STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JAMES ALEVIZOS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	96 WC 01261
	)	21 IWCC 0345
RELCO ELECTRIC CO.,	)	
	)	
Respondent.	)	

ORDER

This matter comes before the Commission on Respondent's Petition to Recall the Commission Decision to Correct Clerical Error pursuant to Section 19(f) of the Act. The Commission having been fully advised in the premises finds the following:

The Commission finds that said Decision should be recalled for the correction of a clerical/computational error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Decision dated July 6, 2021, is hereby recalled pursuant to Section 19(f) of the Act. The parties should return their original decisions to Commissioner Kathryn A. Doerries.

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

August 20, 2021

s/*Kathryn A. Doerries*
Kathryn A. Doerries

KAD/bsd
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21IWCC0345

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JAMES ALEVIZOS,

Petitioner,

vs. NO: 96 WC 01261
21 IWCC 0345

RELCO ELECTRIC CO.,

Respondent.

CORRECTED DECISION AND OPINION ON REMAND

This matter comes before the Illinois Workers' Compensation Commission ("Commission") pursuant to a Rule 23 Order of the First District Appellate Court Workers' Compensation Division, filed October 23, 2020, which reversed the decision of the circuit court of Cook County, which confirmed the January 4, 2019, Commission decision finding no causal connection between the Petitioner's December 1, 1995, work accident and his current condition of ill-being of his low back, reversed the Commission decision, and remanded the case to the Commission for further proceedings. (2020 IL App (1st) 200184WC-U) In light of the Rule 23 Order, the Commission is specifically tasked to: (1) determine what medical expenses incurred by claimant after April 28, 2004, were causally related to his work accident of December 1, 1995; (2) to make an appropriate award of medical expenses based upon that determination; and (3) assess whether claimant is entitled to additional temporary total disability and permanency benefits in light of this order.

Based upon the Appellate Court's finding of causal connection between the Petitioner's work injury and his current low back condition of ill-being, the Commission finds that the Petitioner sustained his burden of proving that he is entitled to 302-1/7 weeks of temporary total disability benefits commencing February 28, 2007, through December 12, 2012; that Petitioner is entitled to an award under §8(f) as his condition resulted in a material change in Petitioner's condition since his arbitration hearing resulting in permanent total disability commencing on December 13, 2012; and that Petitioner is entitled to medical expenses related to his low back

treatment itemized in Petitioner's exhibit one, to be paid under §8(a) and §8.2 of the Act and pursuant to the stipulation of the parties. (12/14/17 T, pp. 19-20, PX1)

Background

The following statement of facts is based upon the findings in the afore-referenced Rule 23 Remand Order of the First District Appellate Court and the entire record. (2020 IL App (1st) 200184WC-U) Petitioner sustained an accident arising out of and in the course of his employment on December 1, 1995. He injured his right ankle and subsequently developed an altered gait causing stress in his low back and eventually participated in a work-hardening program. While in work-hardening, Petitioner began treating for low back pain and eventually underwent two surgeries. The first surgery, on February 19, 1997, was an L5-S1 lumbar discectomy with foraminotomies bilaterally performed by Dr. Freitag. Petitioner developed lumbar instability. The second surgery was performed by Dr. DeFeo on February 22, 2000, consisting of a lumbar fusion at L5-S1 with Ray cages.

After Petitioner's April 28, 2004, arbitration hearing, the arbitrator filed a decision on July 7, 2004, and found a causal relationship between the condition of ill-being involving Petitioner's low back and the December 1, 1995, accident. The arbitrator also found Petitioner to be permanently disabled, relative to his lumbar spine, to the extent of 60% of a person as a whole. In so finding, the presiding arbitrator found surveillance footage of Petitioner bench pressing nine to ten repetitions with 135 pounds, eight repetitions with 185 pounds, five repetitions with 225 pounds, and, at least, a single repetition with 275 pounds well in excess of a 30-pound physician-imposed lifting restriction and Petitioner's physical appearance at the arbitration hearing, notably his being physically fit, belied Petitioner's claim of being unable to return to work as an electrician. (12/14/17 T, PX30)

During his testimony in support of his Petition for Review, Petitioner did not deny lifting the weights seen on the surveillance footage, he, instead, testified that he was working out but did not recall testifying that he could hold more than 100 pounds or lifting 45 pounds when working out. (12/14/17 T, PX27, pp. 50-51) Petitioner further testified that he was not sure if he could bench press 225 pounds five times and he was probably maxing out at 275 pounds two times. (12/14/17 T, PX27, p. 53) Nonetheless, the Commission affirmed and adopted the arbitrator's finding. Neither party sought judicial review of the Commission decision and, as the Appellate Court held, the decision therefore became the law of the case.

More than two years passed after Petitioner's April 28, 2004, arbitration hearing before Petitioner sought treatment for complaints traceable to his December 1, 1995, accident. On June 29, 2006, Petitioner presented to Dr. Gary Bennett of Chapman Medical Center with increasing symptoms in his back and right leg complaints. Prior to that, Petitioner testified that he stopped working as a security guard because that was too difficult for him to continue. (12/14/17 T, PX27, p. 9) His brother is an Orange County osteopathic medicine physician and has coordinated his medical care since his relocation to California on February 13, 1999, acted as his primary care physician for most of that time, and referred him to all the physicians he has seen in California. (12/14/17 T, PX27, p. 10-11)

Dr. Bennett recommended that Petitioner undergo conservative treatment, including epidural and transforaminal steroid injections, however, there is no evidence that Petitioner sought further medical care until he presented to Dr. Kamran Aflatoon of Southern California Spine and Orthopedic Oncology on February 28, 2007, eight months after treating with Dr. Bennett. Dr. Aflatoon ordered an EMG/NCV, performed on October 23, 2007, that confirmed lumbosacral nerve-root irritation, mostly at the L5-S1 level. He also ordered a CT myelogram of the lumbar spine, taken on November 6, 2007, which revealed that the left cage device used in Dr. DeFeo's fusion surgery, was extending into the L5-S1 neural foramen and compressing the exiting left L5 nerve root. Dr. Aflatoon opined that Petitioner had a non-union at L5-S1 and a disc herniation at L4-L5. Dr. Aflatoon also found Petitioner totally disabled and in need of additional back surgery and the position of the left cage device would need to be addressed. This finding led to a course of multiple additional surgeries. On May 16, 2007, Dr. Aflatoon authored an addendum to his February 28, 2007, evaluation causally relating Petitioner's current status to his 1995 accident.

Petitioner was referred by Respondent (Guaranty Fund) for a §12 evaluation with Dr. Stewart Shanfield. On March 4, 2008, Dr. Shanfield opined that the CT myelogram showed that the cage from Dr. DeFeo's February 2000 surgery was in the left neural foramen and impinging along the L5 and S1 nerve root. Dr. Shanfield found that Petitioner required surgery, including an extension of the lumbar fusion, and found it causally related to the February 2000 surgery and the and December 1, 1995, work accident. Dr. Shanfield opined that Petitioner was not capable of returning to gainful employment until the full resolution of his medical and pain issues. (PX4)

On April 23, 2008, Dr. Aflatoon recommended a spinal cord stimulator and second opinion from the Santa Monica Spine Institute. On July 23, 2008, Dr. Aflatoon documented that further surgery was not indicated, but that Petitioner was permanently disabled, could not be gainfully employed, and would require lifelong medication to control his chronic pain.

Petitioner saw Dr. Bennett for the second and last time on August 21, 2008. Dr. Bennett concluded that he was unable to treat Petitioner due to the complexity of his medical condition. Petitioner also treated with Dr. Miguel Dominguez of Intervention Pain Management between September 30, 2008, and June 14, 2011, for medications and injections. Petitioner underwent a trial for a spinal cord stimulator (SCS) on February 18, 2009, however, Dr. Dominguez did not proceed with a permanent implantation of a SCS. At subsequent visits, Dr. Dominguez observed behavior that he found inconsistent with Petitioner's office visits and described this behavior as an "amplication of his symptoms." (12/14/17 T, PX5)

Petitioner next consulted Dr. Rick Delamarter at the Spine Institute of Santa Monica on March 25, 2009, and was under his care through February 1, 2011. (12/14/17 T, PX6) Dr. Delamarter agreed that the left cage used in Dr. DeFeo's February 22, 2000, surgery was protruding into the canal. He recommended surgery to correct the malalignment and a revision at L5-S1 with extension to L4-L5 which was previously positive on a discogram. Dr. Delamarter also referred Petitioner to Dr. George Graf for detoxification because Petitioner was taking a high dosage of narcotics. (12/14/17 T, PX6 3/25/09)

Petitioner was again examined by Dr. Shanfield on May 28, 2009, pursuant to Respondent's request under §12 of the Act. Dr. Shanfield concurred with the diagnosis of

malalignment of the Ray cages and surgery was warranted. Dr. Shanfield estimated that recovery for the surgery would take six months to one year. He hoped that Petitioner would return to gainful employment, but likely in a sedentary position. (PX4)

Petitioner underwent a two-step surgery with Dr. Delamarter to trim the misaligned Ray cage on January 28, 2010, and also consisting of an anterior discectomy, L4-5 partial corpectomies in preparation for interbody fusion, L4-5; use of allograft femoral ring for interbody fusion, L5-S1; revision laminotomies L4-5, L5-S1; revision partial medial facetectomies, L4-5, L5-S1; removal of extensive epidural scar tissue; exploration of fusion mass; segmental instrumentation of L4 and L5 with pedical screws; posterolateral fusion, L4-5; use of local autograft for posterolateral fusion. The post-operative diagnosis was failed-back syndrome. (12/14/17 T, PX6)

When Petitioner followed up with Dr. Delamarter, he recommended a lumbar CT scan and EMG nerve conduction study (NCS). The EMG/NCS was abnormal. (12/14/17 T, PX6) The lumbar CT scan confirmed the metal spacer device at L5-S1 was protruding into the neural foramen by approximately 4 millimeters. (12/14/17 T, PX6) Dr. Delamarter wrote a "to whom it may concern" report on February 1, 2011 stating that he was releasing Petitioner from his care since he is no longer a surgical candidate. He referred Petitioner to Dr. Hormoz Zahiri for further care. (12/14/17 T, PX6) The pain management physician's office notes document that Dr. Dominguez reviewed the CT scan and Petitioner needed further evaluation by a surgeon. (12/14/17 T, PX5, 1/17/11 and 1/24/11) Dr. Zahiri, an orthopedic surgeon, reviewed the CT scan and the NCS and opined that the metal cage from the Dr. Delemarter's surgery was protruding into the left foramina causing left sided severe radiculopathy, confirmed by the NCS. Dr. Zahari's notes confirmed that Petitioner remained temporarily totally disabled and he recommended revision of the lumbar fusion.

Petitioner underwent the next surgery on June 28, 2011, to remove and replace the L5-S1 interbody cages and extend the fusion to L4-S1 performed by Dr. Gregory Carlson. Petitioner then treated with Dr. Albert Lai, consisting of medication management and multiple lumbar injections. A lumbar myelogram and CT scan on April 13, 2012, revealed possible pseudo meningocele, which Dr. Carlson explained is a persistent leakage of spinal fluid from the spinal canal, a risk that Dr. Carlson pre-operatively discussed with Petitioner as well as the risks of arachnoiditis and adjacent level disease. Another surgery was performed on May 31, 2012, to repair the leak, a dural defect at L4-5.

On November 1, 2012, Dr. Lai performed a dorsal column stimulator trial that was removed one week later. On June 6, 2013, Dr. Bradley Noblett implanted an intrathecal pain pump. On August 21, 2013, Petitioner returned to Dr. Carlson complaining of more pain caused by the implanted device. An EMG showed chronic neurogenic changes in the lumbar paraspinal muscle with no evidence of radiculopathy. Dr. Carlson released Petitioner from his care, indicating that there were no further surgical procedures he could offer, and recommended continuing pain management with Dr. Albert Lai. Petitioner underwent a lumbar myelogram and CT scan at his brother and primary care physician Dr. Alevizos's request. Dr. Carlson interpreted the studies as showing significant arachnoiditis, scarring within the thecal sac. Dr. Carlson explained that arachnoiditis is a risk associated with surgery and associated with back pain, leg pain, and sciatica and can be ongoing or additional cause for persistent pain. Dr. Carlson testified that there is no

cure for arachnoiditis. (12/14/17 T, PX29, p. 15) In Dr. Carlson's view, Petitioner was totally disabled and unable to obtain any gainful employment. (12/14/17 T, PX29, p.21) Dr. Carlson referred claimant to Dr. J. Patrick Johnson for a second opinion.

Petitioner saw Dr. Johnson on June 16, 2014. Dr. Johnson concurred with the diagnosis of arachnoiditis and referred Petitioner to Dr. Joshua Prager, a pain-management physician. Petitioner was under the care of Dr. Prager from July 2, 2014, through September 9, 2014. He was diagnosed with failed-back-surgery syndrome. On September 2, 2014, Dr. Prager performed further surgery involving revision of the placement of the pain pump to optimize medications.

On September 23, 2015, Dr. Steven Feinberg examined Petitioner at Respondent's request. Dr. Feinberg subsequently testified by evidence deposition on June 20, 2017. (RX1) Doctor Feinberg noted that Petitioner had a "major" lumbar pathology after all of his surgeries but found a lack of objective physical findings on evaluation. Dr. Feinberg felt that Petitioner suffered from considerable pain behavior and symptom magnification, citing Petitioner's report to him that he was suffering from moderate depression with frequent suicidal ideations and pain level at 10 on a 10- point scale. Dr. Feinberg's diagnosis was failed-back syndrome, psychiatric comorbidity (i.e. psychological factors affecting claimant's physical condition). Dr. Feinberg recommended that Petitioner participate in a functional restoration and chronic pain program with a detoxification component. Dr. Feinberg concluded there was a causal relationship between the December 1, 1995, work injury and Petitioner's current disability. From a purely physical standpoint Petitioner would be expected to work at a sedentary capacity, although his overall presentation would make engagement in work impossible. Dr. Feinberg agreed that arachnoiditis is a significant diagnosis that can result in severe back and leg pain with neurological problems. He acknowledged that it can be a debilitating condition and that there's no surgery or procedure to "get rid of" arachnoiditis.

Upon referral of Dr. Alevizos, Petitioner received additional pain management from multiple physicians consisting of medication management, including pain pump reprogramming, refills and injections. Petitioner testified Dr. Chang and Dr. Alsharif recommended reducing medication intake and weaning off the pain pump. To that end, use of the pain pump was discontinued on September 14, 2016, and the device was later surgically removed. In September 2016, Petitioner began treatment with Dr. Lai for pain management.

On September 28, 2016, Petitioner returned to Dr. Carlson. Dr. Carlson opined that there were new findings at the levels of L3 and L4 based upon new diagnostics. His diagnosis was adjacent segment progressive intervertebral collapse at L2-L3 and L3-L4, remote fusion at L4- S1 with retained segmental hardware. A lumbar MRI taken on November 1, 2016, revealed a disc bulge at L2- L3 and a small disc protrusion at L3-L4. Dr. Carlson indicated that at L2 and L3 there had been a progressive intervertebral collapse with left paracentral disc extrusion measuring 12 millimeters by 5 milliliters by 10 millimeters, which was a change compared to the previous MRI scans taken more than two years earlier. Upon referral of Dr. Carlson, Dr. Eric Chang performed an epidural injection at the L2-L3 levels.

On May 19, 2017, Dr. Carlson testified consistent with his report that adjacent level problems are causally related to the original work injuries. He further testified that Petitioner is at risk to require further surgeries at L2-L3 and L3-L4, that he also has residual new L2-L3

paracentral disc herniation and progressive intervertebral collapse at L2-L3 and L3-L4, lumbar radiculopathy, arachnoiditis and has a cervical condition. (12/14/17 T, PX29, p. 28) Petitioner testified, however, that he doesn't know why he had the cervical MRI. He was not having cervical symptoms. He currently does not have cervical symptoms. (12/14/17 T, PX27, pp 32) In Dr. Carlson's view, there is a psychological component to Petitioner's condition. (12/14/17 T, PX29, p. 28) He acknowledged there have been issues regarding the proper amount of medication. He testified that Petitioner would benefit from ongoing pain management, functional restoration care, mental health care, and psychological supports. The lumbar condition of ill being has reached a permanent state and Petitioner is unable to return to gainful employment, even if sedentary. (12/14/17 T, PX29, p. 29-30)

Conclusions of Law

§19(h) of the Act provides, in pertinent part, as follows:

> [A]s to accidents occurring subsequent to July 1, 1955, which are covered by any agreement or award under this Act providing for compensation in installments made as a result of such accident, such agreement or award may at any time within 30 months, or 60 months in the case of an award under Section 8(d)1, after such agreement or award be reviewed by the Commission at the request of either the employer or the employee on the ground that the disability of the employee has subsequently recurred, increased, diminished, or ended. 820 ILCS 305/19(h) (West 2014).

In order to prove a change in Petitioner's condition, there must be a material change in the Petitioner's condition as compared to at the time of the arbitration hearing. The Appellate Court explains how to determine the material change.

> In reviewing a section 19(h) petition, the evidence presented in the original proceeding must be considered to determine if the petitioner's position has changed materially since the time of the Industrial Commission's first decision. (*Howard*, 89 Ill. 2d 428, 433 N.E.2d 657.)

Gay v. Industrial Com., 178 Ill. App. 3d 129, 532 N.E.2d 1149, 1989 Ill. App. LEXIS 3, 127 Ill. Dec. 320.

The Petitioner testified at the arbitration hearing that he was limited on things that he could do as he had lower back pain with sometimes radiating pain. Sometimes it felt like he was walking on pins and needles. He could not feel his bladder as he was emptying it. (04/28/04 T, pp. 101-104). The arbitrator relied upon the entire record at arbitration to assess permanency of 60% loss of use of the person as whole for the Petitioner's low back injury. The arbitrator noted that the three video surveillance tapes showing Petitioner weight-lifting well beyond his 30 pound lifting restriction belied Petitioner's claims that he could not work as an electrician at the time. Petitioner further testified at the arbitration hearing that he would to the health club and lift weights five days per week. He would lift in excess of 45 pounds when lifting weights. (04/28/04 T, pp. 101-104)

However, the arbitrator also acknowledged the fact that Petitioner sustained a significant injury to his low back.

At the §19(h) hearing, Petitioner testified that his current pain is in his lower back and his legs. He feels weakness in both his legs, and severe low back weakness. (12/14/17 T, p. 36) He further testified that he uses a cane, and loses balance and cannot grab, twist or do things normal people do and has to change positions a lot. He can drive for 19 minutes. (12/14/17 T, pp 37-38) His day-to-day life is a nightmare because of his back injury. He is unable to take care of himself or his house. He hires gardeners to take care of outside. His 82 year old mother helps him on a daily basis. He finds it sometimes hard to concentrate when the pain spikes. He would not wish his condition on his worst enemy. (12/14/17 T, pp. 40-41)

Given the Appellate Court Remand Order, that the Petitioner's low back condition is causally related to the work accident, the Commission therefore finds that Petitioner's low back condition has materially changed and significantly worsened from the time of the arbitration hearing based upon Dr. Carlson's opinion regarding Petitioner's chronic pain and inability to work as a result of multiple subsequent lumbar surgeries, diagnosis of arachnoiditis, new L2-L3 paracentral disc herniation and progressive intervertebral collapse at L2-L3 and L3-L4.

Medical

> Under section 8(a) of the Act, the claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure [*267] the effects of a claimant's injury. *University of Illinois v. Industrial Comm'n*, 232 Ill. App. 3d 154, 164, 596 N.E.2d 823, 173 Ill. Dec. 199 (1992). The claimant has the burden of proving that the medical services were necessary and the expenses incurred were reasonable. *F&B Manufacturing Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 534, 758 N.E.2d 18, 259 Ill. Dec. 173 (2001).

City of Chicago v. Ill. Workers' Comp. Comm'n, 409 Ill. App. 3d 258, 266-267, 947 N.E.2d 863, 870, 2011 Ill. App. LEXIS 327, *18, 349 Ill. Dec. 849, 856.

At the beginning of the December 14, 2017 §19(h) and §8(a) Commission hearing, the parties stipulated that if Petitioner was entitled to medical expenses, Respondent is responsible for any reasonable, related and necessary bills in the form of 1) reimbursement to Petitioner for out-of-pocket medical expenses; 2) outstanding balances; and 3) Respondent will hold Petitioner harmless from any Medicare-based reimbursement claims. (12/14/17 T, pp. 19-20) Given the finding that Petitioner's low back condition is causally related to the work accident on December 1, 1995, the Commission finds that the Respondent shall pay the medical bills itemized in Petitioner's exhibit one pursuant to §8(a) and §8.2 of the Act and pursuant to the stipulation of the parties excluding treatment with growth hormones or plasma-enriched injections and excluding psychiatric or psychological treatment, if any.

The arbitrator specifically noted that the Petitioner was voluntarily exceeding his work restrictions by weightlifting as per the video surveillance and that Petitioner was, therefore, capable

of working. After his consult on February 28, 2007, Dr. Aflatoon found Petitioner totally disabled. On December 12, 2012, Dr. Carlson completed a "Consulting Physician's Permanent and Stationary Report." He ultimately concluded Petitioner to be 100% disabled from performing any meaningful work. Dr. Carlson's opinion, according to the report, was based, in part, on mental issues. The Commission declines, however, to find the Petitioner's mental health condition, if any, is causally related to the December 1, 1995, work accident given the paucity of evidence in the medical records concerning a diagnosis by an expert psychological or psychiatric physician, or treatment for a psychological condition including anxiety or depression outside of his consult for the SCS with Dr. R. Wayne Brown, a PhD, Clinical Psychologist. Dr. Brown was referred by Dr. Aflatoon. Further, based on Petitioner's reporting to Dr. Shanfield, he was admitted to the hospital pre-injury in 1994 for a psychiatric evaluation. (12/14/17 T, PX4, 3/4/08, p. 3) The Commission infers that there were previous pre-existing mental health issues, however, no indication that Petitioner's condition was more or less impacted after the subject work accident.

Dr. Brown documented that Petitioner believed both his depression and anxiety levels were low. Petitioner reported that at that time, on December 12, 2008, he was using Cymbalta 15 milligrams for depression with Valium and Xanax listed as current medications. He reported that he had not treated with a psychologist or psychiatrist. (12/14/17 T, PX5, Dr. Brown report pp. 2-3) However, Petitioner testified that he recalled seeing Dr. Terry Roh, a psychiatrist, in late 2011. (12/1/4/17 T, PX27, p. 21) At the Petitioner's September 30, 2008, office visit with Dr. Dominguez, he reported he had not tried Cymbalta. On November 13, 2008, Dr. Dominiguez wrote that he would institute Cymbalta for pain as primary reason. (12/14/17 T, PX5, 11/13/2008)

Dr. Brown noted that psychiatric indications did not indicate significant psychiatric distress at the time of his evaluation. (12/14/17 T , PX 5, Dr. Brown report p. 4) Dr. Brown concluded that an invasive procedure was not contraindicated from a psychological perspective. Dr. Brown further concluded that his depression and anxiety levels are better than expected for a chronic pain patient and should not cause him to be at a heightened risk for having an exaggerated negative reaction to an invasive medical procedure. (12/14/17 T, PX5, Dr. Brown report p. 8) Petitioner saw Dr. Dominguez on December 11, 2008 and on January 12, 2009 and neither pain medication history noted by Dr. Dominguez reflects that Petitioner was taking Cymbalta, however, under the section "medical reasoning" Cymbalta was included. The history of Petitioner's taking Cymbalta was short lived. Petitioner reported to Dr. Lai that Cymbalta was of no benefit. (12/14/17 T, PX11, 3/9/12)

On July 5, 2011, Petitioner refused to participate in a neuropsychological evaluation at St. St. Jude Medical Center. (12/14/17 T, PX9)

Dr. Carlson first saw Petitioner on May 13, 2011, for a consultation concerning his low back condition and continued to see him thereafter as one of his treating physicians. On December 12, 2012, Dr. Carlson completed a "Consulting Physician's Permanent and Stationary Report." He ultimately concluded Petitioner to be 100% disabled from performing any meaningful work, having noted earlier in the report that Petitioner had developed "significant mental health issues" that impede him from both returning to a functional lifestyle and coping with his pain. In the approximately twelve visits Petitioner had with Dr. Carlson between the May 13, 2011, consultation and Dr. Carlson authoring the Consulting Physician's Permanent and Stationary

Report on December 12, 2012, Dr. Carlson had never made a diagnosis relative to Petitioner's mental health in any of the records memorializing those visits. The Commission finds Dr. Carlson's lack of significant psychiatric or psychological findings consistent with the records of Petitioner's previous treating physician, Dr. Dominguez, with whom Petitioner treated with from 2008 to 2011.

Dr. Dominguez authored a Pain Management Workers' Compensation Report following each visit and within each report was both a behavioral assessment and a cognitive assessment. These assessments noted Petitioner exhibited anxiousness and distress but, other than those findings, Dr. Dominguez detected no behavioral abnormalities and unremarkable cognitive assessments. Dr. Dominguez did not refer Petitioner to another physician to address his anxiousness and distress. (12/14/17 T, PX5)

Dr. Albert Lai succeeded Dr. Dominguez as Petitioner's pain medication physician, treating Petitioner from 2011 into 2014. His records include a section entitled Review of Systems and listed among the reviewed systems was "anxiety and depression." Dr. Lai's objective findings included only anxiety. Dr. Lai, like Dr. Dominguez before him, did not refer Petitioner to anyone to address either his anxiety or depression.

A review of Petitioner's medical records from 2008 through 2012 provides no indication of Petitioner's mental state demonstrating, as Dr. Carlson described, "significant mental health issues" at any time prior to him writing as much in his Consulting Physician's Permanent and Stationary Report from December 12, 2012. That Dr. Carlson, despite that diagnosis, did not subsequently refer Petitioner for psychiatric or psychological care undermines his diagnosis.

Further, although Dr. Carlson treated Petitioner intermittently for many years, the Commission does not wholly rely upon his opinion alone in making its findings. Dr. Carlson, on May 8, 2014, authored a "To Whom It May Concern" letter in which he concluded that Petitioner was unable to take a four-hour flight to be present for the hearing in support of his §19(h) petition. He testified that "someone" asked him to write a letter but was unable to recall who that was. More troubling was his explanation as to how he knew Petitioner was unable to make such a flight. He testified that he knew Petitioner could not handle a four-hour flight because Petitioner's condition hadn't changed from the last time he saw him. Dr. Carlson's records indicate that last time he saw Petitioner prior to writing the "To Whom It May Concern" letter on May 8, 2014, was on August 21, 2013. Dr. Carlson did not offer an explanation as to how he knew what Petitioner's condition was on May 8, 2014, when he hadn't seen Petitioner for more than nine months. How Dr. Carlson assessed Petitioner's ability to travel is consistent with how he came to assess Petitioner's mental health. Both were made without an examination or medical records that support his conclusions. Dr. Carlson also testified that Petitioner has a cervical condition that Petitioner denied altogether.

Petitioner's mental health status was revisited by Dr. Khang Lai, the pain management physician with whom Petitioner has been treating with since September 14, 2016. The diagnosis Dr. Lai made of Petitioner's condition as a result of his examination of Petitioner that day included recurrent major depressive disorder. The Commission is also not persuaded with Dr. Lai's diagnosis given that neither Petitioner's chief complaints nor his recounted history included any complaints that touched upon his mental health. More significantly, the Review of Symptoms

indicates Petitioner's mental status to be normal and without depression. Dr. Lai's subsequent visit records repeat the diagnosis of recurrent major depressive disorder and repeatedly recommend that Petitioner's primary care physician refer Petitioner for psychiatric/psychological treatment. As Petitioner testified to, his primary care physician is, in fact, his brother, Dr. John Alevizos, and Dr. Alevizos has coordinated his medical care ever since he moved to California in February 1999. There was no testimony or medical record in evidence that Dr. Alevizos ever made such a referral. Therefore, the Commission declines to find Petitioner's condition as it relates to his mental health, if any, related to the work accident.

The Commission further relies upon Dr. Feinberg's opinion that there is no scientific basis regarding the use of human growth hormones for treatment of low back conditions and that plasma-enriched injections into the spine is "ridiculous." Dr. Feinberg further testified that there is no scientific-based evidence to support those injections. (12/14/17 T, RX1, pp. 31-32)

Temporary Total Disability

> To be entitled to TTD benefits, the claimant must prove not only that he did not work but that he was unable to work. *City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d at 1090, 666 N.E.2d at 828-29 (1996). It does not matter whether he could have looked for work. Even though a claimant may be entitled to permanent disability compensation under the Workers' Compensation Act (Act), once the injured employee's physical condition has stabilized, he is no longer eligible for TTD benefits because the disabling condition has reached a permanent condition. *Manis*, 230 Ill. App. 3d at 660, 595 N.E.2d at 160-61. [***13]

Freeman United Coal Mining Co. v. Industrial Comm'n, 318 Ill. App. 3d 170, 177, 741 N.E.2d 1144, 1150, 2000 Ill. App. LEXIS 1021, *12-13, 251 Ill. Dec. 966, 972.

With respect to Petitioner's lost time, the Commission notes that Petitioner testified that he had not worked since he left his job as a security guard prior to his return to Dr. Bennett. (12/14/17 T, PX27, p. 9) The Petitioner also testified that he has not returned to work since that time. (12/14/17 T, PX27, 35) The Petitioner testified that no treating physician has released him to return to work since Dr. Aflatoon took him off work on February 28, 2007. (12/14/17 T, PX27, 35; PX3) The Commission notes that Dr. Aflatoon opined on June 23, 2008, that Petitioner was permanently disabled and would not be able to have any gainful employment. (12/14/17 T, PX3) Subsequently Dr. Shanfield opined on May 28, 2009, that Petitioner should have the surgery recommended by Dr. Delamarter, and it would be unlikely Petitioner could return to work as an electrician or engage in heavy physical work but hoped he could return to some type of gainful employment, sedentary work as opposed to physical labor. This again represented a material change in Petitioner's condition as he previously demonstrated the ability to lift heavy weights. Petitioner underwent several additional procedures and pain management thereafter, and after the January 28, 2010, surgery had a new diagnosis of failed back surgery.

On December 12, 2012, Dr. Carlson issued a report stating that Petitioner had reached maximum medical improvement (MMI). Petitioner saw several medical providers since that date

for pain management, however, Dr. Carlson testified consistent with his report that Petitioner had reached a state of MMI on December 12, 2012.

Given the finding of causal connection to Petitioner's work injury of December 1, 1995, the Commission finds that Petitioner is entitled to temporary total disability (TTD) commencing from the date Dr. Aflatoon took Petitioner off work, February 28, 2007, through December 12, 2012, the date Dr. Carlson opined that he was at MMI.

Permanent Disability

> There are three ways that a claimant can establish permanent and total disability, namely: by a preponderance of medical evidence; by showing a diligent but unsuccessful job search; or by demonstrating that, because of his age, training, education, experience, and condition, there are no jobs available for a person in his circumstances. *ABB C-E Services v. Industrial Comm'n,* 316 Ill. App. 3d 745, 750, 737 N.E.2d 682, 250 Ill. Dec. 60 (2000).

Fed. Marine Terminals, Inc. v. Ill. Workers' Comp. Comm'n (Buza), 371 Ill. App. 3d 1117, 1129, 864 N.E.2d 838, 848, 2007 Ill. App. LEXIS 189, *27, 309 Ill. Dec. 597, 607

In this case, on December 12, 2012, Dr. Carlson issued a report stating that Petitioner had reached maximum medical improvement and is 100% disabled from performing meaningful work. (12/14/17 T, PX29, PDepX3, 12/12/12)

Dr. Feinberg saw Petitioner at Respondent's request on September 23, 2015. In his report, Dr. Feinberg found a causal relationship between the December 1, 1995, work injury and the current disability. He recommended medication detoxification. Dr. Feinberg further opined that based on the totality of his presentation, Petitioner was unable to engage in the open labor market. (12/14/17T, RX1, DepX2, 9/23/15 rpt, p. 32) Dr. Feinberg also authored reports dated April 11, 2016, and November 21, 2016. Dr. Feinberg testified on June 20, 2017 that Petitioner could work in a sedentary capacity. (12/14/17 T, RX1, p. 23) This opinion was based on the fact that Petitioner's grip test of his right hand, his non-dominant hand, was quite good at 115 pounds. The grip test is an objective test. Except for his range of motion loss, Petitioner had a normal objective examination. (12/14/17 T, RX1, pp. 21-22) On a purely objective basis, Petitioner's examination was not grossly abnormal. He found no evidence of lower body musculature atrophy. Petitioner was not like others who have had multiple back surgeries with their foot drops, reflex changes, and positive straight leg raises. None of that was evident in Petitioner. There was no evidence of loss of muscle girth which occurs with radiculopathy or severe nerve damage. (12/14/17 T, RX1, pp. 23-24)

In his report from October 30, 2015, Dr. Feinberg recommended that Petitioner participate in a functional restoration and chronic pain program. A functional restoration and chronic pain program is to assist someone who is dysfunctional with chronic pain to become more functional and detoxify them by having them have a better life. The program he recommended is similar to the ones recommended by Dr. Delamarter, Dr. Lopez, and Dr. Prager. One part of the program is to teach the injured people how to mentally and physically deal with the pain. His practice has a

team that includes a full-time psychologist, a full-time physical therapist, himself and an associate. With someone with Petitioner's history, treatment would begin with a day-long interdisciplinary evaluation to assess if the subject is amenable to participating in the program. Some people are not amenable to the treatment, performing more surgery or being afraid. His practice will entice such people by having them meet their successful patients. He did recommend Petitioner needed to be weaned of his pain medications. He would consider Petitioner stopping his medication to be an extremely positive step. (12/14/17 T, RX1, pp. 27-29).

Dr. Feinberg wrote in his April 11, 2016, report that Petitioner engaged in significant pain behavior and symptom magnification. (12/14/17 T, RX1, pp. 33-34)

Dr. Carlson testified on May 19, 2017. He disagreed with Dr. Feinberg that Petitioner would have a better life, be on less medicine, and be capable of working a sedentary job if he participated in a comprehensive functional restoration pain program. Dr. Carlson testified that the basis of his opinion was his long-term association with Petitioner, seeing him multiple occasions and observing his impairment, his lack of ability to even be comfortable in a sitting or standing position for short periods of time, his need for assistive devices such as wheelchairs to mobilize get in and out of our office. His ability to not be able to even wait to for us for 30 minutes in one position without creating havoc due to his ongoing pain issues. (12/14/17 T, PX29, pp. 30-31)

Despite Dr. Feinberg's evaluation and testimony regarding the possibility that Petitioner could work in a sedentary job and Dr. Carlson's credibility issues, the Commission relies on Dr. Carlson's opinion that Petitioner is permanently and totally disabled pursuant to §8(f) of the Act, based on his testimony regarding Petitioner's chronic pain and inability to work as a result of multiple lumbar surgeries, residual lumbar radiculopathy, arachnoiditis, new L2-L3 paracentral disc herniation and progressive intervertebral collapse at L2-L3 and L3-L4. (12/14/17/T, PX29, DepX3, p. 28,)

Therefore, the Commission finds that based upon the material change in Petitioner's low back condition that is causally related to the work accident on December 1, 1995, Petitioner is entitled to TTD from February 28, 2007, through December 12, 2012, is permanently totally disabled commencing December 13, 2012, pursuant to §8(f) of the Act, and is entitled to medical expenses related to Petitioner's low back treatment that are itemized in Petitioner's exhibit one excluding treatment with growth hormones or plasma-enriched injections and excluding psychiatric or psychological treatment, if any, to be paid pursuant to §8(a) and §8.2 of the Act and per the terms of the parties' stipulation, i.e. that Respondent is responsible for any reasonable, related and necessary bills in the form of: 1) reimbursement to Petitioner for out-of-pocket medical expenses; 2) outstanding balances; and 3) Respondent will hold Petitioner harmless from any Medicare-based reimbursement claims. (12/14/17 T, pp. 19-20, PX1)

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $607.33 per week for a period of 302-1/7 weeks, commencing from February 28, 2007, through December 12, 2012, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay for reasonable, related and necessary low back medical expenses under §8(a) and §8.2 of the Act as itemized in Petitioner's exhibit one excluding treatment with growth hormones or plasma-enriched injections and excluding psychiatric or psychological treatment, if any, and that Respondent shall hold Petitioner harmless from any Medicare based reimbursement claims. To the extent any balances remain regarding the awarded bills which stem from Petitioner's out-of-pocket, deductible, co-payments and/or co-insurance, the Respondent shall reimburse Petitioner accordingly pursuant to §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $607.33 per week for life as provided in §8(f) of the Act, commencing from December 13, 2012, for the reason that Petitioner sustained a material increase in his disability to the extent of the total permanent disability of Petitioner. The Petitioner is entitled to receive annual adjustments to this award under §8(g) of the Act. Total and permanent disability awards are subject to an annual rate adjustment on July 15 of each year beginning on the second year after the date the award is entered pursuant to §8(g). The weekly rate shall be proportionately increased by the same percentage increase in the State's average weekly wage, subject to the prevailing maximum rate. In the event of a decrease in such average weekly wage there shall be no change in the then existing compensation rate.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the Petitioner compensation that has accrued and shall pay Petitioner the remainder, if any, in weekly payments.

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 proceeding in the Circuit Court shell file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 20, 2021

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

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42

/s/*Thomas J. Tyrrell*
Thomas J. Tyrrell

/s/*Maria E. Portela*
Maria E. Portela

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CELESTE LISAK,
Petitioner,

vs.

No. 15 WC 009792
IWCC: 21IWCC0435

CITY OF CHICAGO—FLEET MANAGEMENT,
Respondent.

ORDER

The Commission finds that a clerical error exists in its Decision and Opinion on Review dated August 24, 2021, in the above-captioned matter, and on its own motion, pursuant to Section 19(f) of the Act, vacates and recalls that Decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review in the above-captioned matter, dated August 24, 2021, is hereby vacated and recalled pursuant to Section 19(f) for correction of a clerical error contained therein.

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

August 25, 2021

/s/ *Marc Parker*
Marc Parker

mp/dk
68

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Celeste Lisak,
Petitioner,

vs.

No. 15 WC 009792
(consolidated with 12 WC 011061)

City of Chicago—Fleet Management,
Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of clerical error and nature and extent of permanent disability, and being advised of the facts and law, corrects the clerical error in the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision, which is attached hereto and made a part hereof.

With regard to the nature and extent of Petitioner's injury, the Arbitrator found that the injuries sustained caused a 10% loss of use of the person-as-a-whole. However, his Order awarded 75 weeks. The Commission finds that this was a clerical error and modifies the Decision to reflect the proper number of weeks for the award, 50 weeks. 820 ILCS 305 §8(d)2.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 3, 2020 is hereby corrected as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner $498.87 per week for a period of 50 weeks, as provided in §8(d)2 of the Act, because the injuries sustained caused 10% disability of the person-as-a-whole.

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

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

Under Section 19(f)(2), no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. 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.

August 25, 2021

/s/ *Marc Parker*
Marc Parker

mp/dak
o-8/19/21
068

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Stephen Mathis*
Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

LISAK, CELESTE
Employee/Petitioner

Case# **15WC009792**

12WC011061

CITY OF CHICAGO - FLEET MGMT
Employer/Respondent

On 4/3/2020, 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 0.10% 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:

4642 O'CONNOR & NAKOS
STEPHEN CUMMINGS
120 N LASALLE ST 35TH FL
CHICAGO, IL 60602

0113 CITY OF CHICAGO
STEPHANIE LIPMAN
30 N LASALLE ST SUITE 800
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF **COOK**)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

CELESTE LISAK
Employee/Petitioner

v.

CITY OF CHICAG0 - FLEET MGMT.
Employer/Respondent

Case # **15** WC **09792**

Consolidated cases: **12 WC 11061**

The only disputed issue is the nature and extent of the injury. 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 **Arbitrator Charlie Watts**, Arbitrator of the Commission, in the city of **Chicago**, on **June 11, 2019**. By stipulation, the parties agree:

On the date of accident, **March 3, 2015**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained 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 $**43,235.45**, and the average weekly wage was $**831.45**.

At the time of injury, Petitioner was **76** years of age, ***single*** with **0** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of $**22,014.82** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**22,014.82**.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of $**498.87**/week for a further period of **75** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused **permanent partial disability to the extent of 10% loss of a person as a whole..**

Respondent shall pay Petitioner compensation that has accrued from **March, 3, 2015** through **June 11, 2019**, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected 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

March 27, 2020
Date

APR 3 - 2020

BEFORE THE WORKERS' COMPENSATION COMMISSION OF ILLINOIS

CELESTE LISAK,	)	
	)	
Petitioner,	)	
	)	
v.	)	NO. 15 WC 09792
	)	(Consolidated with 12 WC 11061)
	)	
CITY OF CHICAGO – FLEET MGMT.	)	
	)	Arbitrator Charlie Watts
Respondents.	)	

I. STATEMENT OF FACTS

The parties have stipulated that on March 3, 2015, Celeste Lisak, hereinafter referred to as Petitioner was employed by the City of Chicago, hereinafter referred to as Respondent. The parties further stipulated that on that date, Petitioner was involved in an accident arising out of and in the course of her employment. Further, the parties have stipulated that proper notice of this accident was given and Petitioner's current condition is causally related to the accident. Further, the parties have stipulated that Petitioner's earnings in the year preceding the injury were $43,235.45 and her average weekly wage was $831.45. Further, the parties have stipulated that at the time of her accident Petitioner was 76 years old, single with zero dependent children. The parties have further stipulated that Respondent has paid the reasonable, necessary medical associated with this injury. (Arbitrator's Exhibit No. 2)

In addition, the parties have stipulated that Petitioner was temporary and totally disabled from work from March 7, 2015 through December 9, 2015 representing 39 4/7 weeks. The parties have also stipulated that Respondent has paid $22,014.82 in temporary total disability. The only issue in dispute is the nature and extent of Petitioner's injuries. (Arbitrator's Exhibit No. 2)

On March 3, 2015, Petitioner was employed as a Watchman, for the Respondent. On that date, Petitioner attempted to close a 12-foot gate that was stuck due to the cold weather. While trying to

forcibly close the gate, Petitioner felt the immediate on-set of severe pain in her neck and left shoulder. Petitioner's testimony in this regard is unrebutted and corroborated by the medical histories contained in the treating medical records.

Petitioner began treatment for these injuries on March 6, 2015. Petitioner's treating physicians ultimately diagnosed her with a large full thickness tear of the left rotator cuff as well as cervical spondylosis. Petitioner treated for these conditions non-surgically from March 6, 2015 until October 1, 2015.

During the course of her care and treatment, Petitioner underwent a Functional Capacity Evaluation on September 22, 2015 at U.S. Healthworks Medical Group. Petitioner was released back to work with permanent restrictions as delineated by the Functional Capacity Evaluation. (Petitioner's Exhibit #5 pgs. 216-236) .Respondent was able to take Petitioner back to work as a Watchman while accommodating the permanent restrictions.

Petitioner was taken off-work by her treating doctors from March 7, 2015 through December 9, 2015, the date Respondents took Petitioner back to work as a Watchman within her permanent restrictions. During that time, Respondents paid Petitioner her workers' compensation benefits.

Petitioner's unrebutted testimony is that prior to March 7, 2015, she had never injured her left shoulder or neck. Petitioner further testified that she had never previously sought any medical treatment whatsoever relative to her left shoulder and neck prior to March 3, 2015. In addition, Petitioner testified that she has suffered no new injuries to her left shoulder and neck since March 3, 2015. Petitioner's testimony is unrebutted.

Petitioner further testified that upon returning to work on December 9, 2015 as a Watchman for Respondents, she noted continued pain in her left shoulder and neck associated with increased activities

and lifting at work. Petitioner further testified that she notes increased pain in her left shoulder and neck with increased activity of daily living. Petitioner's testimony in this regard is unrebutted.

II. EXPERT OPINIONS

DR. JEFFREY COE

Dr. Jeffrey Coe drafted a Narrative Report on January 19, 2016 rendering opinions relative to the injuries Petitioner suffered on March 3, 2015. In his report, Dr. Coe opined that Petitioner was involved in an accident arising out of her employment on March 3, 2015. Dr. Coe specifically opined "Based on the findings of this examination, it is my opinion that there is a causal relationship between the injuries suffered by Ms. Lisak at work for the City of Chicago....on March 3, 2015 (left upper extremity) and her current upper extremity...symptoms and state of impairment. In my opinion, Ms. Lisak's injuries at work for the City of Chicago....on March 3, 2015 (left upper extremity) have caused permanent disability to both arms and to the person as a whole (Petitioner's Exhibit No. 8)

III. FINDINGS

F). WHAT IS THE NATURE AND EXTENT OF THE INJURY?

The Arbitrator adopts his findings of fact and law contained in the Statement of Facts, and incorporates them herein by this reference.

The unrefuted medical evidence clearly demonstrates that Petitioner has been diagnosed with a full thickness rotator cuff tear in her left shoulder as well as the aggravation of cervical spondylosis in her cervical spine. Both conditions were treated non-surgically. The parties have previously stipulated that these conditions are causally related to her accident at work on March 3, 2015. In addition, Petitioner's unrebutted testimony clearly demonstrates that she continues to experience significant

symptoms with respect to her left shoulder and cervical spine. Finally, Dr. Coe opined that Petitioner's injuries have resulted in permanent partial disability (Petitioner's Exhibit No. 8)

Based upon the above, the Arbitrator finds that Petitioner's injuries to her left shoulder and cervical spine cause her to be permanently and partially disabled to the extent of 10% loss of use of the person as a whole.

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CELESTE LISAK,
Petitioner,

vs.

No. 12 WC 11061
IWCC # 21IWCC0436

CITY OF CHICAGO—FLEET MANAGEMENT,
Respondent.

ORDER

The Commission finds that a clerical error exists in its Decision and Opinion on Review dated August 24, 2021, in the above-captioned matter, and on its own motion, pursuant to Section 19(f) of the Act, vacates and recalls that Decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review in the above-captioned matter, dated August 24, 2021, is hereby vacated and recalled pursuant to Section 19(f) for correction of a clerical error contained therein.

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

August 25, 2021

/s/ *Marc Parker*
Marc Parker

mp/dk
68

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Celeste Lisak,
Petitioner,

vs.

No. 12 WC 011061
(consolidated with 15 WC 009792)

City of Chicago—Fleet Management,
Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of clerical error and nature and extent of permanent disability, and being advised of the facts and law, corrects the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision, which is attached hereto and made a part hereof.

With regard to the nature and extent of Petitioner's leg injuries, the Arbitrator found that the injuries sustained caused a 7.5% loss of use of each leg. However, his Order awarded only 10.75 weeks for each leg. The Commission finds that this was a clerical error and modifies the Decision to reflect the proper number of weeks for each leg, 16.125 weeks. 820 ILCS 305 §8(e)12.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 3, 2020 is hereby corrected as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner $461.70 per week for a period of 105.15 weeks, as provided in §8(d)2 and §8(e) of the Act, because the injuries sustained caused a 10% disability of the person-as-a-whole (50 weeks), 5% disability of the right arm (12.65 weeks), 5% disability of the right hand (10.25 weeks), 7.5% disability of the right leg (16.125 weeks), and 7.5% disability of the left leg (16.125 weeks).

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

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

Under Section 19(f)(2), no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. 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.

August 25, 2021

/s/ *Marc Parker*
Marc Parker

mp/dak
o-8/19/21
068

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Stephen Mathis*
Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

LISAK, CELESTE
Employee/Petitioner

Case# **12WC011061**
15WC009792

CITY OF CHICAGO - FLEET MEMT
Employer/Respondent

On 4/3/2020, 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 0.10% 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:

4642 O'CONNOR & NAKOS
STEPHEN CUMMINGS
120 N LASALLE ST 35TH FL
CHICAGO, IL 60602

0113 CITY OF CHICAGO
STEPHANIE LIPMAN
30 N LASALLE ST SUITE 800
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF **COOK**)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

CELESTE LISAK
Employee/Petitioner

v.

CITY OF CHICAG0 - FLEET MGMT.
Employer/Respondent

Case # **12**WC **11061**

Consolidated cases: **15 WC 09792**

The only disputed issue is the nature and extent of the injury. 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 **Arbitrator Charlie Watts**, Arbitrator of the Commission, in the city of **Chicago**, on **June 11, 2019**. By stipulation, the parties agree:

On the date of accident, **January 3, 2012**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained 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 $**40,014.00**, and the average weekly wage was $**769.50**.

At the time of injury, Petitioner was **73** years of age, ***single*** with **0** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of $**15,099.51** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**15,099.51**.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

1) Respondent shall pay Petitioner the sum of $**461.70**/week for a further period of **50** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused **permanent partial disabilitly to the extent of 10% loss of use of the person as a whole, relative to her right shoulder**.

2) Respondent shall pay Petitioner the sum of $**461.70**/week for a further period of **12.65** weeks, as provided in Section **8(e)** of the Act, because the injuries sustained caused **permanent partial disabilitly to the extent of 5% loss of use of the arm.**

3) Respondent shall pay Petitioner the sum of $**461.70**/week for a further period of **10.25** weeks, as provided in Section **8(e)** of the Act, because the injuries sustained caused **permanent partial disabilitly to the extent of 5% loss of use of the right hand.**

4) Respondent shall pay Petitioner the sum of $**461.70**/week for a further period of **10.75** weeks, as provided in Section **8(e)** of the Act, because the injuries sustained caused **permanent partial disabilitly to the extent of 7.5% loss of use of the leg, relative to her right leg/knee.**

5) Respondent shall pay Petitioner the sum of $**461.70**/week for a further period of **10.75** weeks, as provided in Section **8(e)** of the Act, because the injuries sustained caused **permanent partial disabilitly to the extent of 7.5% loss of use of the left leg, relative to her left leg/knee.**

Respondent shall pay Petitioner compensation that has accrued from **1/3/12** through **6/11/19**, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected 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

March 27, 2020
Date

APR 3 - 2020

BEFORE THE WORKERS' COMPENSATION COMMISSION OF ILLINOIS

CELESTE LISAK,	)	
	)	
Petitioner,	)	
	)	
v.	)	NO. 12 WC 11061
	)	(Consolidated with 15 WC 09792)
	)	
CITY OF CHICAGO – FLEET MGMT.	)	
	)	Arbitrator Charlie Watts
Respondents.	)	

I. STATEMENT OF FACTS

The parties have stipulated that Celeste Lisak, hereinafter referred to as Petitioner, was involved in an accident arising out of her employment with the City of Chicago, hereinafter referred to as Respondent, on January 3, 2012. The parties further stipulate that proper notice of the accident was given. Further, the parties stipulate that the Petitioner's current condition of ill-being is causally connected to this work injury. Further, the parties have stipulated that Petitioner's earnings in the year prior to her accident were $40,014.00 and her average weekly wage was $769.50. In addition, the parties have stipulated that at the time of her accident, Petitioner was 73 years old, single with zero dependent children. The parties further stipulate that Respondent has paid the reasonable, necessary and causally related medical expenses incurred. (Arbitrator's Exhibit No. 1)

In addition, the parties have stipulated that Petitioner was temporary and totally disabled from January 4, 2012 through July 27, 2012 representing 29 weeks. The parties further stipulated that during that time period, Respondent has paid $15,099.51 in temporary total disability. The only issue in dispute is the nature and extent of Petitioner's injuries. (Arbitrator's Exhibit No. 1)

Petitioner testified that when she began work on January 3, 2012 she felt absolutely fine with no pain or symptoms in any body party whatsoever. Petitioner's testimony is unrebutted. On January

3, 2012, Petitioner was employed as a Watchman for Respondent. As a Watchman, Petitioner was responsible for securing the perimeter of the facility located at 2451 S. Ashland, Chicago, Illinois. Petitioner's testimony in this regard is unrebutted. Petitioner further testified that on that date, she stepped into an area on the floor in which a tile had come loose tripping her and causing her to fall onto her bilateral knees and outstretched right arm and right side. Petitioner's testimony is unrebutted and corroborated by the medical histories and evidence. Petitioner testified that she experienced the immediate onset of severe pain in her right shoulder, right elbow, right wrist, and bilateral knees. Petitioner further testified that she was unable to get up and was ultimately transported to the emergency room by Chicago Fire Ambulance.

Petitioner was transported to University of Illinois Hospital on January 3, 2012. On that date, she provided a consistent history of a fall at work. She underwent follow-up care and treatment at the University of Illinois Medical Center, Advanced Occupational Medical Specialists, Northshore Orthopedics Group, U.S. Healthworks and Accelerated Rehabilitation. (Petitioner's Exhibits 1 through 7) During the course of her care and treatment, Petitioner was ultimately diagnosed with the following:

1. Right shoulder tear of the superior glenoid labrum and rotator cuff tendinopathy.
2. Right elbow lateral epicondylitis.
3. Right wrist radial styloid tenosynovitis
4. Bilateral knee injuries post previous knee replacements.

Petitioner underwent care and treatment and rehabilitation relative to her injuries. In addition, Petitioner underwent a Functional Capacity Evaluation. This Functional Capacity Evaluation was performed on July 11, 2012. Petitioner was returned back to work with permanent restrictions as delineated by the Functional Capacity Evaluation. (Petitioner's Exhibit #2 pgs. 127-132)

Respondent was able to accommodate Petitioner's permanent restrictions as delineated by the Functional Capacity Evaluation. Petitioner returned to work for Respondents as a Watchman on July 27, 2012. Petitioner was taken off work by her treating doctors from January 4, 2012 to July 27, 2012. During this time Respondent paid Petitioner her workers' compensation benefits. Petitioner has performed the duties of watchman from July 27, 2012 until she was involved in a subsequent accident on March 3, 2015.

Petitioner testified that prior to January 3, 2012, she had undergone a right knee replacement in 2005 and a left knee replacement in 2008. Petitioner's unrebutted testimony is that after the knee replacements and rehabilitation, she was experiencing absolutely no symptoms or problems with respect to her bilateral knees. Petitioner testified that she was able to ambulate without the use of a cane prior to January 3, 2012. Petitioner further testified that prior to January 3, 2012 she had never injured her right shoulder, right elbow or right wrist. Petitioner's testimony is unrebutted. In addition, Petitioner testified that she had never sought any medical treatment whatsoever to her right shoulder, right elbow and right wrist prior to January 3, 2012. In addition, Petitioner testified that she has sustained no new injuries to her right shoulder, right elbow and right wrist or bilateral knees subsequent to January 3, 2012. Petitioner's testimony is unrebutted.

II. EXPERT OPINIONS

DR. JEFFREY COE

Dr. Jeffrey Coe performed an Independent Medical Examination of Petitioner on January 19, 2016 relative to the injuries she sustained on January 3, 2012. With respect to that accident, Dr. Coe specifically opined that "There is a casual relationship between the injuries suffered by Ms. Lisak at work for the City of Chicago on January 3, 2012 (Right upper extremity and both knees)....and her current upper extremity and lower extremity symptoms and state of impairment. In my opinion, Ms.

Lisak's injuries at work for the City of Chicago on January 3, 2012 (Right upper extremity and knees)...have caused permanent disability to both arms and to the person as a whole." (Petitioner's Exhibit No. 8) In addition, Dr. Coe opined that "Ms. Lisak is in need of on-going medical treatment. Appropriate treatment at this time would be conservative with anti-inflammatory medications as prescribed by her treatment physicians." (Petitioner's Exhibit No. 8)

III. FINDINGS

F). WHAT IS THE NATURE AND EXTENT OF THE INJURY?

The Arbitrator adopts his findings of fact and law contained in the Statement of Facts, and incorporates them herein by this reference.

The medical evidence clearly demonstrates that Petitioner has been consistently diagnosed with a right shoulder labrum tear, right shoulder rotator cuff tendinopathy, right elbow lateral epicondylitis, right wrist radial styloid tenosynovitis and bilateral knee injury post bilateral knee replacements. Petitioner has undergone non-surgical care and treatment for these injuries. Petitioner was ultimately released back to work within permanent restrictions outlined by her Functional Capacity Evaluation. Petitioner's restrictions were accommodated by Respondent, specifically the restrictions did not prevent her from returning to her previous employment as a Watchman.

Petitioner's unrebutted testimony is that prior to her accident on January 3, 2012, she was experiencing absolutely no symptoms in her right shoulder, right elbow, right wrist or bilateral knees. Petitioner specifically testified that she was able to ambulate without the use of a cane prior to her accident. The Arbitrator notes that the Petitioner's testimony in this regard is unrebutted. Petitioner further testified that following her January 3, 2012 accident, she has experienced and continues to experience pain and symptoms in her right shoulder, right elbow, right wrist and bilateral knees. Petitioner's testimony is unrebutted and corroborated by her treating medical records. Further,

Petitioner's unrebutted testimony is that subsequent to her January 3, 2012 accident, she requires a cane in order to ambulate safely.

In addition, Petitioner has testified that physical activities performed upon her return to work as well in her daily life will increase the symptoms in right shoulder, right elbow, right wrist and bilateral knees. The Arbitrator again notes that the Petitioner's testimony in this regard is unrebutted. Finally, Dr. Coe has opined that Petitioner's injuries have resulted in permanent partial disability. (Petitioner's Exhibit No. 8)

Based upon the above, the Arbitrator finds that Petitioner's injuries to her right shoulder, right elbow, right wrist and bilateral knees cause her to be permanently and partially disabled.

Specifically, the Arbitrator finds with respect to Petitioner's right shoulder, (labrum tear and rotator cuff tendinopathy) she is permanently and partially disabled to the extent of 10% loss of use of the person as a whole.

With respect to Petitioner's right elbow, (lateral epicondylitis) the Arbitrator finds Petitioner to be permanently and partially disabled to the extent of 5% loss of use of the arm.

With respect to Petitioner's right hand/wrist (radial styloid tenosynovitis) the Arbitrator finds that Petitioner has been permanently and partially disabled to the extent of 5% loss of use of the right hand.

With respect to the Petitioner's right knee, the Arbitrator finds that Petitioner has been permanently and partially disabled to the extent of 7.5% loss of use of the right leg.

With respect to the Petitioner's left knee, the Arbitrator finds that Petitioner has been permanently and partially disabled to the extent of 7.5% loss of use of the left leg.