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STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

Before the Illinois Workers'
Compensation Commission

DENNIS R. ROUSSIN,

Petitioner,

vs.

NO: 19 WC 005252
21 IWCC 607

MADISON COMMUNITY UNIT
SCHOOL DISTRICT #12,

Respondent.

ORDER

The Commission on the Motion of Respondent recalls the Corrected Decision and Opinion on Review of the Illinois Workers' Compensation Commission dated January 7, 2022, pursuant to Section 19(f) of the Act due to a clerical error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Corrected Decision and Opinion on Review dated January 7, 2022 is hereby recalled and a Second Corrected Decision and Opinion on Review is hereby issued simultaneously.

February 8, 2022

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/s/ Stephen J. Mathis
Stephen J. Mathis

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STATE OF ILLINOIS)
) SS.
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<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 checked="" type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DENNIS R. ROUSSIN,

Petitioner,

vs.

NO: 19 WC 005252
21 IWCC 607

MADISON COMMUNITY UNIT
SCHOOL DISTRICT #12,

Respondent.

SECOND CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability (TTD), medical expenses, and prospective medical care, and being advised of the facts and applicable law, hereby reverses the Decision of the Arbitrator for the reasons stated below. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total disability, prospective medical expenses, and compensation for permanent partial disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327 (1980).

The Commission finds that Petitioner sustained a work-related accident on February 21, 2017. His right shoulder condition is causally related to his work accident. Having found accident and causal connection, the Commission finds Petitioner is entitled to the 62 weeks of TTD that have already been paid commencing February 22, 2017 through October 3, 2017 and January 24, 2018 through August 21, 2018 (RX 2). Respondent is entitled to a credit of \$30,924.98 for TTD benefits previously paid. The Commission finds that all medical care and treatment rendered to

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Petitioner was reasonable and necessary and that Respondent shall pay medical expenses pursuant to Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit of \$77,817.56 for the medical expenses that have been paid. Respondent is also entitled to a credit for any reasonable, related and necessary medical expenses paid by the group medical provider, pursuant to Section 8(j) of the Act. Respondent shall hold Petitioner harmless for any claims by any providers for which Respondent receives any credit for any medical expenses paid by the group medical provider pursuant to Section 8(j) of the Act. Petitioner is entitled to prospective medical care and treatment for his right shoulder as recommended by Dr. Farley.

FINDINGS OF FACT

The Commission makes the following findings:

- 1) Mr. Roussin was employed with Madison Community Unit School District # 12 as a full-time custodian on February 21, 2017. On that date he was on duty cleaning the cafeteria when he slipped and fell on spilled juice and fell directly on his right shoulder.
- 2) Mr. Roussin admitted into evidence and testified to the following job history:
 - a. In 2007 Petitioner was employed as a service technician at Thermal Industries. The position required a lot of overhead lifting. T 19. He left that employment in 2014. In 2014 he was unemployed for 9 months. Petitioner then worked for a temporary service from Labor Day until the end of 2015. T 22. In 2016 Mr. Roussin was hired by Respondent as a full-time custodian.
 - b. Petitioner's duties for Respondent included sweeping, mopping, moving furniture, lawn maintenance, light plumbing, and overhead work. During the summer he painted a couple of classrooms by himself. He emptied trash that weighed 60-70 lbs. and required lifting the can and placing it in the dumpster. He worked alone on his shift until February 17, 2017.
- 3) Mr. Roussin has a history of right shoulder pain that dates back to July 17, 2007 when he sustained a work-related accident in his prior employment. He was lifting a glass trapezoid that weighed 120-140 lbs. and strained his right shoulder. PX3. An MRI performed on October 30, 2007 revealed a focal, partial articular surface tear with tendinosis, and acromioclavicular joint arthropathy with mass effect on the supraspinatus tendon. RX5.
- 4) In 2007 Petitioner came under the care of Dr. Kostman, an orthopedic surgeon. At that time Dr. Kostman was contracted to Concentra. He treated Petitioner conservatively with cortisone injections to the right shoulder. On December 18,

2007, Dr. Kostman discussed treatment options with Petitioner that included continued conservative therapy or arthroscopic surgery. RX6. Right shoulder surgery was not performed. Petitioner testified that he was scheduled for right shoulder surgery but that it was cancelled by Dr. Kostman. T 29. Dr. Kostman was subsequently retained by Respondent in the present case as a Section 12 expert witness.

- 5) Petitioner testified that he had regained full-strength in his right shoulder and continued working full-duty at Thermal Industries through 2014. T 29. He admits he has had symptoms of arthritis in his right shoulder from his 2007 work accident until the 2017 fall at work. T 49. He does not dispute that he had ongoing problems with his right shoulder in the interim for which he consulted his primary care physician Dr. Riordan. T 54.
- 6) Prior to the February 2017 work-injury he was able to reach his right arm above his head without assistance from his left hand. His right arm movement was unrestricted. T 32. Petitioner admitted on cross examination that he saw Dr. Riordan on December 28, 2015 and that his records note decreased range of motion on examination, and inability to resist pressure in his right arm. T 57.
- 7) Petitioner began work for Respondent as a substitute custodian in early 2015. He was then hired full-time by Respondent. He was able to work full-duty from December 2015 until his February 21, 2017 work accident. T 65. He pursued a hobby as a drummer from 13 years of age. He has no other hobbies. T 62.
- 8) On February 21, 2017 Petitioner was working at Madison School doing cafeteria duty. He slipped on spilled apricot juice and fell directly on his right shoulder. He reported the injury and was sent to Gateway Medical Center on February 22, 2017. Petitioner testified that immediately after the fall he did not feel pain because his shoulder felt the way it always did. The pain increased by the end of his shift. T 59.
- 9) The records from Gateway Medical Center reflect that he reported that he slipped and fell at work and that the onset of right shoulder pain was sudden and continuous. An x-ray was performed that revealed no fracture. Acromioclavicular hypertrophy was reported. Examination of the right shoulder demonstrated decreased range of motion. PX2.
- 10) Mr. Roussin was seen by Dr. Milne on March 6, 2017. He presented with complaints of constant pain with any use of his right shoulder. Petitioner was known to Dr. Milne as he performed a left subscapularis repair in 2014. Petitioner reported to Dr. Milne that he had an old work injury to his right shoulder in 2005

(sic). Dr. Milne diagnosed a right full thickness rotator cuff tear involving the subscapularis with right impingement syndrome and acromioclavicular arthrosis. Dr. Milne recommended arthroscopic surgery and imposed a 5 lb. lifting restriction pending surgery. PX3.

- 11) Dr. Milne performed right shoulder surgery on April 5, 2017. The undersurface of the rotator cuff showed a full thickness tear, the biceps tendon was found to be subluxing from the groove and the anterior superior labrum showed fraying and tearing. Petitioner had post-operative follow up and physical therapy. Dr. Milne released him to restricted duty work with a 40 lb. lifting restriction on August 14, 2017. PX3.
- 12) Petitioner returned to Dr. Milne on September 12, 2017 and reported that he did not feel ready to return to full duty employment where he is expected to lift up to 70 lbs. Dr. Milne ordered a course of work hardening. On October 3, 2017 Petitioner reported to Dr. Milne that he was still having difficulty raising his right arm overhead. He was returned to full duty work. Petitioner saw Dr. Milne on October 31, 2017 and told Dr. Milne that his right shoulder was getting worse. Dr. Milne ordered an MRI arthrogram but allowed him to continue working without restrictions.
- 13) An MRI arthrogram was performed on November 21, 2017 which revealed evidence of a repeat full thickness tear at the insertion of the supraspinatus measuring 3.2 cm. in the AP dimension with 3.1 cm. of retraction. Dr. Milne recommended repeat surgery.
- 14) Dr. Milne performed a second right shoulder surgery on January 24, 2018. He underwent physical therapy and was on work restrictions of no overhead lifting or reaching. PX3.
- 15) On June 12, 2018 Petitioner saw Dr. Milne and reported he still had a “sticking point” in his right shoulder and required active assistance when raising his arm from 45 to 90 degrees. Dr. Milne ordered another MRI which was performed on July 10, 2018.
- 16) The MRI report of July 10, 2018 was read by the radiologist as demonstrating a partial thickness undersurface tear with fraying and undersurface irregularity, and suspected superior bundle subscapularis and small focal longitudinal interstitial tendon wear, but no convincing labral tear was identified. PX3.
- 17) Dr. Milne determined that the rotator cuff was intact and increased the frequency of physical therapy. On August 21, 2018 he returned Petitioner to full duty work.

On September 18, 2018 Dr. Milne charted that Petitioner was at MMI and released him from care.

- 18) Petitioner returned for further orthopedic follow up on June 19, 2019. Dr. Milne had retired during the interim. Petitioner was seen by his partner Dr. Farley. Petitioner reported that he had done okay on his initial return to full duty employment but he still had some pain and weakness that became worse over the course of the spring. Dr. Farley ordered an MRI which was performed on July 1, 2019. PX7.
- 19) The MRI performed on July 1, 2019 reported that undersurface tears of the infraspinatus, supraspinatus and subscapularis were seen but that that no through and through components were identified. PX7.
- 20) Mr. Roussin returned to Dr. Farley to review the radiology results on July 3, 2019. Dr. Farley's clinical note states that he reviewed the July 1, 2019 MRI images in comparison to the July 2018 MRI and that failure of the second right shoulder cuff repair performed by Dr. Milne was evident even in the MRI images of July 10, 2018. Dr. Farley recommended further revision rotator cuff repair. His note reflects concern about the predictability of success with further surgery, but Petitioner's symptoms necessitate the recommendation. Further revision was not scheduled as Mr. Roussin had upcoming eye surgery. Dr. Farley released Petitioner without restrictions pending further rotator cuff revision.
- 21) Mr. Roussin underwent a Section 12 examination by Dr. Kostman at the request of Respondent on January 29, 2020.
- 22) Dr. Farley was deposed on March 5, 2020 and his deposition testimony was received into evidence. Dr. Farley is board certified in orthopedics. He has followed Petitioner commencing June 19, 2019 as a treating physician following the retirement of Dr. Milne. He testified consistent with his medical records and opined that the medical care and treatment rendered Mr. Roussin by Dr. Milne following his February 21, 2017 work-related injury was reasonable and necessary. (PX1)
- 23) Dr. Farley opined that Petitioner is not at MMI, and that if he does not undergo the recommended surgery that he will remain permanently disabled and will not regain full functionality. Dr. Farley testified that Petitioner's right shoulder simply failed to heal following the first two surgeries with Dr. Milne. (PX1).
- 24) Dr. Kostman was deposed on June 3, 2020 and his testimony was received into evidence. Dr. Kostman testified that he was retained by Respondent to examine

Petitioner, and that he generated a report dated January 29, 2020 related to the Section 12 examination. (RX5)

- 25) Dr. Kostman expressed the opinion that the April 5, 2017 right shoulder surgery performed by Dr. Milne was necessary to relieve Petitioner's physiological condition, but that the need for surgery was not causally connected to the February 21, 2017 work accident. In Dr. Kostman's opinion Petitioner's history of right shoulder injury in 2007 and his activities as a drummer placed him at risk for continued rotator cuff pathology. Dr. Kostman acknowledges that Petitioner needs the further surgery recommended by Dr. Farley but that the need for surgery is not causally connected to the February 21, 2017 fall at work. (RX5)
- 26) On cross-examination Dr. Kostman admitted to being associated with Concentra in 2007 and that he was the physician who evaluated Petitioner's right shoulder injury while he was employed at Thermal Industries. He admitted that there was no indication that Petitioner had been unable to work between 2007 and February 21, 2017. Dr. Kostman admitted that he had no information to dispute that Petitioner sustained a fall onto his right shoulder on February 21, 2017, nor does he have any basis to dispute that Petitioner was unable to perform his job duties after that fall.

CONCLUSIONS OF LAW

It is for the Commission to determine whether Petitioner sustained a work-related accident on February 21, 2017 and whether his current condition of ill-being is causally connected to that event. Petitioner's testimony concerning the fall he sustained while on cafeteria duty on February 21, 2017 is undisputed. Petitioner reported his injury promptly and sought medical treatment at Gateway Medical Center on February 22, 2017. The history Petitioner gave following the injury to his medical providers has been entirely consistent. The Commission agrees with the Arbitrator's finding that Petitioner sustained a work-related accident on February 21, 2017.

It is undisputed that Petitioner was working as a custodian at full-duty for Respondent at the time he fell directly onto his right shoulder on the date of the accident. Petitioner did have remote history of a right shoulder injury dating back to his prior employment in 2007. Petitioner did consult his primary care provider intermittently during the years from 2007 through 2016 for complaints related to his right shoulder. An MRI performed on November 6, 2007 revealed that Petitioner had a partial thickness right rotator cuff tear.

Petitioner testified that he was able to fully perform all of his work duties for Respondent prior to February 21, 2017 and that those duties included overhead activities. The records of Gateway Medical Center reflect that the onset of Petitioner's right shoulder pain was sudden and continuous following his fall at work. Petitioner further testified that by the time he arrived at

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Gateway Medical Center he was unable to move his shoulder properly and that he was experiencing increasing pain. He was unable to touch the small of his back with his right hand, extend his right arm, or lift his right arm over his head without assistance from his left arm. An MRI performed following the work accident showed a complete tear of the rotator cuff.

Petitioner subsequently underwent two surgeries by Dr. Milne on his right shoulder. Petitioner continued to experience problems with his right shoulder and continued to seek orthopedic care. He consulted with Dr. Farley on June 9, 2019 and had another MRI performed on July 1, 2019. Dr. Farley has recommended further right shoulder surgery without which Petitioner will remain disabled and will not regain full functionality of his right shoulder.

Respondent's Section 12 examiner Dr. Kostman agreed that the medical treatment rendered to date has been reasonable and necessary. He acknowledged that the prospective care recommended by Dr. Farley is medically indicated. Dr. Kostman, however has opined that the February 21, 2017 work accident was not a cause of or factor in the permanent aggravation of Petitioner's right shoulder pathology. After having fully reviewed the facts and law, the Commission views the evidence differently and reverses the Arbitrator's Decision on the issue of causal connection.

In order to establish causal connection under the Act, a Petitioner must prove that some act or phase of employment was a causative factor in his ensuing injury. *Land and Lakes Co. v. Industrial Comm'n.* 359 Ill.App.3d. 582, 592, 834 N.E.2d 583, 296 Ill. Dec. 26 (2005). However, a work-related injury "need not be the sole causative factor, nor even the primary causative factor, so long as it was causative in the resulting condition of ill-being." *Sisbro v. Industrial Comm'n.* 207 Ill. 2d. 193, 205, 797 N.E. 665, 278 Ill.Dec.70 (2003). Thus, even if the employee has a pre-existing condition which makes him more vulnerable to injury, recovery will not be denied as long as it can be shown that his employment was also a causative factor. *Id.* Accordingly, an employee may recover under the Act, if he shows that he suffered a work-related accident that aggravated or accelerated a pre-existing condition. *Id.*

It is undisputed that Petitioner sustained a fall at work on February 21, 2017. Petitioner testified that prior to the fall that he was able to work full-duty as a custodian for Respondent. He was able to perform normal movement with his right shoulder on the morning of February 21, 2017 prior to the fall in the cafeteria. Subsequent to the accident he had pain and loss of range of motion that drove him to seek emergency medical care. Petitioner amply testified as to the change in his physical condition immediately following the accident. Respondent presented no evidence to contradict this testimony. Following the accident, Petitioner was subsequently diagnosed with a full-thickness tear of the rotator cuff that required two surgeries with Dr. Milne.

The Arbitrator noted that Petitioner presented no medical opinion to establish causal connection. "Medical testimony is not necessarily required, however, to establish causal connection and disability." *Westinghouse Electric Co. v. Industrial Comm'n.* 64 Ill. 2d.244, 250 (1976); see also *Union Starch & Refining Co. v. Industrial Comm'n.* 37 Ill.2d 139, 144 (1967).

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Petitioner has presented evidence of a chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in a disability that the Commission finds sufficient to prove a causal nexus between the accident and his right shoulder injury under *International Harvester v. Industrial Comm'n.* 93 Ill.2d. 59 irrespective of the opinion offered by Dr. Kostman concerning causal connection. For all of the forgoing reasons the Commission finds that Petitioner's current condition of ill-being is causally related to the work accident of February 21, 2017.

Dr. Farley has testified that Petitioner is not at MMI and that prospective medical care in the form of further surgical revision is required. Respondent's Section 12 examiner Dr. Kostman agrees that the prospective surgical revision is medically indicated. Without this prospective medical care Petitioner will remain permanently disabled. Dr. Kostman has not expressed any opinion disputing the necessity or reasonableness of any of Petitioner's prior medical treatment.

The Commission finds the Petitioner is entitled to the 62 weeks of TTD that has already been paid commencing February 22, 2017 through October 3, 2017 and January 24, 2018 through August 21, 2018. Respondent is entitled to a credit of \$30,924.98 for TTD benefits previously paid. Petitioner is entitled to reasonable and necessary medical expenses, subject to the medical fee schedule, pursuant to Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit of \$77,817.56 for the medical expenses that have been paid. Respondent is also entitled to a credit for any reasonable, related and necessary medical expenses paid by the group medical provider, pursuant to Section 8(j) of the Act. Respondent shall hold Petitioner harmless for any claims by any providers for which Respondent receives any credit for any medical expenses paid by the group medical provider pursuant to Section 8(j) of the Act. Petitioner is entitled to prospective medical care and treatment of his right shoulder as recommended by Dr. Farley.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on November 9, 2020, is hereby reversed for the reasons stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$498.79 for a period of 62 weeks commencing February 22, 2017 through October 3, 2017, and January 24, 2018 through August 21, 2018, that being the period of temporary total incapacity to work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay subject to the medical fee schedule, for the reasonable and necessary medical expenses that have been incurred pursuant to Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for the prospective medical treatment recommended by Dr. Farley.

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

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IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit of \$ 30,924.98 for 62 weeks of TTD benefits previously paid to Petitioner.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit of \$77,817.56 for medical expenses that have been paid. Respondent is also entitled to a credit for reasonable, related, and necessary medical expenses paid by the group medical provider, pursuant to Section 8(j) of the Act. Respondent shall hold Petitioner harmless for any claims by any providers for which Respondent receives any credit for any medical expenses paid by the group medical provider pursuant to Section 8(j) of the Act.

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

February 8, 2022

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/s/ Stephen J. Mathis

Stephen J. Mathis

/s/ Deborah J. Baker

Deborah J. Baker

/s/ Deborah L. Simpson

Deborah L. Simpson