

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DEAN ROUCHOS, Court Appointed Representative
of Estate of JAMES ROUCHOS, deceased.

Petitioner,

vs.

NO: 13 WC 21583
20IWCC 0544

CITY OF CHICAGO,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

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

Permanent Disability

Section 8.1b(b) of the Illinois Workers' Compensation Act provides the following:

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

in a written order. *820 ILCS 305/8.1b*

The Commission affirms and adopts the Arbitrator's analysis and consideration of all five factors pursuant to §8.1b(b) in determining the award of permanent partial disability in this case. The Commission modifies the Arbitrator's decision solely with respect to apportioning weight to the Arbitrator's §8.1b(b)(v) analysis. After the Arbitrator's analysis of §8.1b(b)(v), regarding the evidence of disability corroborated by the treating medical records, the Commission inserts one additional sentence following the last line in subsection (v), the third paragraph on page 13, as follows: "As such, this factor is given significant weight in the permanency determination."

Therefore, the end of the §8.1b(b)(v) analysis will read as follows: "...The Arbitrator also notes that evidence in the record reflects evidence of other comorbidities, including cardiac and low back problems, which may impact his work abilities. As such, this factor is given significant weight in the permanency determination."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on January 23, 2018, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Petitioner sustained accidental injuries arising out of and in the course of his employment on April 5, 2013. The Commission further finds that the Petitioner's left shoulder condition, which resulted in surgery, as well as Petitioner's cervical strain injuries, are causally related to the April 5, 2013, accident.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$910.21 per week for a period of 154 weeks, commencing May 8, 2013, through April 19, 2016, 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 be given a credit of \$24,445.64 for temporary total disability benefits that have been paid. Respondent shall also be given a credit of \$60,728.83 for non-occupational disability 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 §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$712.55 per week for a period of 50 weeks, as provided in §8(d)2 of the Act, for the reason that the injury sustained to the left shoulder caused the loss of use of 10% of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$712.55 per week for a period of 12.5 weeks, as provided in §8(d)2 of the Act, for the reason that the injury sustained to the cervical spine caused the loss of use of 2.5% of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay reasonable and necessary medical expenses contained in Petitioner's Exhibit 1 in the record of evidence, so

long as the expenses contained therein are causally related to treatment of the left shoulder and/or cervical spine, as provided in §8(a) and §8.2 of the Act. This would also include any expenses related to pre-operative treatment prior to the December 31, 2015, left shoulder surgery.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall be given a credit for any and all awarded medical expenses 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 §8(j) of the Act.

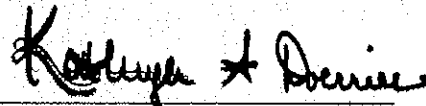
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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.

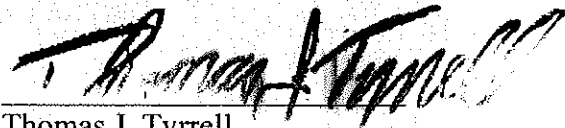
Based upon the named Respondent herein, no bond is set by the Commission. 820 ILCS 305/19(f)(2) (West 2012). The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:
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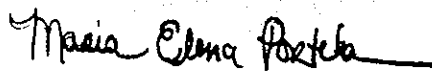
NOV 13 2020



Kathryn A. Doerries



Thomas J. Tyrrell



Maria E. Portela

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

ROUCHOS, JAMES

Employee/Petitioner

Case# **13WC021583**

CITY OF CHICAGO

Employer/Respondent

20 I W C C 0 5 4 4

On 6/1/2018, 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:

2986 PAUL A COGLAN & ASSOC
15 SPINNING WHEEL RD
SUITE 100
HINSDALE, IL 60521

0010 CITY OF CHICAGO-TORTS DIV
KEVIN REID
30 N LASALLE ST SUITE 800
CHICAGO, IL 60602

20 IWCC0544

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JAMES ROUCHOS
Employee/Petitioner

Case # 13 WC 21583

v.
CITY OF CHICAGO
Employer/Respondent

Consolidated cases: _____

An Application for Adjustment of Claim was filed in this matter, and a Notice of Hearing was mailed to each party. The matter was heard by the Honorable **Paul Cellini**, Arbitrator of the Commission, in the city of **Chicago**, on **February 23, 2018 and March 20, 2018**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **April 5, 2013**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$70,996.12**; the average weekly wage was **\$1,365.31**.

On the date of accident, Petitioner was **59** years of age, *single* with **0** dependent children.

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

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

Respondent shall be given a credit of **\$24,445.64** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$60,728.83** for nonoccupational indemnity disability benefits.

Respondent is entitled to a credit for any awarded medical expenses paid by Respondent pursuant to Section 8(j) of the Act.

ORDER

The Arbitrator finds that the Petitioner sustained accidental injuries arising out of and in the course of his employment on April 5, 2013. The Arbitrator further finds that the Petitioner's left shoulder condition, which resulted in surgery, as well as Petitioner's cervical strain injuries, are causally related to the April 5, 2013 accident.

Respondent shall pay Petitioner temporary total disability benefits of **\$910.21 per week** for **154 weeks**, commencing **May 8, 2013 through April 19, 2016**, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of **\$24,445.64** for temporary total disability benefits that have been paid. Respondent shall also be given a credit of **\$60,728.83** for non-occupational disability 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 reasonable and necessary medical expenses contained in Petitioner's Exhibit 1 in the record of evidence, so long as the expenses contained therein are causally related to treatment of the left shoulder and/or cervical spine, as provided in Sections 8(a) and 8.2 of the Act. This would also include any expenses related to pre-operative treatment prior to the 12/31/15 left shoulder surgery.

Respondent shall be given a credit for any and all awarded medical expenses 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.

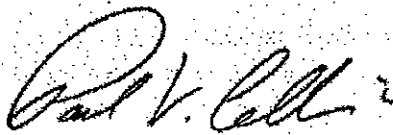
With regard to the left shoulder, the Respondent shall pay Petitioner permanent partial disability benefits of **\$712.55 per week**, the maximum allowable statutory rate, for **50 weeks**, because the injuries sustained caused the loss of use of **10% of the person as a whole**, as provided in Section 8(d)2 of the Act.

With regard to the cervical spine, the Respondent shall pay Petitioner permanent partial disability benefits of **\$712.55 per week**, the maximum allowable statutory rate, for **12.5 weeks**, because the injuries sustained caused the loss of use of **2.5% of the person as a whole**, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from **April 19, 2016** through **March 20, 2018**, and shall pay the remainder of the award, if any, in weekly payments.

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

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



Signature of Arbitrator

JUN 1 - 2018

May 30, 2018

Date

STATEMENT OF FACTS

The Petitioner testified he has worked for the Respondent for 20 years as a food service establishment inspector. This requires him to travel around Chicago inspecting businesses, generally within one zip code area with some exceptions. He testified that he spends his workdays traveling from business to business for inspections other than his lunch period, and "swipes" in and out of work at various locations in the assigned zip code. Petitioner also holds associates degrees in the hospitality and restaurant industries. He is right hand dominant.

Petitioner testified that he was involved in a motor vehicle accident on Friday, 4/5/13 at approximately 4:30 p.m. while driving his personal 2003 Honda Accord. He had been heading east on Chicago Avenue, from near Central Avenue on his way to the fire station he swipes out at near Cicero. His shift generally ended at 4:30. He testified that traffic was moving slow at approximately 10 miles per hour before he came to a stop, and that he was rear-ended while he was stopped at the light. He was wearing his seatbelt. The airbag did not deploy. The Respondent agreed on the record that the Petitioner was in the course of his employment when the accident occurred. Petitioner testified he did not report the accident to the Respondent that day because no one was present to report it to.

The Petitioner testified that the driver who hit him was acting very erratically. There were police in the area who were present for other reasons. While he and the other driver were supposed to go to a nearby police station on Madison, the other driver failed to show up. Petitioner was able to drive his own car. The police report (Rx6) from the accident reflects that it was a hit and run with Petitioner being struck in the rear, though the other driver's contact information was noted. It states that the cars were both traveling eastbound on Chicago Avenue, the Petitioner was coming to a stop, and the other vehicle struck the Petitioner in the rear. There was damage noted to the rear of Petitioner's vehicle. Both drivers had been instructed to go to the 5th police district station, but the other driver never arrived. (Rx6).

The Petitioner indicated he didn't initially know he was injured and was trying to get his composure, but did feel stiff while at the police station. He testified he felt pain in the left shoulder and the left neck areas when he awoke on the morning of 4/6/13, "localized in the shoulder." He rested and took painkillers. After initially indicating he went to the doctor the day after the accident on Saturday, he agreed with the medical records which indicated he initially sought treatment on Sunday, 4/7/13 at the St. Joseph's emergency room.

Petitioner testified he did not report the incident on 4/5/13 because it was late in the day and no one was available. He indicated that because it was right before the weekend, he wanted to see if he would get better. When he didn't, he reported it to the Respondent's chief sanitarian, Ms. Castaneda, on the following Tuesday or Wednesday in person at the office. She provided him with a packet of documentation, including an accident report, which he completed. He testified he also provided Castaneda with the vehicle accident police report at that time, and that she provided and signed off on an accidental injury report completed by Petitioner, who also signed it.

A City of Chicago Report of Occupational Injury report indicates the Petitioner reported the accident to his supervisor, Arleen Lopez, on 4/6/13, stating he was on his way to swipe out when he was rear-ended and felt rear upper back and left shoulder pain. This was signed by the Petitioner as well as Chief Sanitarian Virginia Castaneda on 4/18/13. (Px9).

At the ER on 4/7/13, Petitioner related a consistent history of the car accident two days prior. He indicated he had no initial pain but later developed bilateral "strap muscle" and trapezius pain and spasm. There was no weakness or tingling. Dr. Rothschild noted neck pain and stiffness, as well as muscular tenderness. Cervical x-ray reflected spondylitic changes with a suggestion of bilateral C4/5 foraminal stenosis, possibly at C5/6, with no traumatic changes seen. Petitioner was diagnosed with a cervical sprain status post a motor vehicle accident, prescribed valium and advised to follow-up with his primary care physician. (Px2).

A 4/5/13 note of Dr. Lavell, a podiatrist, noted that Petitioner was a diabetic with thickened and discolored nails. It does appear that this may have been a letter issued, and not a medical visit that occurred, on 4/5/13, the alleged accident date. (Rx5).

Petitioner testified he continued to have left shoulder pain. He saw his primary care physician, Dr. Ahluwalia, on 4/10/13, noting he had only been seeing this provider for a year or so prior to the accident. He could not recall the name of his prior primary provider, but agreed his primary care treatment had involved blood pressure and blood thinners, diabetes and coronary issues. Petitioner testified that Dr. Ahluwalia referred him for therapy, which took place at Presence St. Joseph's, and for a brain MRI, though he testified that his brain "wasn't the problem."

On 4/11/13, Petitioner presented to Dr. Ahluwalia for his Prothrombin Time-INR study, relative to cardiac issues. He also reported having been in a car accident, not going to work and wanting a note to stay home for a few more days. He was noted to have limited range of motion of the arms bilaterally on exam, but no diagnosis was made relative to Petitioner's cervical spine or left shoulder. He was advised to follow up in a week to see how he was doing. He was

held off work for three days. (Rx5). On 4/18/13, Petitioner again appeared for PT-INR levels, and complained of neck pain and headache since the 4/8/13 accident. Petitioner requested an MRI, and Dr. Ahluwalia referred him for a brain MRI. At that time Dr. Ahluwalia wrote a note for Petitioner, stating that he was still in immense pain with restricted motion of the neck joint in all directions, that he had been having headaches since the accident, and that he had been advised to rest at home until further notice. (Rx5).

The 4/29/13 brain MRI reflected no acute cranial abnormality. (Px3).

On 4/30/13, Petitioner presented to Saint Joseph Hospital for physical therapy, with the report indicating it was pursuant to the referral of Dr. Ahluwalia. Petitioner noted he was rear-ended while slowing down to stop, and further reported that neck and shoulder pain that were now constant and worsening in severity. Petitioner reported tingling on the top of both of his shoulders when he lays down at night. Petitioner rated his pain an 8 out of 10, and reported no prior neck or shoulder pain. Upon examination, the therapist noted Petitioner was unable to move his neck enough to assess flexibility, and had increased swelling. He "jumped" with light palpation of any part of his left upper trapezius, cervical manipulation and left-sided scapular manipulation. Therapy was to be performed twice weekly for 3 to 4 weeks. (Px3).

Petitioner testified that his prior attorney then referred him to Dr. Kaplan, whom he saw on 5/8/13. Petitioner reported being rear-ended by an SUV while wearing a seat belt, resulting in injury to the neck and left trapezius with local pain, swelling and stiffness. Exam indicated swelling and tenderness, left greater than right, in the posterior cervical area and left trapezius muscles with reduced range of motion. With respect to the left shoulder, Dr. Kaplan noted mild tenderness with reduced range of motion. He diagnosed sprain/strains of the left shoulder, cervical spine and thoracic paraspinals with left trapezius contusion. Petitioner was prescribed Tramadol and referred to physical therapy, as well as to physical medicine for further evaluation. He also was held off work. (Px3).

Petitioner followed up with Dr. Kaplan on 5/22/13 with continued complaints of pain at the neck and left scapula and trapezius and only minimal improvement. Therapy and off work were continued for the left shoulder and cervical and thoracic spine. On 6/8/13, Dr. Kaplan noted Petitioner had some limited improvement. Petitioner was prescribed Tramadol and Flexeril and was continued off work. (Px3).

On 6/1/13, Petitioner saw Dr. Ahluwalia with complaints of low back pain, indicating there are days when he cannot get up at all, and that he had been unable to control his back pain since an auto accident 18 years ago. He'd undergone therapy at that time for 5 years without much improvement. (Rx5).

On 6/25/13, Petitioner continued to report neck and left trapezius pain, swelling, and stiffness radiating to the left scapular. He also noted a "tremor" in the left arm with shoulder extension. Petitioner indicated only slight improvement. Therapy was again continued by Dr. Kaplan along with off work, and Celebrex was an added medication. On 7/17/13, Petitioner again reported slight improvement to Dr. Kaplan. The doctor noted some improvement with range of motion, as well as less muscle spasms, but that Petitioner continued to have some pain. He was advised to continue with therapy, medication and off work status. On 8/16/13, Petitioner again followed-up with Dr. Kaplan, reporting continued pain and stiffness, along with somewhat improved pain radiating to the left scapular area. Petitioner reported also experiencing such radiating pain to the right scapula area during physical therapy. Petitioner noted unchanged muscle spasms and mild left arm tremor with shoulder extension. Dr. Kaplan noted that cervical kyphosis continued, along with minimal clonic contractions in the left biceps muscle with left shoulder extension. There was mild tenderness in the bilateral thoracic paraspinal areas. Petitioner was given a trigger point injection, and medication, therapy and off work status were continued. (Px3).

On 9/10/13, Petitioner followed-up with Dr. Kaplan with continued local pain and stiffness. Pain radiating to the left scapular area was somewhat, still occasional radiating to the right during therapy, and he had mild tremor in the left arm. Petitioner declined an additional trigger point injection. Dr. Kaplan wanted him to work on reducing kyphosis, in addition to the current therapy, and that they should work on freeing up Petitioner's frozen shoulder. He remained off work, and disability forms were completed for the Petitioner. On 9/24/13, given the Petitioner's prolonged poor response to conservative treatment, Dr. Kaplan noted the Petitioner's therapist recommended MRI testing of the cervical spine and left shoulder to see if something was being missed. (Px3).

Petitioner testified that at this time his arm wasn't moving properly and his shoulder was being addressed. He testified the trigger point injections on 8/3/13 provided only temporary relief.

The Respondent obtained a 9/24/13 utilization review with regard to ongoing physical therapy, and family practitioner Dr. Jones determined, via ODG guidelines for the shoulder, that an additional 24 sessions of therapy were not certified. It was noted that a peer-to-peer review was conducted with Dr. Kaplan on 9/23/13 which did not change Jones' denial of certification. (Px3).

A 10/30/13 MRI of the cervical spine showed degenerative disc disease from C3 to C6, most pronounced at C4/5, with a disc bulge and bilateral osteophytes causing severe neuroforaminal narrowing. The left shoulder MRI performed that same day indicated a possible small partial thickness distal supraspinatus tear at the insertion, mild AC joint osteoarthritis and minimal subacromial/subdeltoid bursitis. (Px4).

On 11/6/13, Petitioner was seen for a Section 12 examination with spine surgeon Dr. Singh at the request of Respondent. Petitioner reported 8 out of 10 neck pain radiating into the left upper arm, bilateral arm spasms that were a direct result of the accident, and that he'd had only moderate relief with therapy. He reported being able to sit, stand or walk for no more than 5 minutes at a time. Dr. Singh reviewed the 10/23/13 cervical MRI, noting it showed mild C4/5 disc space collapse with mild foraminal stenosis, but did not review the left shoulder MRI. He diagnosed the Petitioner with a cervical strain and degenerative disk disease at C4/5. During physical examination, Dr. Singh noted that the Petitioner was intentionally creating a tremor, noting it was not present with distraction and that there was no anatomic basis for it. Dr. Singh also opined that the Petitioner's pain complaints were out of proportion to the examination findings. He opined that the Petitioner's current symptoms were not related to the accident, as the Petitioner had only sustained a soft tissue neck strain. He felt that the MRI findings were incidental in nature. As the Petitioner had undergone over 40 sessions of physical therapy, and his pain complaints were non-anatomic, Dr. Singh opined that Petitioner had reached maximum medical improvement and was able to return to work with no restrictions. (Rx4).

Petitioner testified that Dr. Singh did not examine his shoulder. The Petitioner testified that Dr. Singh examined his neck for 5 to 10 minutes but did not examine his shoulder as his own doctor had.

On 11/9/13, Dr. Kapan issued a note continuing the Petitioner off work. On 11/19/13, Petitioner reported only slight improvement since his last visit, and that his Celebrex was discontinued by "other M.D." due to risks of bleeding, but he was still using Flexeril. Dr. Kaplan reviewed the MRI results and continued physical therapy, but noted surgery for the partial rotator cuff tear could not be ruled out in the future. (Px3).

Petitioner again followed up with Dr. Kaplan on 12/10/13 and 1/11/14, with Petitioner's condition essentially unchanged, and medication, therapy and off work status were continued. He did note that shoulder surgery was becoming less likely given Petitioner's rate of improvement. On 1/24/14, Dr. Kaplan continued the Petitioner off work,

noting he would likely be able to return to work in May 2014. On 2/15/14, Dr. Kaplan noted Petitioner had ongoing complaints, but the neck kyphosis was now near normal. It was noted that since the last visit the Petitioner had undergone coronary stent placement. Medication, therapy and off work were continued. (Px2).

On 3/22/14, Petitioner reported his neck was much better, while the left trapezius/scapular pain was a little better. Dr. Kaplan noted improved cervical range of motion overall, but no significant improvement in cervical extension. Dr. Kaplan advised Petitioner to continue cervical and left shoulder therapy and medication, and continued off work status. On 5/17/14, Dr. Kaplan indicated minimal change. Petitioner advised that he had a heart ablation procedure since his last visit. The last noted visit with Dr. Kaplan was on 7/22/14. Petitioner advised that his therapy was ongoing including ultrasound and electrical stimulation modalities in addition to regular therapy, and that he'd had some improvement. He continued to report left trapezius muscle/shoulder pain and stiffness with pain radiating to the left scapular area. Petitioner's left shoulder range of motion was noted to be slightly improved, although muscle spasms continued. Dr. Kaplan's examination was essentially unchanged since the prior visit, and Dr. Kaplan continued the same treatment plan, continuing the Petitioner's off work status. The record contains an additional 11/6/14 off work note, indicating this status from 5/8/14 to present, but there was no progress note in the record for this date. (Px3).

Petitioner testified that rotator cuff tear surgery was recommended by Dr. Kaplan in November 2013, but he didn't have surgery initially because he had to find a shoulder surgeon who was within his health insurance group. Petitioner testified that he did not originally receive temporary total disability (TTD) benefits in this case for three to four months after the accident. Following his examination with Dr. Singh, the Respondent would not authorize further treatment. Following this exam, Petitioner testified the Respondent benefits. He went onto FMLA leave and had to obtain his own health insurance. He obtained insurance through his employer, which required him to get a new primary provider to obtain a referral to a shoulder specialist. As this process took time, he didn't return for treatment until 8/21/15. During this interim period, Petitioner indicated his shoulder function remained abnormal and he had difficulty with rotation, which he testified is the same problem he'd had with it since the car accident. He testified he had no shoulder problems bilaterally, neck problems or pain down his arm prior to the accident.

The Petitioner testified that he found a new primary provider at this point, Dr. Siddiqui, who referred him to Dr. Fisher, a cervical specialist, at Illinois Bone & Joint Institute, who then referred him to Dr. Garelick for the shoulder.

On 4/6/15, Petitioner underwent bilateral shoulder MRIs at the request of Dr. Siddiqui. On the right, films reflected a suspected full thickness supraspinatus tear. The AC joint was moderately arthritic, and there was a type 3 acromion, both causing impingement. The MRI of the left shoulder was noted to be limited due to excessive motion, so a repeat left MRI was suggested with sedation. (Px5). At the request of Dr. Siddiqui, Petitioner also underwent EMG testing of the left upper extremity which showed no evidence of radiculopathy, peripheral neuropathy, brachial plexopathy or polyneuropathy. (Px6).

On 2/5/15, Dr. Siddiqui held the Petitioner off work through 5/5/15. On 4/9/15, he continued the Petitioner off work again through 6/9/15. On 4/27/15, Dr. Siddiqui issued a work note holding Petitioner off work through 8/5/15. (Px7). The records (Px6) indicate the Petitioner was a no show to his initially scheduled visit with Dr. Fisher on 5/13/15. After rescheduling to 6/22/15, Petitioner again failed to show up for the visit, as well as on 7/16/15. The 8/21/15 initial report of spine surgeon Dr. Fisher noted chief complaint of cervicgia and left shoulder pain following a car accident two years prior. The symptoms were mild to moderate, worse with activity. He denied radicular symptoms, and noted the shoulder injection he had received provided no relief. Dr. Fisher noted Petitioner had neck tenderness throughout the cervical paraspinals, as well as in the left shoulder, lateral subacromial space, and glenohumeral joint anteriorly. There was limited range of motion. With respect to the bilateral upper extremities, Dr. Fisher noted a positive Neer's and

Hawkins on the left, and that Petitioner had difficulty actively forward flexing or abducting past 70 degrees. Dr. Fisher reviewed the previous MRI and x-ray results. He obtained new x-rays, with the cervical films revealing disc space narrowing at C4/5 and C5/6 with loss of normal cervical lordosis. Left shoulder films showed a slightly high-riding humerus, and no evidence of fracture or tumor. Petitioner was diagnosed with cervical degenerative disc disease and left shoulder internal derangement, most likely supraspinatus rotator cuff tear. Dr. Fisher recommended a repeat cervical MRI and follow-up with a shoulder surgeon. (Px6).

On 9/12/15, cervical MRI was also noted to be poor due to patient movement, but was remarkable for mild multilevel mid-cervical spondylosis, worst at C4/5 with mild central and bilateral neuroforaminal stenosis. C5/6 spondylosis resulted in mild central and right neuroforaminal stenosis. (Px5).

On 11/4/15, Petitioner followed-up with Dr. Fisher with ongoing complaints of left shoulder pain and neck pain. Dr. Fisher noted the cervical MRI, while having slight motion artifact, indicated no significant central canal stenosis, but disk space narrowing at C4 to C6 with disk herniations. Given Petitioner's main complaint was the left shoulder, Dr. Fisher again recommended an updated left shoulder MRI and follow-up with a shoulder specialist. (Px6).

The repeat left shoulder MRI was performed on 11/24/15, indicating a 3 mm partial thickness supraspinatus tear, no full thickness tear, and tendinosis at the subscapularis insertion site. (Px5).

Petitioner initially saw shoulder surgeon Dr. Garelick on 12/1/15. He reported bilateral shoulder pain, with the left much worse than the right. Following examination and review of the left shoulder MRI, Dr. Garelick recommended shoulder arthroscopy and acromioplasty, distal clavicle resection, biceps tenodesis and, if needed, rotator cuff repair. He first requested pre-surgical clearance from Petitioner's primary care physician and possibly a cardiologist. (Px6).

Dr. Garelick performed arthroscopic left shoulder surgery on 12/31/15, involving arthroscopic loose body removal measuring approximately 1 cm in size, subacromial decompression and distal clavicle resection, as well as open biceps tenodesis through a separate incision. The post-operative diagnosis was impingement syndrome, AC arthropathy and biceps tendinitis with loose body. (Px2).

Petitioner followed up with Dr. Garelick on 1/13/16 and he was doing well. X-rays of the left shoulder revealed excellent decompression of the AC joint. Therapy was prescribed, which Petitioner began on 1/21/16. On 2/10/16, Dr. Garelick advised the Petitioner to work harder on his home exercise regimen. He stated that Petitioner had not worked since 2013 and that his prospects for returning to work were "slim", but that he "would not be necessary [sic] participating in keeping him off work forever." Dr. Garelick noted that typically patients go back to work with restrictions by this time, but that Petitioner would be provided with a few extra weeks of therapy before being released with restrictions in five weeks. (Px6).

On 3/16/16, Dr. Garelick noted that Petitioner was passively guarding on exam "a fair amount", with only about 90 degrees of forward elevation and 30 degrees of external rotation. Dr. Garelick released Petitioner to return to work with no lifting over 10 pounds and no overhead work with the left upper extremity. Petitioner was advised to follow-up in 5 weeks. Dr. Garelick noted: "I was met with a fair amount of resistance when I allowed him to return to work. I tried to explain to him that in all of my patients that have injuries and subsequent surgeries like he has, we will usually allow them to return to work at six weeks post-op and we have given him a few extra weeks to heal. Even with this said, I was met with a fair amount of resistance. I further explained to him I think that return to work full duty after this type of operation be somewhere between four to four and a half months post-operative. Ultimately, I think that he may necessitate an FCE (functional capacity evaluation) to assess for his true abilities." (Px6).

The Petitioner's attorney referred him for an independent examination with Dr. Gross in January 2017, with Petitioner indicating Gross examined him for "a couple hours" versus the 10 minutes he testified that Dr. Singh spent with him. On 1/26/17, Petitioner obtained an evaluation with Dr. Michael Gross. The history provided to Dr. Gross was consistent with what Petitioner testified to at trial, namely that he felt stiffness initially after the accident which he thought would go away, but that his neck and shoulder became increasingly painful so he presented to the ER. Petitioner reported neck stiffness and left trapezius pain and stiffness, clicking in his neck when he turns his head since the accident, and left arm pain with use. Petitioner also reported tingling in all of his left fingers when holding a telephone or lifting something heavy, or at night, especially when lying on it. Dr. Gross' diagnoses included residuals of a cervical spine injury and left shoulder supraspinatus tendon tear and left biceps tendon tendonitis. He related the left shoulder surgery and treatment to the cervical spine as being causally related to the accident of 4/5/13. Dr. Gross also opined that Petitioner demonstrated impairment pursuant to the AMA guidelines as it related to the shoulder injury of 4% of the whole person (or 7% of the upper extremity), and 8% of the whole person as it related to the cervical spinal stenosis, resulting in a total of 12% whole person impairment. (Px8).

Petitioner testified he had to sleep sitting up for a while following surgery, and that he underwent physical therapy. He testified that neither his group nor workers' compensation insurers would authorize FCE testing. Petitioner has had no further shoulder treatment since this release, and returned to work on 8/1/16. He testified that the surgery improved his condition, though he still has pain and is not as active as he used to be, including going to the gym and gardening. If he tries to do too much with the shoulder, it pulls and hurts. He now has to carry his work bag with his right hand, and its more difficult if he has to sometimes use a ladder to get.

On cross examination, Petitioner testified that the Respondent utilizes an occupational health clinic, MercyWorks, but that no one sent him there for evaluation after this injury. When the city stopped paying his duty disability/TTD benefits, he agreed he obtained weekly lost time benefits through Prudential, though he couldn't confirm if they began on 11/12/13 or not. After his release from Dr. Garelick he was reinstated back to full duty in approximately August 2016, and he continues to perform his regular job as an inspector. He does not have to move appliances or other items at the inspected facilities in his job. Petitioner agreed that he was provided and instructed in a home exercise program while in physical therapy, and while he tried it, he felt he wasn't sure he was doing it right, but he does do "some stretching."

The Respondent submitted evidence of its payments of lost time benefits (Rx1) and medical benefits (Rx2) related to this case.

CONCLUSIONS OF LAW

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that the Petitioner has proven, by the preponderance of the evidence, that he sustained accidental injuries arising out of and in the course of his employment on 4/5/13.

The Petitioner testified that his job involved traveling from place to place by car to perform inspections of food establishments in Chicago, generally within his assigned zip code area. It is clear to the Arbitrator that the evidence in the record supports that the Petitioner was a traveling employee. He testified that when he was involved in an auto accident

on 4/5/13, he was on his way to swipe out. Therefore, he remained in the course of his employment at the time. At hearing, the Respondent stipulated that the Petitioner had been in the course of his employment at the time of the accident. The Petitioner's testimony and the contemporaneous records in evidence support that he was still working and had not yet swiped out when the accident occurred.

With regard to the "in the course of" element of the accident claim, the Arbitrator finds that the Petitioner has proven the accidental injuries occurred in the course of his employment, both based on an auto accident being a clearly foreseeable incident for a traveling employee who has to drive from place to place in his job, but also as an increased risk over and above that to which the general public is exposed to given the amount of driving the Petitioner has to do each day for work. The Petitioner testified that he is essentially in a vehicle or at a place of inspection throughout his daily shift.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

At the second hearing date (3/20/18) in this bifurcated matter, the Respondent withdraw this as a disputed issue. Given the evidence presented in the Respondent's accident report (Px9), the Petitioner clearly provided timely notice of the accident within the proscribed 45-day period of Section 6(c) of the Act.

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

The Petitioner testified that he was initially feeling stiff at the police station after the accident, and that when he awoke the next day he had pain in his left shoulder and neck. He was initially diagnosed at the ER on 4/7/13 with a cervical strain, but he also complained of trapezius pain and spasm. The accident report of 4/18/13 reflects complaints of neck and left shoulder pain, and notes that the accident and injury was reported on 4/6/13 to Ms. Lopez. The Respondent did not present any conflicting testimony in this regard. When the Petitioner presented for therapy at St. Joseph's on 4/30/13, it was noted that he had neck and shoulder pain since the accident.

While there are some discrepancies in that the shoulder was not focused on at the ER or the initial visit with Dr. Ahluwalia on 4/11/13, there is enough contemporaneous evidence supporting neck and left shoulder complaints to lead the Arbitrator to conclude that the preponderance of the evidence supports a causal relationship of the Petitioner's initial neck and left shoulder complaints to the 4/5/13 accident.

With regard to the left shoulder, the Arbitrator finds that the Petitioner's treatment, including surgery, through the release of Dr. Garelick remained causally related to the accident. With regard to the cervical spine, the Arbitrator finds that while the condition was causally related to the accident, the causal relationship involves a cervical strain. The Arbitrator finds the 11/6/13 opinion of Dr. Singh to be persuasive in terms of the cervical spine. The Arbitrator finds that the causal relationship of the cervical spine ended as of that date, given the noted findings and opinions of Dr. Singh and the fact that Petitioner had already treated seven months for a cervical strain.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's above findings, the Arbitrator further finds that the Petitioner is entitled to the causally related medical expenses contained in Petitioner's Exhibit 1 pursuant to Sections 8(a) and 8.2 of the Act. This award is limited to treatment that was directed to and causally related to the cervical spine and left shoulder. This award is also limited as noted below. The Respondent is entitled to credit for any and all awarded medical expenses that were paid by Respondent prior to hearing, either directly via workers' compensation or via a group health plan pursuant to Section 8(j). The Petitioner has stipulated that the Respondent is entitled to credit for group payments per Section 8(j), so long as the Respondent holds the Petitioner safe and harmless with regard to any such credited expenses.

Notwithstanding the above, the Arbitrator denies all physical therapy expenses incurred subsequent to the 9/24/13 utilization review obtained by Respondent. This determination of the Arbitrator is applicable to therapy for both the cervical spine and the left shoulder. While the UR opinion was based only on the left shoulder, the fact of the matter is that therapy over five months at that time had resulted in virtually no improvement in the Petitioner's subjective complaints, per the records of Dr. Kaplan. Buttressed by the UR report, as well as the Section 12 report of Dr. Singh on 11/16/13 finding the cervical spine injury was nothing more than a strain, the continuation of therapy despite any real improvement over such a significant period of time is unreasonable on its face. The Arbitrator therefore finds that the Respondent is not liable for physical therapy expenses subsequent to 9/24/13, and is not entitled to expenses related to treatment of the cervical spine after 11/16/13, including but not limited to the treatment performed and diagnostic testing obtained by Dr. Fisher relative to the cervical spine.

WITH RESPECT TO ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

Based upon the above findings and other evidence, the Arbitrator finds that Petitioner was temporarily totally disabled from 5/8/13, when Dr. Kaplan initially took him off work, through 4/19/16. While the Petitioner claims TTD benefits through 7/31/16, the day before he returned to work, there is no indication that he was either held off work for this period of time or that the Respondent did not accommodate his restrictions prior to 8/1/15. On 3/16/16, Dr. Garelick indicated that the Petitioner was resistant to returning to work, and that he advised the Petitioner he would hold him off work for an additional 5 weeks, at which time he was to follow up. There is no evidence in the record indicating that the Petitioner did, in fact, follow up at that time. There are no treatment records in evidence which post-date 3/16/16.

While the Respondent's Section 12 examiner, Dr. Singh, on 11/6/13, determined that the Petitioner sustained nothing more than a cervical strain and was capable of going back to work, he did not address the Petitioner's left shoulder condition. Thus, while the Arbitrator agrees with Dr. Singh's determination at that time with regard to the cervical spine, off work status after that date remained reasonable based on the left shoulder condition. While there is a gap in treatment following the last visit with Dr. Kaplan in November 2014, the Petitioner credibly testified that, based on Respondent's denial of further treatment, he had to work to obtain treatment after that time through his group health plan. While this was going on, and while there are no shows indicated with regard to seeing Dr. Fisher initially, the Arbitrator relies on the off work notes of Dr. Siddiqui during that time period.

The Arbitrator finds that the Petitioner is entitled to TTD through the intended follow up visit with Dr. Garelick five weeks after 3/16/16, which was 4/19/16. No valid explanation was provided as to why the Petitioner did not return to work following Dr. Garelick's 3/16/16 release until 8/1/16. Respondent shall receive a credit for compensation paid in the amount of \$24,445.64 as well as an 8(j) credit in the amount of \$60,728.83 for disability received, however, shall hold the Petitioner safe and harmless in reference thereto pursuant to the applicable provisions of Section 8(j) of the Act.

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

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

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

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

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

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that the record contains an impairment rating of 4% of the whole person as to the left shoulder, and 8% of the whole person as to the cervical spine, as determined by Dr. Gross pursuant to the most current edition of the American Medical Association's (AMA) Guides to the Evaluation of Permanent Impairment. The Arbitrator notes that this level of impairment does not necessarily equate to permanent partial disability under the Workers' Compensation Act, but instead is a factor to be considered in making such a disability evaluation. In the present case, the Arbitrator finds that this factor provides some weight in the permanency determination, and notes that the findings of Dr. Gross with regard to the cervical spine appear to involve nerve/cord compression and/or radiculopathy, which does not appear to have been shown via the objective evidence in this case.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a sanitation food service inspector at the time of the accident and had returned to work in his prior capacity for over two years as of the date of hearing. While he was issued restrictions, and testified that the Respondent would not authorize and FCE, the Arbitrator notes it does not appear that any restrictions he has prevents him from performing his regular job, and that Dr. Garelick's notes are very confusing as to work status, as he initially questioned Petitioner's ability to return to work at all before then issuing fairly significant restrictions, but then goes on to state that the Petitioner was performing significant guarding and normally should have been returned back to full duty work within 5 months or so of the surgery. Overall, on balance, this factor plays a minimal role in the permanency determination given the Petitioner has returned to his regular job for a significant period of time with no indication of an inability to perform same.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 59 years old at the time of the accident. Neither party has submitted evidence in support of the impact of the Petitioner's age on his permanent condition as a result of his work accident. As such, the Arbitrator gives this factor no weight in the permanency determination.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that no evidence was presented which indicates that the Petitioner's future earnings in his current job with Respondent have been impacted in any way. However, he does have some level of work restrictions that could impact his future earnings if he were to lose his job with Respondent. As such, the Arbitrator gives this factor medium weight in the permanency determination.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes the evidence supports that the Petitioner suffered a cervical strain superimposed on what appears to be a degenerative cervical condition. He also sustained an injury to the left shoulder which ultimately resulted in a need for surgery with Dr. Garelick. As to the cervical spine, there does not appear to have been any significant ongoing sequelae from the accident, and the Petitioner really did not testify to any significant ongoing cervical problems. Petitioner did report ongoing problems with the left shoulder, and Dr. Garelick did issue work restrictions limiting left arm use to 10 pounds of lifting and no overhead use. However, the doctor also noted Petitioner's "resistance" to returning to work, as well as somewhat cryptic language that seems to indicate he would have expected Petitioner to have no work restrictions based on the type of surgery he had. Dr. Gross did make some specific findings of Petitioner lacking a level of range of motion. Petitioner is right hand dominant. The Arbitrator also notes that evidence in the record reflects evidence of other comorbidities, including cardiac and low back problems, which may impact his work abilities.

Based on the above factors, the record taken as a whole and a review of prior Commission awards with similar injuries similar outcomes, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 2.5% loss of use of the person as a whole applicable to the cervical injury, and 10% loss of use of the person as a whole applicable to the left shoulder, pursuant to §8(d)2 of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RICHARD MUNIZ,

Petitioner,

vs.

NO: 10 WC 39469
20 IWCC 651

ROUTINE MAINTENANCE & STATE TREASURER AS
EX OFFICIO CUSTODIAN OF THE INJURED WORKERS' BENEFIT FUND,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by both the Respondent, Injured Workers' Benefit Fund ("IWBF"), and Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, employment relationship, average weekly wage/benefit rate, temporary total disability/maintenance, penalties & fees, and medical expenses both current and prospective, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Findings of Fact – Testimony

Mr. Andrew Majernik was called by Petitioner. He testified that on November 30, 2007 he was owner of Respondent, Routine Maintenance. He described the company as "a marketing company" which "secured jobs for contractors, and then they would do the work and give us a commission." It did not "have any laborers to speak of." He knew who Petitioner was but never met him.

The contractors would have the responsibility of completing the work, receiving payment from the customer, and remitting the commission to Routine. The commission could either be a percentage of the contracted amount or a flat fee, depending on the job. He was never on the jobsite where Petitioner was and he did not have foremen there. He never saw any work being performed.

Carlos was an employee of Routine as office manager and was responsible for directing Petitioner for a certain job. He "oversaw the day-to-day office interactions," and could be at a jobsite. He would not perform work but "might make like a sales call so to speak." The contractor himself would oversee the particular jobsite. He had no idea how the contractors got themselves to the jobsites. The contractors used their own ladders on the jobs. He was shown a purported independent contractor contract between Routine and Petitioner. Carlos is the named contractor and Petitioner is the named "contractee." Mr. Majernik never saw Petitioner work.

On cross examination, Mr. Majernik testified he found jobs and contractors "mainly" from "telemarketing." He also did some newspaper ads, fliers, and referral business. They would give contractor jobs in exchange for a commission. The contractors were never on Routine's payroll, and did not wear uniforms. Routine found customers who wanted work performed and contractors to perform the work. He reiterated his testimony that Routine did not provide transportation or equipment to the contractors. Routine never issues W-2s.

In 2007, Routine had less than 10 employees. Routine used the same independent contractor contracts for all contractors. Routine never provided Workers' Compensation insurance to contractors. Mr. Majernik testified that he did not know whether Routine provided such insurance for its employees, but "apparently not."

On redirect examination, Mr. Majernik testified he had no recollection of meeting or hiring Petitioner or of the job he was working on. He had no knowledge on how his work was supervised. He had no idea how any of the workers were supervised on that jobsite, how they came to the worksite, or what tools were used. He could not testify whether Carlos was at the jobsite.

On re-cross examination, Mr. Majernik testified that Routine never provided transportation for contractors, and was not at the jobsite Petitioner worked at in 2007. Upon questioning by the Arbitrator, Mr. Majernik testified that he "inherited" contractors for jobs when he took over the company. Otherwise he would find contractors the same way he found customers.

Petitioner testified that on November 30, 2007 he was employed by Routine. He has specific recollections of that day and his employments status at that time. Routine hired him to clean gutters. He was hired pursuant to an ad in the paper. He answered the ad and spoke to

Carlos, who hired him in Routine's office. He understood that he was being hired to clean gutters at a residential complex.

Petitioner used his own vehicle and ladder for "small homes" but Routine provided ladders if his did not go high enough. He worked for Routine for three days before the accident. He signed an application with Routine on November 27, 2007. He did not recall anything else he signed. But if he were presented with a document to sign he would have. He understood that if he refused to sign anything, he would not be allowed to work. Petitioner had not worked previously cleaning gutters. He was a union bricklayer, was laid off, and needed extra money for the holidays. Routine would set the rate of pay for a job and pay him after the job was complete. He received checks from Routine. He earned a total of \$600 for the three days he worked.

On the day of the accident, he met the crew at Respondent's office. They loaded up the company truck, rented ladders from a hardware store, and went to the jobsite. Carlos drove the company truck, was the supervisor of the crew, and was going to tell them what to do when they got to the jobsite. Carlos instructed them to open the ladder and go up and clean the gutters. The weather was "cold and windy." Carlos directed them to proceed with the work and the order of the buildings to work on. Respondent collected the money and paid the crew. Respondent chose the worksites and Petitioner never previously cleaned gutters.

Petitioner was coming down the ladder. A gust of wind caught him in the back. The person who was supposed to steady the ladder was not there. Petitioner felt the ladder slip on the gutter. Petitioner jumped off the ladder and caught the balcony with his armpits. He could not keep hold of the balcony and fell to the ground from about 30 feet. Carlos witnessed the accident. He felt agonizing pain in his legs (he fractured his pelvis in three places), in his shoulders bilaterally, and in his tailbone. He was on the ground screaming. The ground around the area was rocky and grassy. It was November and cold so the ground was frozen. Petitioner suffered a fractured pelvis, fractured vertebrae, fractured right hip, fractured collarbone, and bilateral shoulder injuries. He had ORIF repair of his pelvis, open right-shoulder rotator cuff repair with acromioplasty, left SLAP repair surgery with subacromial decompression debridement, and revision left-shoulder SLAP repair surgery.

Following surgeries, Petitioner was diagnosed with a staph infection, "central cord syndrome," and cervical stenosis. In 2009, a doctor recommended that he pursue a sedentary job. Nevertheless, he was able to resume working as a supervisor but not for Routine. He "used to be a union instructor, so they found [him] an easier job to do." He was still earning union scale, which was currently \$46.88. No doctor ever released him to full work. Petitioner took that upon himself; he had to earn money.

Petitioner currently took Norco, maybe twice a week. That was the only medical treatment he was receiving currently. It was prescribed by his primary care physician. He also takes about 12 Aleve tablets a day. Currently, at work he has difficulty sitting for extended

periods; his tailbone starts hurting. When he walks extended distances his hips/pelvis hurts. If he carries anything heavy, he feels pain in his shoulders and back. He can't lay bricks. He can no longer compete in martial arts. He rated his pain as "a controlled 6/10."

On cross examination by IWBF, Petitioner testified he believed he filled out the job application on the 26th and began working on the 27th. He did not remember the application being a contract. While it says he was an independent contractor, that was not what happened. It also provides that Petitioner was responsible for maintaining Workers' Compensation insurance. He really did not read or understand the agreement. He never received any training from Routine. He replied to an ad for gutter cleaners among other jobs. He never met the owner of Routine.

He was to be paid weekly, and received a check in the mail for the days he worked. He was never given a W-2. There was not a set number of jobs to which he was assigned. He was assigned as much as he could handle. Petitioner agreed that he could have chosen not to work some jobs. His employment was terminable at will by Routine. He believed he got paid by the job between \$15 and \$30. He had no other jobs while he worked for Routine. Other than the supervisor, who was present and witnessed the accident, Petitioner did not notify anyone else from Routine. He did not notify anyone about his doctor appointments. He worked other jobs for Routine prior to the instant job. In the other jobs he used his own ladder.

Petitioner testified he performed martial arts since he was five years old. He had broken his nose and fingers in martial arts, but nothing else.

On cross examination by Mr. Majernik, Petitioner reiterated that they never met previously. The company truck was white, but he could not remember the brand. It did not have Routine Maintenance on it, but Carlos called it the company truck. He came to the office in his vehicle and went to the jobsite in the truck. They rented ladders because they were working on three-story buildings. If he deemed a job dangerous, he would have refused to work. The prior two jobs he worked for Respondent were small house gutters. He thought he did not receive a W-2 because he had not made enough money. He had no receipts for the money he earned.

On redirect examination, Petitioner was again shown the "contract." It listed himself as contractee (*sic*) and Carlos, Respondent's employee, as contractor. He understood that if he did not obey orders from Carlos, he "wouldn't be employed." Carlos presented him the document, but did not explain it. He really does not understand the difference between a contractor and contractee. Carlos instructed him to meet the crew at Routine's facility. He was in a hospital for about 2 months and at a nursing home for several months more. Nobody from Routine ever contacted him. On the day of the accident, Routine provided him tools and transportation and he was paid with a Routine check.

Mr. Majernik was recalled by IWBF. He testified he did not know how long Routine was in operation, its annual income, or the annual income in 2007. Carlos' job was not to provide assistance to contractors. To the best of his knowledge, Routine did not have a company truck, and did not rent ladders for contractors.

On cross examination, Mr. Majernik agreed that he testified that Carlos was the office manager. He also agreed that he did not recall anything about November 30, 2007, that he was not at the jobsite on that date, and he knew nothing of what Carlos did at the jobsite.

Findings of Fact – Medical Records

On November 30, 2007, Petitioner presented to the Advocate Lutheran General Hospital Emergency Department by ambulance after a 30-foot fall from a ladder. He had multiple fractures but denied any loss of consciousness. A CT of the pelvis showed bilateral pelvic fractures. A cervical CT showed congenital fusion at C2-3 and no acute abnormality. A CT of the brain was normal. A thoracolumbar CT showed L5 and sacral fractures. A pelvis CT showed multiple pelvic fractures. Chest x-rays were normal. X-rays of the right shoulder showed bony fragment in the distal end of the clavicle, widening of the AC joint, and fragmentation of the superior lateral portion of the acromion. It was not clear whether these findings were acute or from an old injury. There was also a later right shoulder x-ray which showed separation of the AC joint and lucency of the coracoid process of the scapula, suggesting fracture. Lumbar x-rays showed degenerative retrolisthesis of L5 on S1 but no evidence of dislocation or fracture. Petitioner was admitted to the hospital.

The day after being admitted, a social worker noted that Petitioner came in with a positive toxicology screen for cocaine and opiates. Petitioner reported he only took cocaine thrice in his life, the most recent, a couple of days previously, and it was supplied by a friend. He denied use of prescriptions medications. He had been recently laid off due to reduced work and weather conditions.

On December 5, 2007, Dr. Jimenez performed surgery inserting two screws in the SI joint, anterior external fixation of the anterior pelvis using two half pins for unstable pelvic ring disruption, anterior pelvic ring disruption, and unstable posterior pelvic ring disruption distribution through sacrum.

Petitioner was discharged on December 11, 2007 to an extended care facility. Dr. Martin noted that Petitioner was admitted on November 11th, upon transfer from Northwest Community Hospital due to the level of trauma care needed. He had ORIF surgery on his pelvis with Dr. Jimenez. He was to follow up with Dr. Jimenez concerning his pelvis and with Dr. Mardjetko about his L5 fracture.

On December 15, 2007, Petitioner returned to the emergency department because of increased redness over the fixture sites and some bilateral arm weakness/paresthesia. He was deemed to have a staph infection and was re-admitted. Dr. Jimenez removed the pins around the infection on December 19th. An MRI taken of the right shoulder on December 22nd showed an anterior nondisplaced labral tear, probably full-thickness rotator cuff tear, and edema within the humeral head related to a prior subluxation.

On December 25, 2007, Dr. Jimenez noted cervical imaging showed no cord or nerve root compression, but an EMG showed evidence of right carpal tunnel syndrome and an MRI showed a rotator cuff tear of the right shoulder. Petitioner was doing well in physical therapy. Petitioner was discharged back to the extended care facility.

On January 5, 2008, a brain CT was normal. A chest x-ray was normal. Pelvis x-rays showed bilateral superior and inferior pubic rami fractures and 2 screws across the right SI joint. A lumbar MRI showed artifacts at L5-S1 and S1, and degenerative disc disease at L3-4, but no spinal stenosis.

On January 22, 2008, Petitioner returned to Dr. Jimenez who noted Petitioner had an unstable pelvic ring disruption. He was treated with an anterior ring fixator, which had since been removed. An MRI also showed a complete tear of the rotator cuff supraspinatus muscle. Dr. Jimenez opined that Petitioner's pelvis had sufficiently healed and they should proceed with surgical repair of the right shoulder rotator cuff and noted he would be non-weightbearing for 12 weeks from pelvis surgery. On January 30, 2008, Dr. Jimenez performed right shoulder open acromioplasty and open rotator cuff repair for complete right rotator cuff tear and impingement.

On April 22, 2008, Petitioner presented to Dr. Guelich after falling 3&1/2 floors fracturing his pelvis and injuring both shoulders. He had surgery on his pelvis and right shoulder by Dr. Jimenez at Lutheran General. However he was terminated by Workers' Compensation, was now on public aid, and Dr. Jimenez discontinued care. Dr. Guelich noted Petitioner was in physical therapy, but Dr. Guelich believed it may be difficult to restore full range of motion in the shoulders. He indicated that Petitioner was not a surgical candidate until they restored full range of motion. He administered an injection, continued physical therapy, and ordered an MRA. The MRA of the left shoulder taken on July 3, 2008 showed rotator cuff tendonitis and partial tear of the anterior glenoid labrum. On August 7, 2008, Dr. Guelich performed left-shoulder SLAP type 2 repair, subacromial decompression, and limited debridement of the undersurface cuff tear, for SLAP tear with impingement and partial thickness rotator cuff tear. The rotator cuff tear was found intra-operatively.

On May 6, 2008, Petitioner presented to Dr. Metz, D.P.M. for left foot/ankle pain after falling from a ladder in November of 2007. He had x-rays and an MRI of the ankle and told there was nothing wrong, but his pain persisted. Dr. Metz noted that the left leg was longer than the right due to the pelvis/femur fracture. He opined that the condition placed greater strain on

the left leg causing his chronic pain. He provided a heel lift, advised Petitioner he would use on full time, and referred his to get custom orthotics.

On June 20, 2008, Dr. Guelich noted that overall Petitioner's shoulders appeared to be improving in physical therapy. He switched from Norco to Tramadol for pain. Dr. Guelich was concerned about Petitioner's left shoulder which exhibited persistent pain and possible instability. He ordered an MRA of the left shoulder.

On August 7, 2008, Dr. Guelich performed left shoulder SLAP type 2 repair, subacromial decompression, and limited debridement of the undersurface cuff tear for SLAP tear with impingement and partial-thickness rotator cuff tear.

Dr. Guelich noted Petitioner was doing well five weeks after left-shoulder SLAP repair. He wanted Petitioner to continue physical therapy. He also note that Petitioner was concerned about his pelvis. Dr. Guelich would take x-rays on the next visit.

On October 22, 2008, Petitioner returned to Dr. Guelich, who had last seen him on September 15th. At that time he was doing very well. However, he sustained a reinjury when a child, weighing more than 150 pounds, fell down some stairs. Petitioner caught him, straining his left shoulder. Dr. Guelich diagnosed recurrent strain post SLAP repair. He continued physical therapy and noted that if he had persistent pain, he would order an MRA.

The new MRA was taken on November 13, 2008. It was compared to a study on July 3rd MRA and showed stable AC joint arthritis and a partial-thickness tear of the supraspinatus muscle. On November 19th Petitioner reported he stopped physical therapy due to pain and was taking narcotic pain medication occasionally. He denied any instability. The MRA showed "continued partial thickness rotator cuff tear," but the SLAP repair appeared intact. Because of the complicated nature of Petitioner's symptoms, Dr. Guelich wanted a second opinion from Dr. Nam.

Petitioner presented to Dr. Nam on December 3, 2008. Dr. Nam noted that Petitioner had SLAP repair surgery, but then felt a pop in his left shoulder trying to stop a child from falling two months previously. He had persistent and worsening pain since. He had physical therapy and an injection since the reinjury. Dr. Nam thought it was difficult to determine whether there was a re-tear of the labrum from the MRA. He diagnosed partial-thickness rotator cuff tear and possible recurrent tear of the anterior and superior labrum. After discussing alternative treatment options, Petitioner wanted only surgical intervention.

On February 3, 2009, Dr. Guelich performed revision left SLAP repair with removal of suture revision of labral repair, and debridement of partial-thickness rotator cuff tear for reinjury and superior labral tear. A week later, Dr. Guelich noted Petitioner was doing well post SLAP

repair surgery. Because of the nature of the injury, Petitioner was susceptible to re-injury. Therefore, Dr. Guelich wanted to go slow in returning to activities and should remain in a sling.

On February 5, 2013 Petitioner presented to Dr. Newman with his son, who had suffered a wrestling injury. Petitioner asked that his right elbow be evaluated while he was there; it had been a problem for some time. On exam, he had reduced elbow range of motion and was very tender. X-rays showed evidence of prior trauma, with spur formation at the and suspected loose body in the lateral joint. Dr. Newman indicated that Petitioner had failed conservative treatment, and recommended surgery.

On February 8, 2013, Dr. Newman performed right elbow arthrotomy with the coracoid process and olecranon, epicondylectomy, and lengthening of the common extensor for synovitis, tendonitis, and epicondylitis.

On March 12, 2013, Petitioner reported no problems while he was on vacation. However, on return his surgical wound was red. Dr. Newman did not see evidence of deep infection but noted some fibrous tissue, which he debrided to remove some of the fibrous material. Two weeks later, Petitioner's infection appeared to be resolved after a round of Keflex. Dr. Newman re-debrided fibrous material. On March 2nd, Dr. Newman noted that Petitioner was improving but he still debrided some fibrous material. A week later, Dr. Newman noted that Petitioner was healing nicely. He had an exacerbation of medical epicondylitis and Dr. Newman administered an injection.

On January 8, 2014, Dr. Newman noted that Petitioner's lateral epicondylitis resolved after the injection, but he now had medial epicondylitis. He did not recall any trauma on the right side. He also had pain in the PIP joint of the left index finger. X-rays showed collapse of cartilage on the ulnar aspect of the PIP joint. He thought this condition was the result of an old sprain which had degenerated. He administered an injection in the trigger point.

Dr. Chudik examined Petitioner on November 18, 2018 at the request of his lawyer and issued a report. In it he noted that his current diagnoses were post-traumatic bilateral hip arthritis after bilateral acetabular fractures, inferior pubic rami fracture, right sacral fracture and right transverse process fracture at L5, which was caused by the work accident. Right shoulder post-traumatic arthritis after coracoid fracture and rotator cuff tear post open repair and acromioplasty, caused by the work accident. Left shoulder SLAP tear and partial thickness rotator cuff tear after surgical repair and subsequent surgical repair revision, which was caused by the work accident. Chronic right SI joint pain after unstable anterior pelvic ring disruption post SI joint screw fixation and pelvic external fixation.

Currently, Petitioner complained of constant LBP that radiated to the groin mostly on the right worsened by sitting, or long car rides. He uses a pillow donut while driving. He noticed his back pain worsened over the past two years, especially after he was very active. He also

reported bilateral shoulder pain with work/activity. He was working, but should refrain from heavy lifting/carrying.

Petitioner reported he no longer participated in martial arts. He received periodic trigger-point injections for back pain and was prescribed Norco and Flexeril as needed. Dr. Chudik noted that Petitioner reported the accident in which he fell 28-30' and landed mostly on his back and right hip. Dr. Chudik then summarized treatment through September 11, 2013. His clinical exam appears to have been normal.

Dr. Chudik concluded that the diagnoses cited above were all caused by the work accident on November 30, 2007. He continued to suffer from pain associated with his work-related conditions of ill-being. He was unable to work up to April 13, 2009. He will need permanent restrictions of no heavy lifting/carrying. All medical treatment incurred was necessary and reasonable.

In addition, he would need prospective treatment, including but not limited to, physical therapy and injections for his SI joint/hip pain and left shoulder arthritis. He would also need prospective surgeries, including but not limited to bilateral hip arthroplasty and left-shoulder arthroplasty for his post-traumatic arthritis. Dr. Chudik also itemized his recommended prospective treatment which would cost an estimated \$322,585.05.

Findings of Fact – The Contract

The "contract" executed by the parties, identified by Mr. Majernik, was submitted into evidence. It provides that Petitioner (contractor) was an independent contractor hired by Carlos Hernandez (contractee). The document specifies that no employment relationship was established. Petitioner represented that he had his own business. While Carlos had the right to "control the results to be accomplished" Petitioner had the right to control the "manner or means by which the task" was to be performed. Petitioner was free to take work from other entities. However, Petitioner was not allowed to solicit Routine's customers while working on a job for Routine. Petitioner could refuse any job offered by Carlos that he not already accepted in writing and was responsible for all taxes and to have WC insurance. Either side could terminate the contract upon completion of a contemplated job or after a 30-day notice. Carlos would send Petitioner an invoice for fees and Petitioner had the obligation to pay the fees.

Conclusions of Law – Employment Relationship

The Arbitrator found that Petitioner established an employment relationship with Routine with regard to his work on the day of the accident. She found Petitioner's testimony credible about his initial encounter with Carlos when he was hired. She also found him credible about Carlos' activities on the jobsite, that he oversaw Petitioner's work, he drove Petitioner to the jobsite, and he supplied the 40-foot ladder. She also found that Petitioner established "the nature

of the work,” as performing unskilled labor and not anything to do with his expertise of bricklaying. As such, Petitioner “advanced Routine Maintenance’s goal of providing such labor to customers.” Finally, the Arbitrator explained that the Supreme Court has held that the parties’ description of the relationship between them is only one factor in determining whether an employment relationship existed.

Respondents argue that the Arbitrator erred in finding an employment relationship. They stress the credibility of Mr. Majernik and base their arguments on the veracity of his testimony. IWBF stresses that Petitioner’s testimony was “illogical and confusing.” It notes he testified that he was paid between \$15 and \$30 depending on the job, but also that he received a check for \$600 for the 3 days worked. IWBF described that testimony as illogical. Both Routine and IWBF argue that Petitioner did not establish that Routine controlled Petitioner’s work citing the provisions of the contract and Mr. Majernik’s testimony. Routine also argues the Arbitrator erred in her finding about the nature of Routine’s work. It stresses that Routine did not provide maintenance services itself but rather acted as a conduit between independent contractors and customers.

The Commission agrees with the analysis of the Arbitrator in finding an employment relationship between Petitioner and Routine Maintenance and affirms the Arbitrator on the issue of employment relationship. Here, the relative credibility of the competing witnesses is a fundamental issue. Generally the Arbitrator is in a better position to assess the relative credibility of witnesses than the Commission. The Arbitrator clearly found Petitioner more credible than Mr. Majernik and there does not appear any compelling reason to disturb that assessment. In addition, the Commission finds Petitioner’s version of the relationship makes more intuitive sense than Mr. Majernik’s. It make little sense for Petitioner to set up an independent company to perform professional activities he had never done before. His testimony that he had no expertise in gutter cleaning was not rebutted and it would appear likely that Carlos would have in some way directed his work.

Conclusions of Law – Average Weekly Wage/Benefit rate

The Arbitrator found an AWW of \$450 a week based on Petitioner’s testimony that on average he worked four jobs per day for Respondent and was paid \$15 to \$30 per job. She took the average of the two at \$22.50 per job. Petitioner argues that the Arbitrator should have found an average weekly wage (“AWW”) of \$1,000 based on his testimony that he earned \$600 for three days of work.

There is precious little information upon which to assess the correct AWW. Petitioner’s testimony about AWW was inconsistent. However, in the Request for Hearing form (“stip sheet”), Petitioner alleged an AWW of \$600. Respondent disputed that amount, but did not provide an alternate AWW. The Commission concludes that we should not make awards based on an AWW larger than the one Petitioner alleged in the stip sheet. While the Respondent

disputed Petitioner's alleged AWW in the stip sheet it failed to provide an alternative AWW or provide any means to calculate an alternative AWW. The Commission finds that Petitioner's alleged AWW of \$600 in the stip sheet was not adequately rebutted. Therefore, the Commission modifies the Decision of the Arbitrator to increase the AWW to \$600 and to increase the associated benefit rates.

Conclusions of Law – Causation/Medical

The Arbitrator found that Petitioner proved causation to the conditions of ill-being of the pelvis fractures, right-shoulder rotator cuff tear, left-shoulder labral tear, L5 traverse fracture, and a left ankle injury. However, she also found that Petitioner did not sustain his burden of proving that he sustained an injury to his right elbow/hand in the accident and that the required revision left-shoulder labral repair was not caused by the accident, but rather by the intervening accident of Petitioner trying to catch the 150-pound falling child. Therefore, the Arbitrator denied medical for treatment of Petitioner's right elbow, right hand, and revision left-shoulder labral repair surgery. The Arbitrator also denied prospective medical. The Arbitrator found Dr. Chudick's report unpersuasive. She noted that he did not review all medical records, was not aware that Petitioner had been released to work, and he opined that Petitioner would need bilateral hip replacements, even though clinically he found no abnormalities. Petitioner argues that the Arbitrator erred in not awarding all medical. He also seeks an award of prospective medical in the amount of \$332,585.05, per the report of Dr. Chudik.

The Commission agrees with the Arbitrator that there is no evidence that Petitioner's elbow/hand conditions were caused by his fall. However, the Commission disagrees with the Arbitrator on the issue of whether the need for Petitioner's left-shoulder revision surgery was causally connected to the original work accident. There is no question that the work-related accident resulted in a left-shoulder injury and an associated condition of ill-being. In addition, he had left-shoulder surgery only two and a half months prior to the "falling child incident" and was still being treated for his left shoulder at the time of that incident. In addition, the post-incident MRA showed "continued partial thickness rotator cuff tear," but the SLAP repair appeared intact. The Commission concludes that the later incident did not cause any structural change in Petitioner's left-shoulder and that the incident did not result in an intervening accident terminating causation. Therefore, the Commission finds that the need for left-shoulder revision surgery was still causally connected to the original work accident and awards medical accordingly.

However, the Commission agrees with the Arbitrator and concludes that awarding the prospective medical is inappropriate here. As with all aspects of his case, Petitioner has the burden of proving all elements of his claim, including a claim for prospective medical. First, the Commission agrees with the Arbitrator that Dr. Chudik's report is unpersuasive. Second, here Petitioner sought PPD at arbitration and is currently seeking review on the issue of PPD before the Commission. Such requests connote Petitioner considers himself at MMI. The assumption

that Petitioner is at MMI and that permanency can be adjudicated, is in conflict with his request for prospective medical. Petitioner apparently did not file any 19(b)/8(a) petition and at this stage in litigation, perhaps a 19(h)/8(a) petition may be a better avenue to pursue prospective medical, if Petitioner's condition changes.

Conclusions of Law – TTD

The Arbitrator awarded 40 weeks of TTD, through September 15, 2008, prior to the left-shoulder revision surgery in 2009. Petitioner argues the TTD award should be extended to include the period of disability caused by the "re-stain" and revision surgery. He requests TTD of 78 weeks through July 1, 2009. IWBf preserved the issue of TTD, but neither it nor Routine argues the issue in their briefs. Because the Commission finds that the need for left-shoulder revision surgery was still causally related to the work accident, the Commission modifies the Arbitrator's TTD award accordingly.

Conclusions of Law – PPD

The Arbitrator awarded Petitioner 175 weeks of PPD representing loss of 35% of the MAW. Principally, the Arbitrator based her award on the excellent recovery Petitioner had from his significant injuries. Petitioner seeks an award of 375 weeks of PPD representing loss of 70% of the MAW.

The Commission concludes that the Arbitrator was correct in noting a good recovery and that such recovery should be considered in arriving at an appropriate PPD award. In addition, Petitioner testified that he still earned the same union scale wage that he would of absent the injuries. Nevertheless, the Commission has modified the Decision of the Arbitrator and found that the need for left-shoulder revision surgery was still causally connected to the original work accident. Therefore, the Commission concludes that Petitioner is entitled to additional PPD benefits for his second left-surgery surgery and an associated increase in permanent partial disability. Therefore, the Commission modifies the Arbitrator's PPD award from loss of 35% of the person-as-a-whole to loss of 45% of the person-as-a-whole.

Conclusions of Law – Penalties & Fees

The Arbitrator denied Petitioner's request for penalties and fees noting that there was no written demand for payment made. Petitioner argues the Arbitrator erred in not awarding penalties & fees and seeks 19(k) penalties of \$162,263.55, 19(l) penalties of \$10,000, and 16 fees of \$34,452.71. The Commission agrees with the Arbitrator and finds that there were legitimate issues for adjudication. Therefore, the Commission finds Respondents actions were not arbitrary or capricious in denying benefits. Therefore, the Commission affirms the Arbitrator's denial of penalties and fees.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$400 per week for a period of 78 weeks, that being the period of temporary total incapacity for work under §8(b)

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to for medical expenses under §8(a) of the Act for all medical treatment incurred to date other than that incurred to treat his right elbow or laceration of his thumb.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner request for prospective medical treatment and for the imposition of penalties and fees is denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner the sum of \$360 per week for a period of 225 weeks because the injuries sustained resulted in the 45% loss of use of the person-as-a-whole.

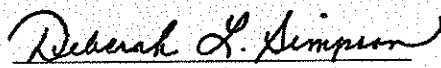
IT IS FURTHER ORDERED BY THE COMMISSION that the Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under §4(d) of the Act, in the event of the failure of Respondent-Employer to pay the benefits due and owing the Petitioner. Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent-Employer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

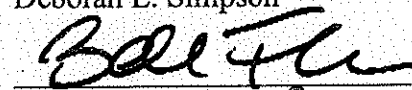
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

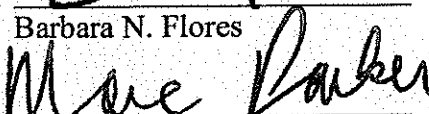
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

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

DATED: NOV 16 2020


Deborah L. Simpson


Barbara N. Flores


Marc Parker

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

JULIET OBODOAKOR,
Petitioner,

vs.

NO: 11 WC 44064
20IWCC0607

JACKSON PARK HOSPITAL

ORDER OF RECALL UNDER SECTION 19(F)

The Commission on Motion of Petitioner recalls the Decision and Opinion on Review of the Illinois Workers' Compensation Commission dated October 14, 2020, pursuant to Section 19(f) of the Act due to a clerical error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated October 14, 2020 is hereby recalled and a Corrected Decision and Opinion on Review is hereby issued simultaneously.

Dated: **NOV 19 2020**

11/19/2020

SM/msb

44



Commissioner Stephen Mathis

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JULIET OBODOAKOR,

Petitioner,

vs.

NO: 11 WC 44064
20IWCC0607

JACKSON PARK HOSPITAL,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability, permanent partial disability, and penalties and fees, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission modifies the Decision of the Arbitrator and finds that Petitioner achieved maximum medical improvement on March 20, 2014. On March 20, 2014 Petitioner presented to her treating physician, Dr. Rinella in follow-up. Petitioner was seen by Dr. Rinella's physician's assistant. The clinical note reflects that imaging studies were reviewed, and a physical examination was performed. The examiner also referenced the Functional Capacity Evaluation performed on January 28, 2014 which was invalid. The FCE report states, "The results represent a manipulated effort by the client. Therefore, the levels identified by the client represent less than their true safe capability level." No additional work restrictions were deemed appropriate by Dr. Rinelli secondary to Petitioner's clinical findings and she was to return to clinic on an as needed basis.

On December 22, 2014 Petitioner underwent a lumbar MRI. Dr. Ghanayem, Respondent's Section 12 examiner saw Petitioner on April 2, 2015. He reviewed the lumbar MRI

and interpreted the scan as normal with no evidence of neurologic compression. The Commission notes and corrects a scrivener's error in Dr. Ghanayem's report which mistakenly identifies the date of the lumbar MRI as having been performed in "February of 2014" rather than the correct date of December 22, 2014. Additionally, Dr. Ghanayem reviewed the invalid FCE report of January 2014, and performed a physical examination. Dr. Ghanayem found Petitioner to be at maximum medical improvement and capable of returning to regular duty. He stated the impression that Petitioner "has subjective complaints of neck and back pain that are not substantiated objectively".

The Commission finds based upon the foregoing analysis that Petitioner achieved maximum medical improvement on March 20, 2014 and modifies the Arbitrator's award of temporary total disability benefits and medical benefits accordingly.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$757.20 per week for a period of 139 weeks, commencing July 22, 2011 through March 20, 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 pay to Petitioner the sum of \$681.46 per week for a period of 28.5 weeks, as provided in §8(e)9 of the Act, for the reason that the injuries sustained caused the 15% loss of the use of the hand, and \$681.46 per week for a period of 25 weeks, as provided in Section 8(d)2 for the reason that the injuries sustained caused 5% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner medical bills incurred on and prior to March 20, 2014, as well as the referenced x-ray and physical therapy on Petitioner's right hand, as ordered by the Commission, if not already paid, as well as any medical services related to Petitioner's carpal tunnel and de Quervain's syndrome for medical expenses under Sections 8(a) and 8.2 of the Act.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that no penalties or attorney's fees are awarded.

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:
SJM/msb
o: 9/9/20
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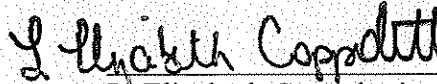
NOV 19 2020



Stephen Mathis



Douglas McCarthy



L. Elizabeth Coppoletti

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

OBODDOKOR, JULIE

Employee/Petitioner

Case# 11WC044064

JACKSON PARK HOSPITAL

Employer/Respondent

2011WC0607

On 8/27/2019, 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 1.84% 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 the award, interest shall not accrue.

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

0290 KATZFRIEDMAN
CHRISTOPHER MOSE
77 WASHINGTON ST 20TH FL
CHICAGO IL 60602

5116 ODELLSON & STERK
MATTHEW DALEY
4818 W 95TH ST
EVERGREEN PK IL 60805

STATE OF ILLINOIS

COUNTY OF Cook

20 IWCC0607

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Juliet Obodoakor

Employee/Petitioner

v.

Jackson Park Hospital

Employer/Respondent

Case # 11 WC 44064

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Thomas L. Ciecko**, Arbitrator of the Commission, in the city of **Chicago**, on **March 28, 2019**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

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FINDINGS

On **July 21, 2011**, Respondent *was* operating under and subject to the provisions of the Act. On this date, an employee-employer relationship *did* exist between Petitioner and Respondent. On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment. Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being, a carpal tunnel injury, and de Quervain's syndrome, and lumbar strain only, is causally related to the accident.

In the year preceding the injury, Petitioner earned **\$59,061.60**; the average weekly wage was **\$1135.80**. On the date of accident, Petitioner was **40** years of age, *single* with **3** dependent children. Petitioner *has* received all reasonable and necessary medical services. Respondent *has* paid all appropriate charges for all reasonable and necessary medical services. Respondent shall be given a credit of **\$83,074.56** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$4770.36** as **an advance for permanent partial disability benefits**, for a total credit of **\$87,844.92**. Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

ORDER

Medical benefits

Respondent shall pay medical bills incurred on and prior to August 28, 2013, as well as the referenced x-ray and physical therapy on Petitioner's right hand, as ordered by the Commission, if not already paid as well as any medical services related to Petitioner's carpal tunnel and de Quervain's syndrome.

Temporary total disability

Respondent shall pay Petitioner temporary total disability benefits of **\$757.20** per week commencing July 22, 2011 through February 14, 2014.

Permanent partial disability

Respondent shall pay Petitioner permanent partial disability benefits of: **\$681.48** per week for 28.5 weeks because the injuries sustained caused **15% loss of a hand**; and **\$681.48** per week for 25 weeks because injuries sustained caused **5% loss of a man as a whole**.

Penalties

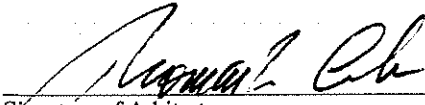
No penalties or attorneys' fees are awarded.

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

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment;

20 IWCC0607

however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator



Date

ICArbDec p. 2

AUG 27 2019

Juliet Obodoakor v. Jackson Park Hospital, No. 11 WC 44064

Preface

The parties proceeded to hearing March 28, 2019, on a Request for Hearing indicating the following disputed issues: whether Petitioner's current condition of ill-being is causally connected to an accidental injury on July 21, 2011; whether Respondent is liable for unpaid medical bills; whether Petitioner is entitled to temporary total disability from July 22, 2011, through November 29, 2018; what is the nature and extent of the injury; and whether Petitioner is entitled to penalties and attorney's fees. Juliet Obodoakor v. Jackson Park Hospital, No. 11 WC 44064 Transcript Proceedings on Arbitration at 5; Arbitrator's Exhibit 1. The hearing was recessed and resumed four times concerning the return of subpoenaed records, with proofs closed May 30, 2019. The resumed dates of April 25, 2019, May 23, 2019, and May 30, 2019, were not transcribed.

This matter was previously heard as a Section 19(b) Petition, and on Petition for Review of an Arbitration Decision on the 19(b) Petition, the Commission found Petitioner entitled to temporary total disability at the sum of \$757.21 per week for 109 6/7 weeks from July 22, 2011, through August 28, 2013. It further found Respondent responsible to pay for medical services incurred from July 21, 2011, to August 28, 2013. It further ordered Respondent authorize and pay for an x-ray of the lumbar spine and physical therapy on Petitioner's right hand. The Commission denied Petitioner's claims for penalties and attorney's fees. Petitioner's Exhibit 1.

Findings of Fact

The facts, prior to this hearing, are taken and condensed from the decision of the Commission. Petitioner was a registered nurse working at Respondent when, on July 21, 2011, she was kicked by a patient in the chest causing her to fall backwards on the floor. Petitioner sustained a carpal tunnel injury that failed conservative treatment. Carpal tunnel release surgery on the right hand was performed May 19, 2012, and Petitioner performed post-operative physical therapy. During that therapy, symptoms of de Quervain's syndrome manifested in Petitioner, as a complication of physical therapy. Additional surgery to relieve the de Quervain's syndrome was performed May 14, 2013. Petitioner's Exhibit 1.

Petitioner testified she has severe pain in her back, but does not remember when it started to get worse. She did not recall all her doctors. Her testimony was marked by histrionic outbursts, and seemed exaggerated. She showed selective memory. She did not remember certain medical treatment. Obodoakor at 16, 20, 27, 45, 34, 39, 42.

Petitioner submitted to an independent medical examination April 2, 2015, by Dr. Alexander Ghanayem, Director of the Division of Spine Surgery at Loyola University Medical Center. Petitioner complained of neck pain; pain and numbness of both thumbs; low lumbar back pain; and numbness in her foot. Dr. Ghanayem reviewed a lumbar MRI of Petitioner done in February 2014, and found it normal with nothing pathological. He found facet joint thickening consistent with age. He noted, in a cervical MRI, a disc herniation at C4-5. Dr. Ghanayem believed that if the disc herniation was from the accident, it would have been

symptomatic within a week or so. Petitioner had no neurological finding of a disc herniation. Ghanayem found Petitioner's subjective complaints of back pain not substantiated by objective diagnostic testing. He said Petitioner had multiple nonorganic physical examination findings consistent with symptom magnification. Dr. Ghanayem found that Petitioner's subjective complaints of neck and back pain were not objectively substantiated. Ghanayem noted Petitioner had an FCE in January 2014 that was invalid. That functional assessment done January 28, 2014, at ATI identified it as an invalid representation of the present physical capabilities of Petitioner. It noted "the results represent a manipulated effort by [Petitioner]." The observations contained over 20 instances where Petitioner terminated testing saying some variation of "I'm having pain in my lower back." Dr. Ghanayem found Petitioner at MMI and noted she should be back to work regular duty with no need of further medical care. Respondent's Exhibit 6; Petitioner's Exhibit 3.

Petitioner testified she saw a doctor at the request of her attorneys, Dr. Ross. Dr. Matthew Ross testified via evidence deposition. He said he saw Petitioner as a second opinion for legal purposes, March 2, 2018. That was nearly seven years after Petitioner was kicked in the chest by a patient. He did not think Petitioner sustained significant disc injury as a result of the accident. He said Petitioner was on a number of mind-altering drugs and could not work as a nurse on the with the cocktail of drugs she was on. He testified Petitioner displayed situational depression and her examination was marked by depressed affect, frequent crying, anger and overall depression. He believed a significant portion of Petitioner's pain is facet mediated. Obodoakor at 21; Petitioner's Exhibit 20 at 7, 9-10, 14, 15, 19.

Dr. Ross admitted he was hired by Petitioner's attorneys and saw Petitioner only once. He reviewed the IME report of Dr. Ghanayem, but not the opinions. He testified Ghanayem is a capable, respected orthopedic spine surgeon. He admitted he did not see the study or report of Petitioner's February 2014 MRI. Ross said he would expect symptoms of a lumbar or cervical spine injury to resolve in days. He thought Petitioner's psychological distress is playing a role in her physical distress. Ross testified the degree of disruption to Petitioner's life and disability is much greater than would be seen with even true facet mediated pain. Petitioner's Exhibit 20 at 25-26, 27, 28, 29-30, 40, 42.

Conclusions of Law

Disputed issue F is, is Petitioner's current condition of ill-being causally related to the injury of July 21, 2011. An injured employee bears the burden of proof to establish the elements of her right to compensation, including the existence of a causal connection between her condition of ill-being and her employment. Navistar International Transportation Corporation v. Industrial Commission (Diaz), 315 Ill. App. 3d 1197, 1202-1205 (2002). A claimant must prove that some act or phase of her employment was a causative factor in the ensuing injury. Whether a causal connection exists is a question of fact. Vogel v. Illinois Worker's Compensation Commission, 354 Ill. App. 3d 780, 786 (2005).

I found, as a conclusion of law, Petitioner's current condition of ill-being, that of a carpal tunnel injury and de Quervain's syndrome, and lumbar strain, causally related to being kicked in the chest by a patient on July 21, 2011. Those conditions resolved long ago. In support of this, I

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rely on the opinions of Dr. Lim in 2011 and 2012; Dr. Ghanayem in 2015. Respondent's Exhibit 2; Respondent's Exhibit 3; Respondent's Exhibit 6.

There is, looming over Petitioner's claim, a substantial amount of exaggeration, embellishment, and lack of objective support for her claims. Having observed her performance at this hearing, I find her less than a credible witness. Doctors have observed symptom magnification and overreaction to pain symptoms mere months after the accident. Petitioner's functional assessment was found invalid, as she attempted to manipulate the results. Even a doctor hired by Petitioner who saw her nearly seven years after the accident thought Petitioner's claimed disability was much greater than should be seen. Respondent's Exhibit 2; Respondent's Exhibit 3; Petitioner's Exhibit 3; Petitioner's Exhibit 20 at 42; Respondent's Exhibit 6.

Disputed issue J is whether Respondent is liable for certain unpaid medical bills, the list of which is attached to the Request for Hearing. An employer shall pay according to a fee schedule or negotiated date, all necessary first aid, medical services, and hospital services incurred, reasonably required to cure or relieve from the effects of an accidental injury. 820 ILCS 305/8a.

- I find as a conclusion of law, as set forth by the Commission, Respondent shall pay medical bills incurred on and prior to August 28, 2013, as well as the referenced x-ray and physical therapy on Petitioner's right hand. I further find, consistent with the findings on causal connection, that medical services related to Petitioner's carpal tunnel and de Quervain's syndrome are to be paid by Respondent. Any treatment of Petitioner's lumbar strain, except for the x-ray previously awarded, is not the responsibility of Respondent. Petitioner does not offer a coherent explanation for Respondent's responsibility for payment of the list of bills. The sheer number of disparate providers without correlation to a specific condition of ill-being, works against imposing liability on Respondent.

- Disputed issue K is, is Petitioner entitled to a period of temporary total disability. She certainly is through August 28, 2013. Petitioner's Exhibit 1. To be entitled to a temporary total disability award under the Act, an injured worker must prove not only she did not work, but was unable to work. Ingalls Memorial Hospital v. Industrial Commission, 241 Ill. App. 3d 710 (1993). Here the issue comes down to how long past August 28, 2013, should the award extend. On February 14, 2014, Petitioner's doctor released her to work as to her right hand. Petitioner's Exhibit 5. An MRI of her back done on that date was normal. Respondent's Exhibit 6.

- I find, as a conclusion of law, Petitioner is entitled to a period of temporary total disability benefits from July 22, 2011, to February 14, 2014, at \$757.20 per week. The parties have stipulated Respondent has paid \$83,074.56 in such benefits.

Disputed issue L is, what is the nature and extent of the injury of July 21, 2011. That date of injury predates the establishment criteria in 820 ILCS 305/8.1b, and so disability need not be established using those criteria.

Petitioner sustained injuries to her right hand and a subsequent condition in that hand during physical therapy. I find the level of permanent partial disability for that hand at 15%

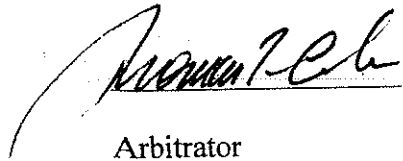
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(28.5 weeks) at \$681.48 per week. She recovered from these injuries to the extent she was seeking employment as a Case Manager, a Clinical Manager, Dialysis Nurse, Registered Nurse, and Travel Nurse in 2017. Petitioner's Exhibit 19. She secured employment as a Supervisor in a nursing home in 2017. Obodoakor at 29; Petitioner's Exhibit 31.

Petitioner also sustained a lumbar strain. That has long since resolved. I find the level of permanent partial disability at 5% (25 weeks) man as a whole at \$681.48 per week.

The parties have stipulated Respondent has paid an advance of such benefits of \$4,770.36.

Disputed issue M is, should penalties or fees be imposed upon Respondent. The Commission previously denied Petitioner's claim for penalties and attorney's fees. Penalties are discretionary, rather than mandatory. I note Respondent has paid over \$150,000 in benefits in a claim where an injury occurred eight years ago. I also note Petitioner's lack of credibility and the repeated recognition of doctors and therapists of Petitioner's attempted manipulation of findings and symptom magnification. I find this is not a case that, by any stretch of the imagination, warrants the imposition of penalties or fees.


Arbitrator


Date