized the insertion of the intrathecal pump, Respondent did so, but then sought the opinion of a pain specialist, Dr. Konowitz. Dr. Konowitz recommended removal of the pump. It appears that neither Dr. Noren nor Dr. Konowitz were provided with a complete set of treating records, including the EMG of the lower extremities, when they initially rendered their opinions.

Dr. Lubenow testified that the EMG indicated S1 sciatica that would explain some of her radiating pain that came from the disc. The Arbitrator notes, however, that Petitioner also complained of pain in her neck and upper extremities.

Petitioner points out that Respondent denied Petitioner's request to have Steven Blumenthal as her choice of vocational counselor. Instead, Respondent authorized Vocamotive, Inc., to carry out the vocational counseling. After Vocamotive, Inc., determined that Petitioner had lost access to any viable labor market, which would render her totally disabled, Respondent advised Vocamotive to close their file. Respondent then hired Ms. Dytrych of EVR to perform a forensic vocational analysis. Ms. Dytrych conducted a vocational interview of Petitioner in which Petitioner complained of pain that starts in her neck and travels down to her toes and affects her shoulder and arm, back, hands, feet, legs, and buttocks. Petitioner stated that "if [her] upper back is touched the pain goes up to 10/10." Ms. Dytrych initially performed her assessment and noted that there were 2 major issues that prevented Petitioner from returning to work: her driving limitation and her work hour limitation. Ms. Dytrych recommended an updated driving evaluation. Prior to Ms. Dytrych's compilation of the Labor Market Survey, Dr. Konowitz removed Petitioner's work hour restriction without acknowledging the limitations noted in the FCE and removed Petitioner's driving restrictions. Dr. Konowitz testified that he

boosted Petitioner from sedentary to light duty after he examined her based on what she told him she was able to do given her own physical state. He testified that the FCE is a jumping-off point for him. As noted above, Ms. Dytrych's Labor Market Survey relies on Dr. Konowitz's opinions to expand potential job opportunities and does not consider Dr. Lubenow's restrictions.

Petitioner returned to work as a Teacher's Aide (Paraprofessional) in January 2016. This was offered to Petitioner based on an ability to work an 8-hour day at a facility located over a 1-hour drive away. According to Petitioner's treating physician, neither requirement was within her capabilities. Respondent made numerous accommodations for Petitioner. Principal Dendler testified that he did not believe Petitioner should be working at this job given her condition because she could be struck by a student in class or in the hallway. Mr. Dendler further testified that Petitioner did not perform the duties of a Paraprofessional but then conceded that she did perform minimal paperwork during her 5-week attempt, such as taking attendance and recording assignments in the computer.

Petitioner points out that Respondent has denied payment of numerous medical bills that total $321,368.95, which includes bills for the implantation and maintenance of the intrathecal pump.

Respondent argues that Petitioner is not entitled to any penalties or fees as they have a good faith basis for non-payment of benefits: the findings and opinions on causation/future medical from examining physicians that include board-certified orthopedic surgeon Julie M. Wehner, M.D., board-certified neurosurgeon Jonathan S. Citow, M.D., board-certified rheumatologist Mary L. Moran, M.D., board-certified anesthesiologist and pain management

physician Richard L. Noren, M.D., and board-certified anesthesiologist and pain management physician Howard S. Konowitz, M.D.

The Arbitrator finds that Dr. Konowitz gave no opinion as the reasonableness or necessity of the intrathecal pump in his August 20, 2013 report. (Rx. 8, pp. 29, 142-143) Dr. Konowitz later testified during his deposition that Petitioner should be weaned from this pump and that the pump should be discontinued.

On August 27, 2012 and September 28, 2012, psychiatrist Alexander E. Obolsky, M.D., conducted an "Independent Forensic Psychiatric Examination" that included an interview and extensive testing of Petitioner. Dr. Obolsky opined, within a reasonable degree of medical psychiatric certainty, that Petitioner did not develop any condition of mental ill-being due to any work-related events. Dr. Obolsky stated that he does not possess the requisite expertise to offer opinions as to (1) whether Petitioner's physical symptoms and pain complaints are related to the work-related incidents, or (2) the appropriateness or necessity of the continuation of prospective pain management. Having said that, Dr. Obolsky concluded that his findings indicate that emotional and secondary gain factors play a significant role in the maintenance, severity, and exacerbation of her physical and pain complaints and that these factors also play a significant role in her perceived and reported functional impairments. His current evaluation indicated that Petitioner's subjective complaints are significantly driven by psychiatric factors and that these factors are unlikely to improve with surgeries. Dr. Obolsky opined that from a psychiatric perspective, Petitioner could benefit from conservative medical care that focused on improving physical functioning while putting into practice benign neglect of complaints that do not have an objective basis. (Rx. 7)

Bonnie Jordan testified that during Petitioner's 5-week attempt to return to work in 2016, she remembered stopping by the classroom once and saying hello to Petitioner. Ms. Jordan testified that she remembered seeing Petitioner at that time sitting in the back of the classroom working on papers in no apparent distress.

The Arbitrator notes that Respondent has paid Petitioner $217,550.50 in TTD benefits, $12,993.64 in TPD benefits, $8,272.45 in other benefits (permanency advance), and $0.00 in maintenance benefits.

Respondent has also paid $43,653.35 in medical benefits through their group carrier and is entitled to a Section 8(j) credit in this amount.

In *McMahan v. Indus. Comm'n*, 183 Ill. 2d 499, 702 N.E.2d 545 (1998), claimant sustained a May 20, 1992 slip-and-fall accident while working for respondent that resulted in a low back injury. Claimant had injured his back 11 years earlier while working for another employer and underwent back surgery at L5-S1 in August 1985. However, since March 1990, claimant experienced very little difficulty with his back while working as a laborer for respondent. Claimant admitted that he periodically experienced mild left leg pain and pain down his left foot. His work activities at respondent's grain elevator included climbing, shoveling, painting, and lifting.

On May 21, 1992, claimant informed his supervisor of the slip-and-fall accident. An accident report was not completed or forwarded to the insurance carrier at that time because it was respondent's policy to take care of small workers' compensation claims internally. In November 1992, when claimant's supervisor realized that claimant's low back condition was more serious than first believed (claimant had continued to work in pain and had voiced complaints), she completed an accident report and forwarded it to the insurance carrier. The

carrier informed the supervisor that there was a problem with coverage on the accident because respondent had not complied with its policy provisions. As a result, the carrier refused to pay any of claimant's medical bills. The supervisor was also told by respondent not to pay any more of claimant's bills internally. Claimant was left to deal with those bills on his own.

In January 1994, orthopedic surgeon Walter Baisier, M.D., performed a lumbar laminectomy and discectomy at L4-L5 on claimant. The Supreme Court's Decision states:

> "Dr. Baisier opined that surgery was necessary to relieve claimant of his symptoms and that claimant's condition was causally connected to his fall on May 20, 1992. No other physician gave a contrary opinion."

The Supreme Court considered the sole issue of whether claimant was entitled to penalties under Section 19(k) of the Act and attorney's fees under Section 16. The Court overruled precedent and held:

> "In any case, we do not read Section 19(k) as precluding the imposition of penalties for unreasonable and vexatious delay in paying medical expenses ... Under Section 8 the amount of 'compensation' ... is expressly defined to include not only compensation for lost wages ... but also payment for medical services."

The Court held that Petitioner was entitled to, *inter alia,* 19(k) penalties on unpaid medical bills that totaled $21,795.11.

The Arbitrator finds that Respondent's conduct in the case at bar does not rise to the level of the employer's conduct in *McMahan.* The employer in *McMahan* denied TTD and paid only some pre-surgical medical bills. Significantly, the employer had no medical opinion that denied causation. Moreover, the employer made an intentional decision not to honor their statutory obligation to claimant, and they did so simply because they had not complied with the requirements of their insurance policy and were unwilling to absorb the cost themselves.

In the case at bar, Dr. Lubenow's primary diagnosis was atypical CRPS, which did not meet the Budapest criteria for CRPS. Dr. Noren opined surgery or the insertion of needles in the region of the complex regional pain syndrome is really considered to be contraindicated because it is likely to exacerbate or worsen the syndrome. Dr. Konowitz did not diagnose CRPS and did not agree with placement of the intrathecal pump. In order to place the pump, Dr. Konowitz testified, one has to have a diagnosis that meets the criteria, and Dr. Lubenow did not have that. Dr. Konowitz suggested that diagnostic error can lead to treatment error. Furthermore, Dr. Konowitz believed that Petitioner's current pain may be due to opiate-induced hypersensitivity.

On February 24, 2012, following a "Utilization Review for Authorization of Placement of the Intrathecal Pump," Petitioner had the permanent intrathecal pump installed. (T. 106) After the pump was inserted and after it was shown to alleviate her pain to a moderate degree, Respondent sought to have the pump removed and denied all charges associated with the pump, as well as a number of other bills.

The Arbitrator recognizes that Respondent in the case at bar engaged in (examining) doctor shopping and vocational rehabilitation counselor shopping. The Arbitrator has found that Petitioner's treating physicians are more persuasive than Respondent's Section 12 examining physicians. The Arbitrator gives minimal weight to the opinions of Kathleen Dytrych, CRC.

Petitioner testified that she continues to have her pump refilled regularly and continues to see Dr. Lubenow every 6 to 9 months. So, despite the fact that Respondent has denied payment of a great number of medical bills, the medical providers have rendered, and continue to render, medical care to Petitioner for her accidental injuries.

Respondent has opinions regarding causation/future medical care from 5 examining physicians, as well as an opinion from 1 examining psychiatrist.

Respondent has paid $43,653.35 in medical benefits through their group carrier, $217,550.50 in TTD benefits, $12,993.64 in TPD benefits, and $8,272.45 in other benefits (permanency advance).

Based on the foregoing, the Arbitrator finds that penalties under Sections 19(k) and 19(l), as well as attorney's fees under Section 16, are not warranted.

Brian T. Cronin
Arbitrator

3-6-2019
Date

STATE OF ILLINOIS)
) SS.
COUNTY OF)
JEFFERSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Melissa Causey,

Petitioner,

vs.

NO: 18 WC 9605
20 IWCC 333

Amazon,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 1, 2019, is hereby affirmed and adopted.

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

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

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: JUL 24 2020
TJT:yl
o 6/9/20
51

Thomas J. Tyrrell

Deborah L. Simpson

Maria E. Portela

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

CAUSEY, MELISSA
Employee/Petitioner

Case# **18WC009605**

AMAZON
Employer/Respondent

20IWCC0333

On 8/1/2019, 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 2.03% 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:

4463 GALANTI LAW OFFICE
GIAMBATTISTA PATTI
115 S BELLWOOD DR
E ALTON, IL 62024

0000 WIEDNER & McAULIFFE LTD
JULIE M TENUTO
8000 MARYLAND AVE SUITE 550
ST LOUIS, MO 63105

20IWCC0333

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Melissa Causey
Employee/Petitioner

v.

Amazon
Employer/Respondent

Case # 18 WC 09605

Consolidated cases: n/a

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Mt. Vernon, on June 6, 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. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

20IWCC0333

FINDINGS

On the date of accident, February 15, 2018, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $n/a; the average weekly wage was $380.96.

On the date of accident, Petitioner was 35 years of age, married with 3 dependent child(ren).

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

Respondent shall be given a credit of $6,656.38 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $6,656.38.

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

ORDER

Based upon the Arbitrator's Conclusions of Law attached hereto, claim for compensation is denied.

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

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

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

William R. Gallagher, Arbitrator
ICArbDec19(b)

July 30, 2019
Date

AUG 1 - 2019

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment by Respondent on March 21, 2018. The Application alleged Petitioner "Hurt back packing" and sustained an injury to the "MAW" (Arbitrator's Exhibit 2). At trial, counsel for Petitioner made an oral motion to amend the Application to change the date of accident to February 15, 2018. Counsel for Respondent had no objection, the Arbitrator granted the motion and changed the date of accident on the Application to February 15, 2018.

This case was tried in a 19(b) proceeding and Petitioner sought an order for payment of medical bills and temporary total disability benefits as well as prospective medical treatment. In regard to temporary total disability benefits, Petitioner alleged she was entitled to temporary total disability benefits of 62 4/7 weeks, commencing March 25, 2018, through June 6, 2019 (the date of trial). The prospective medical treatment sought by Petitioner was a two level disc replacement surgery recommended by Dr. Matthew Gornet, an orthopedic surgeon. Respondent disputed liability on the basis of accident and causal relationship (Arbitrator's Exhibit 1).

Petitioner became employed by Respondent in August, 2017, and worked as both a "picker" and a "packer." Most of the time, Petitioner worked as a picker, but there were occasions in which Petitioner was directed to work as a packer.

Petitioner testified that when she worked as a picker, she was told where a product was located, she proceeded to the location where the product was, and scanned both the location and product. The product was then picked and placed in a cage. Petitioner stated she was at the same level as the cage so she could walk into and place the product in its appropriate place. While picking, Petitioner used a lift to raise her to the level of the product on the shelf that it was to be picked from. Once the cage was full of products, Petitioner would take it to a packing station and then resume her duties as a picker.

When Petitioner worked as a packer, she would pack various products into boxes. Packing involved getting an empty box, putting the box on a table, getting the product out of the cage and packing the product inside the box. Petitioner stated she was directed to work as a packer on a regular basis, especially when Respondent had large orders. While packing, Petitioner stated she would pack approximately 60 items per hour for a 10 hour shift with two 15 minute breaks and an hour for lunch.

When Petitioner was initially questioned about the accident of February 15, 2018, she testified she had been at work all day, was at her residence, sat down to take a break and when she got up she felt as though she was "...going to snap in half" and compared it to when she had kidney stones approximately 15 years prior.

Petitioner subsequently testified she experienced the onset of pain at work on February 15, 2018, when she lifted a bag of dog food from the bottom of the cage. Petitioner estimated the bag of dog food weighed approximately 45 pounds. Petitioner testified she reported that she sustained the injury while lifting the bag of dog food to her treating medical providers, Dr. Eavenson and Dr. Gornet as well as to Respondent's Section 12 examiner, Dr. deGrange.

Petitioner initially sought medical treatment at the ER of Anderson Hospital on February 15, 2018. According to the ER record, Petitioner complained of left sided flank pain that had been present for two or three days. Petitioner indicated it began that day while going to work and nothing she did brought the pain on, worsened it, or lessened it. The record did not contain any reference to Petitioner having sustained an injury at work or that she injured her back while lifting a bag of dog food. Further, the record noted that Petitioner "denies injury" (Petitioner's Exhibit 1).

On cross-examination, Petitioner acknowledged she did not know she injured her back at work, but experienced pain while working as a packer. Petitioner agreed there was not a specific incident of bending or twisting which caused her to experience low back pain, but it appeared over time while she was working in packing.

Following the ER visit of February 15, 2018, Petitioner returned to work for Respondent as a picker. Petitioner worked as a picker for several weeks and did not experience any back pain. On March 21, 2018, Petitioner was directed to work in the packing department. During that day, Petitioner requested to be moved back to the picking department, but her request was denied. Petitioner was informed that there was no one else trained for packing. Later in the day, Petitioner said she saw two or three other pickers who were trained to pack, so she renewed her request to move back to the picking department, but it was again denied.

On March 21, 2018, Petitioner went to the HR department to complain about her request being denied. At that time, Petitioner reported she sustained a work-related injury. Petitioner completed and signed a form captioned "Associate First Report of Injury." The form listed the incident date as "2/15/ER Visit" and Petitioner started feeling pain in the back before lunch, asked if she could pick or if someone could alternate, was informed no one else was trained, saw four pickers that were trained and talked to individuals named Christian, Thomas and Steve. There was no mention in this report of Petitioner having injured herself while lifting a bag of dog food (Respondent's Exhibit 3).

On March 21, 2018, Petitioner sought treatment at Multicare Specialists and was evaluated by Michelle Lemp, a Nurse Practitioner. Petitioner informed NP Lemp that she experienced low back pain while at work while working as a packer. NP Lemp diagnosed Petitioner with low back pain, prescribed medication and authorized Petitioner to be off work. There was no mention in the record of Petitioner sustaining an injury while lifting a bag of dog food (Petitioner's Exhibit 2).

The following day, March 22, 2018, Petitioner was seen by Dr. Mark Eavenson, a chiropractor. Petitioner complained of low back pain and related it to working as a packer and the picking job was much easier. Dr. Eavenson ordered x-rays of the lumbar spine which revealed degenerative disc disease at multiple levels. He opined Petitioner had a lumbar disc protrusion and imposed work/activity restrictions. Dr. Eavenson ordered physical therapy, chiropractic treatment, cupping and an MRI scan. Again, there was no reference to Petitioner sustaining an injury while lifting a bag of dog food (Petitioner's Exhibit 2).

The MRI was performed on March 22, 2018. According to the radiologist, the MRI revealed annular tears at L4-L5 and L5-S1 (Petitioner's Exhibit 7).

Dr. Eavenson referred Petitioner to Dr. Matthew Gornet, an orthopedic surgeon. Dr. Gornet evaluated Petitioner on March 30, 2018. In a form completed and signed by Petitioner on that date, Petitioner noted that the date of accident was March 21, 2018, at about 3:15 PM. According to Dr. Gornet's record of that date, Petitioner informed him her problem began one to two months prior when she was switched from picking to packing. He noted that when Petitioner was packing she was required to bend and lift packages from a cage and place them on a table and this aggravated her condition, but picking did not. Dr. Gornet reviewed the MRI and opined it revealed annular tears and disc protrusions at L4-L5 and L5-S1. Dr. Gornet recommended three more weeks of physical therapy. There was no reference in Dr. Gornet's records, including the form completed by Petitioner, of Petitioner having injured her back while picking up a bag of dog food (Petitioner's Exhibit 3).

At the direction of Respondent, Petitioner was examined by Dr. Donald deGrange, an orthopedic surgeon, on June 7, 2018. In connection with his examination of Petitioner, Dr. deGrange reviewed medical records provided to him by Respondent. Petitioner complained of low back pain, but without any lower extremity pain, numbness or weakness. Petitioner advised Dr. deGrange that on February 15, 2018, she was working as a packer and develop symptoms similar to those she previously had when she had kidney stones 10 years prior. Petitioner described the pain as being insidious and did not recall any specific incident (including lifting a bag of dog food), but only that she began to experience discomfort.

Dr. deGrange reviewed the MRI and opined it revealed annular fissures at L4-L5 and L5-S1. Dr. deGrange opined Petitioner's work activities of February 15, 2018, were consistent with a lumbar strain which aggravated a pre-existing degenerative condition. He also opined that further physical therapy was not indicated, but that Petitioner might benefit from epidural steroid injections, but a maximum of two. He noted Petitioner could return to work with a 25 pound lifting limit and limited bending and twisting (Respondent's Exhibit 5).

Dr. Gornet saw Petitioner on August 6, 2018, and reviewed Dr. deGrange's report noting he had recommended epidural steroid injections. Dr. Gornet agreed there was no significant neurologic compression, but referred Petitioner to Dr. Helen Blake for the epidural steroid injections (Petitioner's Exhibit 5).

Dr. Blake saw Petitioner on August 7, and August 21, 2018. On those occasions, she administered an epidural steroid injection on the right at L5-S1 and on the right at L4-L5, respectively (Petitioner's Exhibit 8).

Dr. Gornet subsequently saw Petitioner on October 1, 2018, and noted the epidural steroid injections did not provide Petitioner with any significant relief. Dr. Gornet ordered additional diagnostic tests including a discogram, CT scan and MRI spectroscopy. Dr. Gornet has recommended Petitioner undergo a two level disc replacement surgery at L4-L5 and L5-S1. Dr. Gornet last saw Petitioner on March 28, 2019 (Petitioner's Exhibit 5).

At the direction of Respondent, Petitioner was again examined by Dr. deGrange on February 6, 2019. At that time, Dr. deGrange reviewed additional medical records and diagnostic studies provided to him by Respondent. Petitioner complained of low back and right hip pain with occasional numbness in the right calf; however, Dr. deGrange's findings on examination were consistent with what they were previously. Dr. deGrange noted Petitioner had received extensive

medical treatment since the last time he saw her, which included 10 to 11 months of physiotherapy, chiropractic care and cupping. Dr. deGrange again questioned Petitioner whether she could recall any specific event such as lifting or slipping/falling. Petitioner could not recall any such incidents and again stated the bending and twisting while packing aggravated her low back pain (Respondent's Exhibit 6).

Dr. deGrange now opined that the bending and twisting previously described by Petitioner was no more likely to cause pain than bending and twisting at home. He also opined that the continuous therapy and chiropractic treatment Petitioner had received was excessive and a two level disc replacement surgery was not indicated due, in part, to the fact Petitioner was morbidly obese. Dr. deGrange now opined Petitioner had chronic low back pain which was not related to the work-related activities of February 15, 2018 (Respondent's Exhibit 6).

Dr. Gornet was deposed on April 29, 2019, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Gornet's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. Dr. Gornet related the annular tears at L4-L5 and L5-S1 to Petitioner's activities as a packer because that was when her symptoms began. He reaffirmed his recommendation Petitioner undergo a two level disc replacement surgery at those levels (Petitioner's Exhibit 5; pp 9, 14-15).

On cross-examination, Dr. Gornet agreed he had not reviewed job descriptions for either the picking or packing job. Dr. Gornet also agreed he had not reviewed a job analysis report or video job analysis of either position. When cross-examined about degenerative findings being present before the work injury, Dr. Gornet replied, in part "...something occurred with this mechanical activity, and doing that, I believe that's when she sustained disc injury." (Petitioner's Exhibit 5; pp 17, 23).

Dr. deGrange was deposed on May 7, 2019, and his deposition testimony was received into evidence at trial. On direct examination, Dr. deGrange's testimony was consistent with his medical reports and he reaffirmed the opinions contained therein. In regard to his first examination of June 7, 2018, Dr. deGrange testified Petitioner did not inform him that she had sustained a specific injury on February 15, 2018. Based upon Petitioner's description of her work activities, Dr. deGrange opined she sustained a lumbar strain which was a temporary exacerbation of her underlying degenerative disc disease at L4-L5 and L5-S1 (Respondent's Exhibit 4; pp 7, 13-14).

Dr. deGrange testified Petitioner could not recall any specific incident, but that she attributed her symptoms to bending and twisting while working as a packer. Dr. deGrange considered bending and twisting as a normal daily activity and while Petitioner attributed it to her work, Dr. deGrange noted that one should "...not confuse association with causation." (Respondent's Exhibit 4; pp 28-29.

When cross-examined, Dr. deGrange explained he changed his opinion regarding causation based upon Petitioner's persistence of symptoms and that Petitioner could not recall anything that might have caused it. He stated "I no longer believed that her ongoing symptoms were a consequence of anything she might have done in February of 2018." (Respondent's Exhibit 4; pp 47-48).

At trial, Petitioner testified her current symptoms prevent her from doing anything involving any stress for longer than five minutes or so. Petitioner stated she is willing and able to return to work as a picker, but not as a packer. Petitioner has continued to seek chiropractic care and wants to proceed with the surgery as recommended by Dr. Gornet.

On cross-examination, Petitioner conceded she was still able to take family vacations and recently made a trip to Florida which included a two and one-half hour plane ride. Further, Petitioner also traveled to Utah by car to visit her sister and estimated this took about 18 hours. While there, Petitioner also engaged in some hiking on trails.

Conclusions of Law

In regard to disputed issue (C) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner did not sustain an accidental injury arising out of and in the course of her employment by Respondent on February 15, 2018.

In support of this conclusion the Arbitrator notes the following:

It was not clear from Petitioner's testimony whether she was claiming to have sustained a specific accident on February 15, 2018, or whether she was claiming to have sustained a repetitive trauma injury which manifested itself on February 15, 2018.

Petitioner testified she experienced pain in her low back while working as a packer, but also testified she experienced the onset of pain on February 15, 2018, when she lifted a bag of dog food that weighed 45 pounds.

Petitioner testified she informed Dr. Eavenson, Dr. Gornet and Dr. deGrange of having injured her back while lifting a bag of dog food; however, such a history was not contained in any of their records/reports. Further, such a history was not included in the First Report prepared by Petitioner.

Petitioner also testified she experienced the onset of pain on February 15, 2018, when she got up from taking a break at home.

When seen at Anderson Hospital on February 15, 2018, Petitioner complained of left sided flank pain that had been present for two or three days and that she had experienced the onset of pain while going to work. Further, there was nothing in the record of that date that referenced any work-related injury and Petitioner denied injury.

When Petitioner was seen by Dr. Gornet on March 30, 2018, she completed a form which noted the date of accident was March 21, 2018, at 3:15 PM; however, Dr. Gornet's record indicated Petitioner experienced the onset of pain while working as a packer.

Petitioner apparently did have to engage in bending and twisting while working as a packer and Dr. deGrange initially opined this may have caused Petitioner to have sustained a lumbar strain. However, given the long periods of physical therapy, chiropractic care, cupping and epidural steroid injections, and the persistence of her symptoms, Dr. deGrange subsequently opined Petitioner had a chronic low back condition that was not related to her work activities of February 15, 2018.

Dr. Gornet's opinion that Petitioner's low back condition was related to her work was based, in large part, on his belief that "something occurred" with Petitioner's activities at work to cause the disc injury. This is not a sufficient basis to find a medical causal relationship.

Based upon all of the preceding, the Arbitrator concludes Petitioner did not sustain either a specific injury or a repetitive trauma injury on February 15, 2018.

In regard to disputed issues (F), (J), (K) and (L) the Arbitrator makes no conclusions of law as these issues are rendered moot because of the Arbitrator's conclusion of law in disputed issue (C).

William R. Gallagher, Arbitrator