STATE OF ILLINOIS)
) SS:
COUNTY OF DUPAGE)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JACLYN WELLMAN,

Petitioner,

vs. NO: 13 WC 13675
IWCC: 21IWCC0402

CASE: GLENWOOD ACADEMY,

Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

A Petition under Section 19(f) of the Illinois Workers' Compensation Act to Correct Clerical Error in the Decision and Opinion on Review dated August 9, 2021 has been filed by Respondent herein. Upon consideration of said Petition, the Commission is of the opinion that it should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated August 9, 2021, is hereby vacated and recalled pursuant to Section 19(f) for clerical error contained therein.

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

SEPTEMBER 7, 2021

DJB/mck /s/ *Deborah J. Baker*
43 Deborah J. Baker

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

☐ 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 Causal Connection, Medical, TTD, PPD	☒ None of the above

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Petitioner,

vs.

NO: 13 WC 13675
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CASE: GLENWOOD ACADEMY,

Respondent.

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 whether: the date of accident is correct, the benefit rates are correct, the wage calculations are correct, Petitioner's current condition of ill-being is causally connected to the accident, Petitioner is entitled to medical expenses both previously incurred and prospective, Petitioner's previously incurred medical treatment was reasonable and necessary, Petitioner is entitled to temporary disability benefits, Petitioner is entitled to permanent disability benefits, and "clerical errors," and being advised of the facts and law, modifies the Decision of the Arbitrator as set forth below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

I. HISTORY & SUMMARY

Petitioner filed two claims alleging injuries while employed by Respondent: 13 WC 13675 (acute trauma on October 23, 2012); and 13 WC 13676 (acute trauma on March 19, 2013). Both matters were consolidated for hearing. At the hearing, the parties stipulated that both accidents arose out of and in the course of her employment with Respondent. The Arbitrator thereafter issued two separate decisions.

In case no. 13 WC 13675, the Arbitrator found Petitioner's perforated right eardrum and neck pain were causally related to the undisputed October 23, 2012 accident where a student punched Petitioner. The Arbitrator found further that Petitioner failed to prove she sustained a concussion, post-concussion syndrome, PTSD, TMJ, tinnitus, occipital neuralgia, anxiety, and migraines as a result of the October 23, 2012 accident. The Arbitrator found Respondent had paid all associated medical bills and thus awarded no medical benefits. The parties stipulated that temporary total disability ("TTD") benefits were not at issue in this case. The Arbitrator found Petitioner's injuries caused a 10% loss of the person-as-a-whole pursuant to section 8(d)(2) of the Act.

In case no. 13 WC 13676, the Arbitrator found Petitioner failed to prove she sustained a concussion, post-concussion syndrome, PTSD, TMJ, tinnitus, occipital neuralgia, anxiety, and migraines that were causally related to the undisputed March 19, 2013 accident where a student pushed and hit Petitioner for a second time. The Arbitrator found Petitioner's unspecified condition had resolved as of August 19, 2013 based on Dr. Landre's section 12 examination opinions and awarded medical and TTD benefits through August 19, 2013. The Arbitrator further found Petitioner's injuries caused a 7.5% loss of the person-as-a-whole pursuant to section 8(d)(2) of the Act. The Arbitrator noted the parties stipulated Respondent was entitled to a credit for TTD benefits and an advance in PPD benefits totaling $14,507.77.

Petitioner filed a Petition For Review of both Decisions of the Arbitrator. On review, Petitioner argues: (1) the conditions of post-concussion syndrome, PTSD, and insomnia due to PTSD are causally related to one or both undisputed accidents; (2) Petitioner is owed additional temporary total disability benefits; and (3) the permanent disability awards in both cases are inadequate. Respondent did not file a Petition For Review of either case and did not challenge the Arbitrator's Decisions. Specifically, in case no. 13WC13675, Respondent did not challenge the Arbitrator's finding that "Petitioner has proven by the preponderance of the evidence, that her perforated right eardrum and neck pain was causally related to the October 23, 2012 accident," and did not challenge the award of 10% loss of the person-as-a-whole.

The Commission agrees with the Arbitrator, in part, and finds Petitioner failed to prove that the TMJ, tinnitus, and occipital neuralgia conditions were caused by either the undisputed October 23, 2012 or the March 19, 2013 accidents. However, the Commission disagrees with the Arbitrator, in part, and finds Petitioner proved by a preponderance of the evidence that: (1) the undisputed accidents caused Petitioner to suffer concussions and post-concussion syndrome, which resolved by July 18, 2013; (2) the undisputed accidents aggravated Petitioner's migraines and resolved by July 18, 2013; (3) the undisputed accidents caused Petitioner to suffer PTSD, which resolved by September 20, 2016; and (4) the undisputed accidents aggravated and exacerbated Petitioner's anxiety and depression, which resolved by September 20, 2016.

II. ADDITIONAL FINDINGS OF FACT

In September 2007, Petitioner began working as a health assistant for Respondent, Cooperative Association for Special Education ("CASE")/Glenwood Academy. T. 10. Petitioner explained Glenwood Academy includes kindergarten through 12th grade, and all the students have a mental disability, physical disability, or behavioral problem. T. 13. Petitioner's job was to

provide for the health needs of the students: she administered medication as needed; prepared health files for Individualized Education Plan meetings; and participated in daily or weekly meetings with each student and his/her social worker, psychologist, and physician. T. 11. She would accompany the students on certain field trips if medication issues made it necessary. T. 12. Petitioner is trained in Crisis Prevention and Intervention, and she assisted students who had trouble performing certain activities. T. 12. She was also a paraprofessional for the school, so she assisted students during physical education and helped in classrooms that were short-staffed. T. 12.

On August 23, 2010, Petitioner presented to her family physician, Dr. Sapan Patel at DuPage Medical Group's Wheaton Medical Clinic. Petitioner reported numbness and tingling in her left side face and arm for approximately three years. Petitioner also reported having severe headaches on the left side with blurry vision, anxiety when her migraines progressed, and fatigue. Dr. Patel diagnosed Petitioner with numbness and tingling, chronic left-sided headaches, and fatigue and recommended that Petitioner undergo an MRI of the brain to rule out a mass or other structural abnormality. Dr. Patel referred Petitioner to neurology for possible complex migraines. On August 30, 2010, Petitioner underwent an MRI of the brain which was within normal limits. Pet.'s Ex. 1; Pet.'s Ex. 12.

On April 16, 2012, Petitioner returned to Dr. Patel and reported that her migraines were getting worse over the last couple of months and she experienced facial numbness, blurry vision, tingling and sensory changes when she had severe migraines. Petitioner also reported a deep pain in the head that she had not experienced before. Dr. Patel noted that she had no focal abnormalities on a comprehensive neuro exam and diagnosed Petitioner with chronic migraines. Dr. Patel recommended Petitioner undergo a CT of the brain and blood work, and adjusted Petitioner's medication, opining that one medication may have been contributing to Petitioner's "rebound symptoms." Petitioner underwent the CT scan of the brain that same day, which was unremarkable. Pet.'s Ex. 12.

The October 23, 2012 Undisputed Accident

The parties stipulated that Petitioner sustained an accidental injury arising out of and occurring in the course of her employment on October 23, 2012. Arb.'s Ex. 1. Petitioner testified she was exiting a classroom in the elementary wing, having just administered medication to a student, when she encountered a classroom aide and another student in the hallway; the student was yelling that he had been punched by a fellow student, and the aide was walking him to Petitioner's office to get an ice pack. T. 14. Petitioner explained the protocol is that students in any kind of crisis are supposed to have three staff members with them, but the classroom aide left Petitioner alone with the student and "when I was asking him how did this happen, how he was hurt, he was yelling and swearing and then he started punching me." T. 14. Petitioner explained the student struck her with a fist using both hands. Petitioner also testified that the student punched her on the bridge of her nose, in the mouth, in the right ear, and jaw. Petitioner testified that she could not hear immediately after the student punched her in the ear. Petitioner testified further that she hit hear head on the wall and blacked out after being punched. T. 15. Petitioner testified the student was a first grader; he weighed 50 or 60 pounds and his height was below Petitioner's

shoulder level. T. 15-16. Petitioner is 5'1" and she weighed approximately 110 pounds at that time. T. 16. Petitioner testified that she reported the incident. T. 16.

Petitioner sought medical care that day at DuPage Medical Group's Wheaton Medical Clinic where she was evaluated by Dr. Patel who had treated Petitioner previously. Pet.'s Ex. 12. Dr. Patel memorialized that Petitioner reported being punched in the face by a student, with blows landing on her forehead, nose, and right ear, and complained of ear pain and decreased hearing on the right side. Pet.'s Ex. 12. The doctor noted Petitioner denied vision changes and loss of consciousness. Pet.'s Ex. 12. Dr. Patel's physical examination revealed no large contusions to the head and facial bones stable to palpation, however the right tympanic membrane had a central perforation. Pet.'s Ex. 12. Diagnosing a traumatic right ear perforation, Dr. Patel prescribed Cipro ear drops and referred Petitioner for evaluation by an ear, nose, and throat specialist. Pet.'s Ex. 12. At trial, Petitioner testified she continued working after the injury. T. 29.

On October 24, 2012, Petitioner was evaluated by Dr. Andrew Celmer, an otolaryngologist. Pet.'s Ex. 3. Dr. Celmer noted Petitioner had been referred by Dr. Patel for right tympanic membrane perforation. Pet.'s Ex. 3. Petitioner provided a consistent history of the altercation the day before followed by sudden ear pain and hearing loss; Petitioner also indicated she was struck in the nose and complained her nose was sore, but her breathing was unaffected. Pet.'s Ex. 3. Following an examination, Dr. Celmer diagnosed traumatic right ear perforation with conductive hearing loss as well as nasal trauma without evidence of fracture. Pet.'s Ex. 3. Dr. Celmer attempted a paper patch myringoplasty, but Petitioner could not tolerate the procedure so the doctor instead recommended dry ear precautions with the hope the tympanic membrane would heal on its own. Pet.'s Ex. 3.

That same day, Petitioner completed an Employee Report of Injury. Pet.'s Ex. 1. Therein, Petitioner memorialized that she was attempting to calm a student when he "punched me in the forehead, nose, and [right] temporal area/ear." Pet.'s Ex. 1. A witness statement prepared by Denise Polick reflects Petitioner was struck repeatedly in the nose and the ear area. Pet.'s Ex. 1.

On November 16, 2012, the incident was reported to the Glendale Heights Police Department. The report reflects Petitioner was punched three times in the nose and three times in the temporal/ear area. Pet.'s Ex. 1. The responding officer memorialized Petitioner wanted to document the incident but did not wish to pursue a complaint. Pet.'s Ex. 1.

On December 5, 2012, Petitioner was re-evaluated by Dr. Celmer, who noted dry ear precautions had been unsuccessful: there had been no closure of the perforation and Petitioner had persistent hearing loss and right ear pain. Concluding Petitioner likely required formal tympanoplasty, Dr. Celmer referred Petitioner to Dr. Griffith Hsu for an otology consultation. Pet.'s Ex. 3.

At trial, Petitioner testified that in the weeks after her accident, in addition to her ear symptoms, she also had pain in her teeth and jaw. T. 18. Pursuant to a referral from Dr. Ismail, Petitioner consulted with Gregory Doerfler, D.D.S., on December 14, 2012. T. 18. Dr. Doerfler noted Petitioner complained of pain with function as well as "popping" on the right side after being struck three times in the right side of the face; Petitioner did not lose consciousness but did slide

to the floor, and over the next hours, her jaw stiffened up. Cone-bean CT dental imaging was completed and was negative for significant osseous or soft-tissue abnormality, and Dr. Doerfler indicated further imaging should be considered. Pet.'s Ex. 11.

On December 18, 2012, Petitioner was evaluated by Dr. Hsu. Upon examining Petitioner's tympanic membrane perforation and conducting an audiogram and tympanogram, Dr. Hsu recommended proceeding with tympanoplasty. Pet.'s Ex. 13. On January 7, 2013, Dr. Hsu performed a right tympanoplasty and right allograft reconstruction. Pet.'s Ex. 13. Post-operatively, Petitioner attended routine follow-up appointments with Dr. Hsu.

On February 11, 2013, Petitioner was evaluated pursuant to §12 by Dr. Sam Marzo. T. 28-29. Petitioner gave a history of being hit in the head with a fist multiple times in October 2012. She was thereafter diagnosed with a perforated tympanic membrane and underwent a tympanoplasty in January. She advised she was recently seen by a neurologist who diagnosed post-concussive syndrome as well as occipital neuralgia and performed a nerve block, and Petitioner had further been told she has TMJ. Upon examination and hearing tests, Dr. Marzo's diagnoses included central perforation of tympanic membrane; post-concussion syndrome; conductive hearing loss, tympanic membrane; subjective tinnitus; otogenic pain; ear pressure; and temporomandibular joint disorders, unspecified. Dr. Marzo noted Petitioner's right ear appeared to be healing nicely and recommended she undergo an audiogram as soon as it healed completely. The doctor observed Petitioner's pain and tinnitus should improve with time. Dr. Marzo further recommended Petitioner continue TMJ treatment as well as neurologic management of her post-concussive syndrome. Pet.'s Ex. 16.

At the March 7, 2013 follow-up with Dr. Hsu, Petitioner indicated she continued to experience muffled hearing. On examination, Dr. Hsu observed Petitioner's tympanic membrane was intact; an audiogram revealed Petitioner's right conductive hearing loss had resolved. Dr. Hsu released Petitioner from care. Pet.'s Ex. 13.

That same day, March 7, 2013, Dr. Karen Levine performed a neurological evaluation of Petitioner at Respondent's request. The record reflects Dr. Levine opined Petitioner's pre-existing migraines could have been aggravated by the work injury, and the doctor recommended further workup with an MRI; Dr. Levine's diagnosis was mild post-concussion syndrome. Resp.'s Ex. 4.

The March 19, 2013 Undisputed Accident

The parties stipulated that Petitioner sustained a second accidental injury arising out of and occurring in the course of her employment on March 19, 2013. Arb.'s Ex. 2. Petitioner testified she was attacked while in an elementary classroom to administer medication:

> And I went to one student to give him his medication; and I bent down to give it to him and another thought that it was his turn for medication and it was not, so he got angry and was yelling and swearing at me and he ran out of the classroom. So the classroom assistant ran out after him and I could not leave the room with the other students in it, they can't be alone. So I finished what I was doing with the other students and their medication, and the student that ran out of the room came back in

> the room running and swearing at me. And my back was to the area he was coming from. He punched me in the middle of my back, jumped on my back, started punching me in the neck and in my head, the back of my head. And I tried to get him off me and he kept punching me, and I hit the wall in the front and blacked out and had to have somebody walk me to my office. I couldn't walk straight. T. 21-22.

The student was eight years old and weighed 60 or 70 pounds; he punched Petitioner with both fists. T. 22. Petitioner explained her forehead and face hit the wall before she blacked out. T. 22.

Petitioner sought treatment that day at the Central DuPage Hospital emergency room where she was seen by Kerri Manning, PA-C, and Joseph Boyle, D.O. The records reflect Petitioner presented with a chief complaint of concussion and provided the following history:

> The patient is a 35-year-old female who comes in today after an injury at work. The patient in October was punched by a student at an alternative school, where she works at and sustained a pretty significant concussion with a ruptured tympanic membrane. She supposedly suffers from postconcussive syndrome and has been under the care of Dr. Cheng of neurology. She continues to have headaches and some occipital neuralgia. The patient has been back at work and today was hit from behind by a student and punched in the occiput. Has worsening head pain and dizziness as well as nausea at this time. There is no loss of consciousness, no numbness, tingling, or weakness anywhere. The patient took Fioricet with no relief of her pain. Pet.'s Ex. 15.

Examination findings included normocephalic and atraumatic head; pupils equal, round, and reactive to light; and Petitioner was alert and oriented to person, place, and time with normal mood and affect. After diagnostic workup, Dr. Boyle's impression was as follows:

> Pt with neg. CT. Pt with new concussion. Unfortunately, the pt. Has [*sic*] post-concussive syndrome from a head injury a few months ago. Pt seems to be suffering from PTSD from first concussion. Pt met with social worker who assisted with f/u for this pt. Pt given new neurologist as well. Pet.'s Ex. 15.

Petitioner was authorized off work for the remainder of the week and discharged with instructions to follow-up with her primary care physician. Pet.'s Ex. 15. Petitioner testified she has not worked since the March 19, 2013 accident. T. 30.

The next day, March 20, 2013, Petitioner completed an Employee's Report of Injury. Petitioner memorialized that a student ran into the classroom "and pushed me in the back and hit the back of my head, my head whipped back," and identified injuries to her head, neck, back, and another concussion. Pet.'s Ex. 1.

Petitioner testified that while she was under the care of Dr. Cheng, she underwent some injections. Ultimately, however, Dr. Cheng referred her to Marianjoy for further evaluation and treatment with a brain injury specialist. T. 24.

On April 11, 2013, Petitioner consulted with Dr. Sachin Mehta at Marianjoy Medical Group. The records reflect Petitioner's chief complaint was post-concussion neuro behavioral deficit, neuro cognitive deficit, impaired balance, visual spatial, headache, and insomnia. The two work injuries were detailed in the history of illness and Petitioner's current symptoms were as follows:

> She [complains of] TROUBLE WITH "FLIPPING LETTERS, NUMBERS, DIRECTIONS", CALCULATING DIFFICULTIES. HER HUSBAND NOTED THAT SHE WROTE "NAVERPILE INSTEAD OF NAPERVILLE." SHE STATES SHE IS MORE IRRITABLE, LESS TOLERANT OF HER KIDS [*sic*] ACTIONS. SHE [CONTINUES TO COMPLAIN OF] CONSTANT [HEADACHES] AND [BILATERAL] EYE TWITCHING. SHE RECEIVED AN [RIGHT] OCCIPITAL NERVE BLOCK BY DR. CHANG [*sic*] WHICH IMPROVED THE [RIGHT] EYE TWITCHING BUT ONLY HELPED [HEADACHE] FOR 3-4 DAYS.
> HER MOOD IS DOWN. SHE FEELS NERVOUS AND ANXIOUS. SHE STATES SHE HAS BEEN TOLD SHE HAS PTSD. SHE [COMPLAINS OF] FEELING FATIGUED MOST OF THE DAY AS WELL AS JITTERY. APPETITE IS POOR AND SHE MUST FORCE HERSELF TO EAT BUT THEN DEVELOPS NAUSEA.
> SHE FEELS LOSS OF CONTROL OVER HER LIFE. IN ADDITION TO WORKING 37 HOURS/WEEK, SHE WAS ALSO ATTENDING CLASSES 2-6 HOURS/WEEK. HER HUSBAND IS ON DISABILITY AND CANNOT WORK OR HELP MUCH RUN THE HOUSE. SHE IS THE PRIMARY CAREGIVER FOR HER CHILDREN. Pet.'s Ex. 8 (Emphasis in original).

The Post-Concussion Physical Exam findings included tenderness to the neck/upper back and right occipital nerve, decreased neck range of motion, slow and guarded gait, abnormal balance, and mild convergence deficits; cognition findings included recent and remote memory intact, lethargy, anxiety, depression, and flat affect. Petitioner was noted to be anxious and tearful throughout the examination. Dr. Mehta's assessment was post-concussion syndrome, neurobehavioral deficits/neurocognitive, impaired balance, insomnia, anxiety/depression/PTSD, and chronic post-concussion headaches. The treatment recommendation was multifaceted. For the post-concussion syndrome, Dr. Mehta recommended enrollment in the post-concussion day rehab program with therapy for vestibular dysfunction, visual-spatial deficits, and neurocognitive deficits; a neuropsychology evaluation prior to initiating therapy to assist with coping and validity assessment; and a neuro-optometry evaluation for visual-spatial deficits. Noting Petitioner had a pre-existing history of mild depression likely exacerbated by multiple assaults/concussions, Dr. Mehta referred Petitioner to Dr. Jordania, a neuropsychiatrist, and to neuropsychology to address Petitioner's depression/anxiety. Dr. Mehta prescribed Nortriptyline, Xanax, and Melatonin for Petitioner's insomnia; Ritalin for her daytime fatigue; and Nortriptyline and Fioricet for headaches. Finally, Dr. Mehta authorized Petitioner off work and directed her not to drive. Pet.'s Ex. 8.

On April 15, 2013, Petitioner presented to the Glen Oaks Hospital emergency room complaining of an onset of left paresthesia and altered speech 20 minutes prior. Dr. Daniel O'Reilly consulted and noted Petitioner had developed a right-sided headache followed shortly

thereafter by numbness on the left side of her tongue and lip with some slurred speech and then developed numbness in her left arm and her left leg. It was further noted Petitioner had a prior history of being punched in the face with brief loss of consciousness in October as well as a second assault in March, and she was in treatment for post-concussion syndrome, which she described as headache which was constant since October, frequent nausea, postural dizziness, and difficulty with her balance. Petitioner was worked up for possible stroke with a CT and MRI of the head/brain; when the testing was negative for TIA, Petitioner was discharged with instructions to follow-up with her neurologist and primary care physician. Pet.'s Ex. 14.

On April 22, 2013, Dr. Nina Jordania performed an initial psychiatric evaluation of Petitioner as recommended by Dr. Mehta. The record reflects Petitioner reported headaches with photo and phonophobia, jumpiness and nervousness, and feeling very anxious and fearful dating back to her first concussion. Petitioner also reported poor balance, difficulty focusing, fear of being alone with strangers, nightmares, constantly rewinding the events, hypervigilance, as well as multiple somatic symptoms. Dr. Jordania's assessment was anxiety due to medical condition (post-concussive syndrome) and PTSD, insomnia due to PTSD, and post-concussive syndrome. Dr. Jordania discussed psychoeducation strategies and adjusted Petitioner's medications. Pet.'s Ex. 6.

In late April and early May, Respondent conducted surveillance of Petitioner. The Commission has reviewed the video offered into evidence as Respondent's Exhibit. 6.

On April 30, 2013, Petitioner commenced therapy through Marianjoy's day rehab program. Over the next several weeks, Petitioner attended approximately twice weekly occupational, physical, and speech therapy. Pet.'s Ex. 7.

At the May 16, 2013 follow-up appointment with Dr. Mehta, Petitioner reported she was making progress with therapy; she continued to have constant right-sided headache but was learning strategies to manage the pain. Dr. Mehta noted the therapy staff reported Petitioner's headaches were slightly improved, her overall balance was better, her tolerance for eye movements was improved, and she had improved attention and executive functioning, especially with structured tasks with breaks. Dr. Mehta further noted Petitioner underwent a neuropsychological evaluation with Dr. Devereux, and Petitioner indicated there were problems with computer color, which could affect Petitioner's performance. Dr. Mehta spoke with Dr. Devereaux, who indicated Petitioner performed on the test as poorly as someone who has Alzheimer's although she does not function in her daily life as someone who does have Alzheimer's disease. Dr. Mehta adjusted Petitioner's Ritalin dosing and directed Petitioner to continue with the comprehensive day rehab program as well as follow-up with Dr. Jordania. Pet.'s Ex. 8.

Over the next weeks, Petitioner underwent further therapy at Marianjoy and also saw Dr. Jordania, who adjusted Petitioner's medication. Pet.'s Ex. 6.

On June 6, 2013, Petitioner presented to Dr. Hsu; the record reflects Dr. Celmer requested the consultation to evaluate Petitioner's complaints of balance problems, ringing in both ears, and decreased hearing on the right. A hearing assessment was performed and revealed a slight decrease to thresholds compared to the March 17, 2013 assessment. Dr. Hsu's assessment was tinnitus most

likely secondary to concussion and unspecified hearing loss. Petitioner was directed to return if her symptoms failed to improve. Pet.'s Ex. 13.

Petitioner was discharged from speech therapy on June 13, 2013. The speech language pathologist documented Petitioner demonstrated independent use of strategies. Pet.'s Ex. 7. The next day, June 14, Petitioner was discharged from occupational therapy. The discharge summary reflects Petitioner had achieved all therapy goals but had remaining impairments and limitations:

> [Patient] with good progress in OT meeting all goals set at evaluation. Patient has demonstrated a steady improvement in her ability to return to IADL and community level tasks by implementing strategies learned in OT to reduce stimulation and reduce exacerbation of post concussive symptoms. [Patient] demonstrates improved ocularmotor function with only mild impairment with movements to outer areas of the visual field only rarely. Patient is now able to turn her eyes and head to see her full environment without increased symptoms during her sessions in the clinic. Patient still fatigues more quickly than baseline but with good planning she can manage this to maximize her productivity. Her area of greatest limitation is still in navigating a large, busy area in the community for tasks that require greater amounts of visual scanning and locating items such as during grocery shopping. [Patient] also does still have headache pain although it is more manageable at a 4/10 or less most times. Pet.'s Ex. 7.

On June 21, 2013, Petitioner underwent a driver rehabilitation evaluation at Marianjoy. The occupational therapist opined Petitioner demonstrated the necessary skills for independent driving and no further sessions were indicated. Pet.'s Ex. 5, Pet.'s Ex. 7.

Petitioner was re-evaluated by Dr. Mehta on July 2, 2013. Dr. Mehta noted Petitioner completed the day rehab program and transitioned to a home exercise program; it was further noted Petitioner finished seeing Dr. Devereux who diagnosed Petitioner with PTSD. Dr. Mehta concluded Petitioner was steadily improving from a concussion standpoint but continued to have significant PTSD symptoms. Dr. Mehta recommended Petitioner continue seeing Dr. Jordania for medical management of her PTSD and also referred her to a psychologist specializing in post-traumatic stress counseling. Pet.'s Ex. 5, Pet's Ex. 8.

At the July 18, 2013 follow-up appointment with Dr. Jordania, Petitioner reported significant improvement in her headaches, but her PTSD was still very symptomatic. She described persistent fear of children and people in public places as well as fear of being attacked. Dr. Jordania diagnosed anxiety due to medical condition (post-concussive syndrome), PTSD, and insomnia due to PTSD, and adjusted Petitioner's medications. Pet.'s Ex. 6. On July 23, Dr. Jordania authored a letter indicating Petitioner was unable to work due to post-concussion symptoms. Pet.'s Ex. 5.

Pursuant to Dr. Mehta's referral, Petitioner sought treatment at Pathways Psychology Services; the initial consultation with Steve Cromer, L.C.P.C., took place on July 31, 2013. Diagnosing PTSD and concussions - beat up at work, Cromer recommended individual therapy to address Petitioner's PTSD and fear/anxiety. Pet.'s Ex. 5. Petitioner attended therapy sessions with Cromer for the next several months. Pet.'s Ex. 5.

On August 19, 2013, Dr. Nancy Landre performed a neuropsychological evaluation pursuant to §12 at Respondent's request. Dr. Landre's report reflects Petitioner's performance on the symptom validity assessment was abnormal, indicating the cognitive test results were not valid for interpretation as they likely portrayed her as much more impaired than she was. Dr. Landre noted Petitioner's level of performance on some standard cognitive indices was improbably low, at a level typically seen in patients with severe brain injuries or advanced dementia. Dr. Landre concluded as follows: "Available evidence, therefore, suggest that factors other than the injury itself underlie Ms. Wellman's continued complaints. Petitioner is capable of resuming full-time work activity without any restrictions at this time. No further recommended treatment." Resp.'s Ex. 1.

A week later, on August 26, 2013, Dr. Mehta authored a note indicating Petitioner remained under his care for post-concussive syndrome complicated by post-traumatic stress symptoms and was unable to return to work. Pet.'s Ex. 5.

Over the next two months, Petitioner remained off work and attended counseling sessions with Cromer and follow-up appointments with Dr. Mehta and Dr. Jordania. At the November 4, 2013 re-evaluation with Dr. Mehta, Petitioner reported continuing difficulties with headaches, dizziness with certain movements, and anxiety; Petitioner described experiencing agoraphobia, flashbacks, and trouble sleeping, with occasional nightmares. Petitioner advised the doctor that she hoped to return to work but was unable to go back to her previous job, and she inquired about other options. Dr. Mehta directed Petitioner to continue seeing Dr. Jordania and her counselor, and ordered a vocational assessment:

> We did write an order for vocational counseling to assess her current condition. She is unable to return to her previous job. I would like her to have some idea as to other options that she can tolerate. She has significant PTSD, which may prevent her from returning to the previous job. She also continues to have some neurobehavioral, neurocognitive deficits at this time. Therefore any type of return to work, she would need a full neuropsychology battery. Pet.'s Ex. 8.

The doctor further documented he was leaving Marianjoy, and Petitioner's care would thereafter be overseen by Dr. Sayyad. Pet.'s Ex. 8.

On November 11, 2013, Petitioner met with Ken Skord, M.S., C.R.C., for a vocational rehabilitation consultation. Skord documented Petitioner's vocational history included EMT certification, certified phlebotomist, CNA, certification to perform school vision and hearing screenings, and licensed cosmetologist; Petitioner additionally had paramedic training and had nearly completed an AA degree in science. Pet.'s Ex. 7. Vocational barriers were identified as post-traumatic stress disorder, ruptured eardrum, hand tremors, migraine headaches, jaw problems, eye problems, depression, and anxiety. Petitioner reported she wished to work again but expressed significant fears and concerns about returning to work to her current employer or similar work. She indicated she was contemplating applying for a part-time position as a breast-feeding counselor assisting women who want and need training, as she has interest and previous training in this area. Skord encouraged Petitioner to contact him if she wished to pursue formal vocational

evaluation and counseling and provided her with a resource for finding volunteer opportunities. Pet.'s Ex. 7.

Follow-up appointments with Dr. Jordania and counseling sessions with Cromer continued through the end of 2013 and into 2014. On January 30, 2014, Petitioner presented for an initial evaluation with Dr. Anjum Sayyad. Dr. Sayyad noted Petitioner's past medical history was significant for post-concussive syndrome with posttraumatic stress disorder, associated with neurobehavioral deficits. Petitioner recently had her Ritalin increased and reported improvement in her attention and concentration; however, she continued to have poor sleep, light and sound sensitivity, hypervigilance, memory problems, and dizziness with position changes. Dr. Sayyad's impression was ADL mobility dysfunction with neurocognitive and neurobehavioral deficits associated with post concussive syndrome and PTSD. The doctor recommended continued treatment with Dr. Jordania and authorized Petitioner to remain off work. Pet.'s Ex. 4.

Over the next several months, Petitioner underwent regular counseling with Cromer and attended routine follow-up appointments with Dr. Jordania and Dr. Sayyad. Pet.'s Ex. 5, Pet.'s Ex. 6, Pet.'s Ex. 7. In May 2014, Petitioner reported she completed two classes but did not feel that she did well. Dr. Sayyad's nurse practitioner, Sylvia Duraski, APN, encouraged Petitioner to take another class, indicating speech therapy could be ordered to assist with Petitioner's attention and memory deficits. When Petitioner followed up on September 4, 2014, she reported she had taken additional classes but failed both; APN Duraski directed Petitioner to continue treatment with Dr. Jordania and counseling with Cromer, and also ordered speech therapy to help Petitioner in her classes. Petitioner was to remain off work and neuropsychological testing was ordered to assess whether Petitioner was ready to return to work. Pet.'s Ex. 4, Pet.'s Ex. 8.

The recommended therapy evaluation took place on November 13, 2014. The therapist concluded Petitioner required skilled speech language pathology services to facilitate functional cognitive communication skills to enable safety and independence with daily tasks and responsibilities at home, in the community, and at work. A course of three sessions per week for four to six weeks was recommended. Pet.'s Ex. 7. Petitioner started therapy on November 25, 2014 and continued through the end of the year.

On December 31, 2014, Dr. Alexander Obolsky issued a report summarizing the psychiatric examination of Petitioner he conducted pursuant to §12 at Respondent's request. Petitioner had undergone testing at Dr. Obolsky's direction on April 29, 2014 and met with him on May 16, 2014. Dr. Obolsky concluded Petitioner exhibited malingering as well as avoidant, dependent, and compulsive personality features. Dr. Obolsky opined there was no objective evidence that Petitioner's "alleged work events caused clinically significant mental, emotional, or cognitive dysfunction." Resp.'s Ex. 3. The doctor indicated that during the forensic psychiatric evaluation, Petitioner did not present with behavioral symptoms of anxiety, distress, or avoidance when describing the alleged traumatic events, and she had no difficulties with recall, describing events in detail, and showed neither anxiety nor hyperarousal when recalling and discussing these events. In contrast, on the medical psychiatric questionnaire, she endorsed over 40 current assorted symptoms involving various bodily symptoms, and on forensic psychological testing, Petitioner exaggerated somatic and cognitive complaints and inconsistently magnified psychiatric symptoms. Dr. Obolsky opined Petitioner's observed behaviors during the two days of the evaluation were

incongruent with her self-reported subjective complaints. Dr. Obolsky further felt Petitioner's self-report of subjective symptoms was unreliable due to her reporting inauthentic, exaggerated, and inconsistent symptoms. Dr. Obolsky opined Petitioner had been exaggerating her various mental, emotional, and cognitive complaints "as far back as several weeks after the alleged second injury." Resp.'s Ex. 3. Dr. Obolsky believed Petitioner exhibited "life-long maladaptive avoidant, dependent, and obsessive-compulsive personality features." Resp.'s Ex. 3. Dr. Obolsky concluded as follows:

> …Ms. Wellman reports multiple and various subjective mental, emotional, and cognitive symptoms. Her self-report is unreliable as evidenced by exaggeration of symptoms, inconsistencies, and discrepancies noted above. There is no objective evidence to support presence of reported symptoms and the alleged causal connection of such symptoms to the work events in 2012 and 2013. On the other hand, Ms. Wellman exhibits a life-long personality features [*sic*] that interfere with her interpersonal functioning leading to dysthymia, anxiety, worries, fears, and somatic complaints. Ms. Wellman has decided not to return to her employment, she is claiming mental, emotional, and cognitive symptoms as justification for remaining off work. Resp.'s Ex. 3.

Dr. Obolsky further concluded Petitioner did not develop post-traumatic stress disorder due to the work events. Resp.'s Ex. 3.

Follow-up treatment with Dr. Jordania and Dr. Sayyad and counseling with Cromer continued into 2015. On April 21, 2015, Petitioner was re-evaluated by Dr. Jordania. Dr. Jordania memorialized that upon Petitioner's initial presentation, Petitioner's symptom complex included problems with sleep, constant headaches with photo and phonophobia, nervousness, heightened anxiety, inability to focus, memory difficulties, nightmares, fear of everything, ringing in her ears, vision problems, and inability to drive due to poor balance. Petitioner's current symptoms were noted to be headaches with increasing sensitivity to different stimuli as the day progresses, persistent ringing in the ears, improved palpitations, and continuing jumpiness but without automatically assuming that it is a bad thing. The doctor observed Petitioner was "very disturbed by the review of independent Neuropsychological evaluation concluding that her presentation and symptoms do not meet the criteria of PTSD not postconcussive syndrome, diagnosing her with Malingering and Somatization." Pet.'s Ex. 6. Upon discussing Petitioner's cognitive and mood status, Dr. Jordania concluded Petitioner had "achieved MMI with the present medication regimen." Pet.'s Ex. 6. Dr. Jordania's assessment remained anxiety due to medical condition (post-concussive syndrome), PTSD, and insomnia due to PTSD; the treatment plan was to "keep her meds as is and add amantadine." Pet.'s Ex. 6.

On July 7, 2015, Petitioner followed up at Marianjoy. The record reflects Petitioner's symptoms were unchanged. Pet.'s Ex. 4.

In early 2016, Respondent obtained a labor market survey. Resp.'s Ex. 5. The February 29, 2016 report indicates appropriate vocational goals for Petitioner include claims clerk, receptionist, collections clerk, hospital-admitting clerk, radio dispatcher, administrative clerk, customer service clerk, home attendant, and teacher aide. The wage range for those positions within a 50-mile radius was $12.00 to $23.00 per hour. Resp.'s Ex. 5.

Petitioner's next follow-up visit at Marianjoy occurred on March 25, 2016. Petitioner reported her headaches were under control since Dr. Jordania increased her Depakote dose; Petitioner continued to get headaches but they did not occur until evening, though the side effect of Depakote was Petitioner got tired in the afternoon. Petitioner further advised she recently resumed taking classes and was enrolled in a criminal investigation class as well as a grief therapy class; she reported the grief class was helping with her PTSD. After discussion with Dr. Sayyad, Petitioner was advised to try a small dose of Amanatadine to address her fatigue. She was otherwise to continue with the treatment plan of ongoing follow up with Dr. Jordania and the psychologist. Pet.'s Ex. 4, Pet.'s Ex. 8.

On May 18, 2016, Petitioner saw Dr. Jordania for the last time; the record reflects the doctor advised Petitioner that she would be moving from the area. Dr. Jordania reiterated that Petitioner remained at maximum medical improvement with her present medication regimen, and discussed transitioning her care to another psychiatrist. Pet.'s Ex. 6.

The last medical visit in the record is the September 20, 2016 follow-up at Marianjoy. Petitioner reported she started taking Amantadine as directed at the last visit and was much less tired during the day. She further advised headaches on the right side of her head had returned, her blood pressure was slowly climbing, and she was still looking for a psychiatrist to replace Dr. Jordania. Petitioner reported that she was doing well in her classes and was taking more counseling classes. The diagnoses on that date included post-concussion syndrome; major depressive disorder, single episode, unspecified; posttraumatic stress disorder; posttraumatic headache, unspecified, not intractable; insomnia, unspecified; and other symptoms and signs involving cognitive functions. Dr. Sayyad's nurse practitioner provided names of potential psychiatrists, adjusted Petitioner's Ritalin dose, encouraged Petitioner to continue taking classes, and directed Petitioner to remain off work. Pet.'s Ex. 4, Pet.'s Ex. 8.

At trial, Petitioner described what she experienced from April 2013 to 2018. Petitioner testified her vision and hearing were getting worse, balance was a problem, lights and noises would cause ringing in her ears, and she became dizzy if she moved too fast. T. 27. There was a period where she could not drive because she had diminished peripheral vision and depth perception in her left eye. T. 27-28. Prior to her initial work accident, Petitioner exercised on a regular basis, did not take medication for any reason, and could sleep, go running, use the stethoscope properly, and see properly. T. 29.

Petitioner testified she returned to school at College of DuPage in 2017 and completed an Associate Degree in Applied Science in Human Services for Addictions Counseling in May 2019. T. 31-32. Petitioner described her time in college as difficult: "I had some roadblocks to try to complete it. I had a lot of help with my professors and counselors and advisors at COD to help me through. Marianjoy had given me an order for accommodations while I was in school." T. 32. Petitioner explained her accommodations included extra testing time, extra time for work, and a private area to feel safe studying. T. 32. Petitioner had trouble "flipping numbers around" and problems comprehending what she was reading. T. 33.

Petitioner described her current difficulties. She has problems sleeping and has nightmares about "these issues occasionally." T. 36. She gets dizzy and can lose her balance if she stands too

quickly from a seated position. T. 36. She experiences loud ringing in her ears when she gets anxious, which causes her to get "light-headed." T. 36. She is sensitive to bright lights and she gets nervous around a lot of people "in newer situations." T. 36. She becomes anxious in public. T. 37. She uses landmarks to remember where she parked her car because she has difficulty remembering things when she gets nervous. T. 38. Petitioner takes multiple prescription medications: Lamictal for migraines, Lexapro for depression, Buspar for anxiety, Ritalin for concentration, and potassium to counteract cardiac side effects of her other medications. T. 35.

Depositions

The March 1, 2017 evidence deposition of Dr. Anjum Sayyad was admitted as Petitioner's Exhibit 10. Dr. Sayyad is board-certified in brain injury medicine as well as physical medicine and rehabilitation. Pet.'s Ex. 10, p. 5-6. Dr. Sayyad is the residency director of the physical medicine and rehabilitation medical residency program at Marianjoy Rehabilitation Hospital and is a former medical director of Marianjoy's inpatient and day rehabilitation brain injury program. Pet.'s Ex. 10, Dep. Ex. 1.

Dr. Sayyad testified she assumed Petitioner's care when Dr. Mehta left the practice; Dr. Sayyad reviewed Dr. Mehta's treatment notes prior to seeing Petitioner. Pet.'s. Ex. 10, p. 10. Dr. Sayyad first evaluated Petitioner on January 30, 2014; this was in connection with Dr. Sayyad's role as medical director of Marianjoy's Brain Injury Program. Pet.'s. Ex. 10, p. 9. At that initial evaluation, Petitioner complained of problems with concentration, headaches, and problems with sleep. Pet.'s. Ex. 10, p. 10-11. Petitioner reported Dr. Jordania was managing her medication, and her current Ritalin regimen helped her attention and concentration difficulties. Pet.'s. Ex. 10, p. 11. Petitioner further advised she was taking online classes and was also undergoing vocational rehabilitation counseling with a goal of returning to work when she was better able to perform on the cognitive tests; Dr. Sayyad explained Petitioner "was very sensitive to light and sound and was hyper-vigilant, which would be consistent with her diagnosis of PTSD." Pet.'s. Ex. 10, p. 12. Dr. Sayyad performed a physical examination and observed findings of anxiety and depression as well as a flat affect. Pet.'s. Ex. 10, p. 13. Dr. Sayyad authorized Petitioner off work and recommended she follow up with Dr. Jordania for medication management of her post-concussion neurocognitive issues with attention and concentration. Pet.'s. Ex. 10, p. 14-15.

Dr. Sayyad continued to see Petitioner every three to four months until September 2016. Pet.'s. Ex. 10, p. 17. Dr. Sayyad summarized Petitioner's treatment over that period:

> But in short, she continued to have significant amounts of anxiety, where she for a few visits continued to exhibit picking at her scalp, having problems with attention and concentration. We would occasionally make changes in some of those medications, but her anxiety was such that sometimes she could not incorporate the changes we'd recommend. One example was we had recommended trialing Inderal, which can be very helpful for headache pain and for anxiety, but she was so concerned about blood pressure changes, she couldn't really make herself take the medicine or fill the prescription. It would take a couple of visits to kind of convince her to follow through on some of the treatment because of her anxiety being so great. By the time I saw her in her last visit, September 20th of 2016, she started to

> show some signs of some improvement. She was taking new medicines at that point to help with her attention and focus. She continued to have headaches. They would wax and wane throughout these visits. She still had one by the last visit. She was tolerating the Ritalin. And she was, at one point, as you recall, she was seeing Dr. Jordania, but Dr. Jordania had moved to Florida so she didn't have a psychiatrist to follow-up with and was trying to identify one at that point. And she was doing a little bit better in her classes by the last visit that I saw her. Pet.'s. Ex. 10, p. 17-19.

Directed to the September 20, 2016 visit, Dr. Sayyad testified that the progress note indicated Petitioner had a much brighter affect, was smiling and appeared more optimistic on examination. Pet.'s. Ex. 10, p. 19. The assessment was post-concussion syndrome, major depressive disorder, post-traumatic stress disorder, post-traumatic headache, insomnia, and signs and symptoms involving cognitive function. Pet.'s. Ex. 10, p. 20. The treatment plan was for Petitioner to find a new psychiatrist as soon as possible, increase her Ritalin dose to combat her headaches, and Petitioner was also encouraged to continue with school. Pet.'s. Ex. 10, p. 20-21. Dr. Sayyad opined Petitioner was not yet ready to return to work as of September 20, 2016 because she had not stabilized: Petitioner was doing better in some areas, but she still had headache symptoms and her medications were being adjusted. Pet.'s. Ex. 10, p. 26-27. Dr. Sayyad clarified that her nurse practitioner, Sylvia Duraski, APN, saw Petitioner on September 20, 2016, and Dr. Sayyad thereafter discussed the case with her and signed off on the chart note. Pet.'s. Ex. 10, p. 22.

Dr. Sayyad testified that Dr. Mehta had diagnosed Petitioner with post-concussion syndrome, PTSD, neurocognitive deficits associated with the PTSD and post-concussion syndrome, and post-traumatic headache. Pet.'s. Ex. 10, p. 24. Dr. Sayyad agreed with that diagnosis and she had carried it forward as she treated Petitioner over the next three years. Pet.'s. Ex. 10, p. 24. Turning to causation, Dr. Sayyad concluded "there is a connection between Ms. Wellman being punched in the head by a student and these diagnoses." Pet.'s. Ex. 10, p. 25.

On cross-examination, Dr. Sayyad agreed she ordered neuropsychological testing on January 6, 2015; the doctor explained she ordered the testing so "we could track what her - - objectively what the difficulties she was having with her attention and concentration issue that she was reporting difficulty. It also helps us determine a baseline from which we can compare either future or past results with." Pet.'s. Ex. 10, p. 30. Dr. Sayyad confirmed the testing would also identify areas of weakness and assess whether Petitioner was ready to return to work. Pet.'s. Ex. 10, p. 30. Dr. Sayyad testified that January 6, 2015 was the last time she saw Petitioner; the remaining visits were conducted by her nurse practitioner and discussed with the doctor afterwards. Pet.'s. Ex. 10, p. 33. Dr. Sayyad did not have a record of the testing being completed and she had not reviewed any neuropsychological testing results. Pet.'s. Ex. 10, p. 29. Dr. Sayyad agreed that absent this testing there is no objective basis for work restrictions. Pet.'s. Ex. 10, p. 33.

The March 9, 2017 evidence deposition of Dr. Nancy Landre was admitted as Respondent's Exhibit 2. Dr. Landre is a board-certified clinical psychologist with specialty training in neuropsychology. Resp.'s Ex. 2, p. 5. Dr. Landre sees a variety of patients for dementia, learning disabilities, ADHD, head injuries, and other neurological disorders such as stroke and MS. Resp.'s Ex. 2, p. 5. She does both treatment and legal evaluation. Resp.'s Ex. 2, p. 5. Dr. Landre was

formerly the clinical neuropsychologist for the traumatic brain injury program at Lutheran General Hospital. Resp.'s Ex. 2, p. 6.

At Respondent's request, Dr. Landre performed a neurological evaluation of Petitioner on August 19, 2013. Resp.'s Ex. 2, p. 8. The doctor explained her evaluation process:

> …I receive the records ahead of time, and I would glance at those and just get an overview of what's going on with the case. And then the patient would come in. I would meet with them first for a clinical interview that normally lasts between an hour to an hour and a half, during which time I would get information about their injury, their medical history, their academic history, their work history, current lifestyle, things of that nature. And then I would decide what tests I would like to have the patient be administered as part of the evaluation. So I would indicate that and give the test battery to my technician. And my technician would then take over at that point and do all of the testing with the patient. Then they score everything out, they give it back to me. I look over the test results and I would write a report and interpret them and then write a report based on my interpretation. Resp.'s Ex. 2, p. 9-10.

The battery of testing that Petitioner underwent takes between four and five hours depending on how quickly the patient works. Resp.'s Ex. 2, p. 10.

Directed to her August 19, 2013 report, Dr. Landre testified she took a history from Petitioner and reviewed outside records, and the history within the report is a combination of the two. Resp.'s Ex. 2, p. 10-11. Dr. Landre testified consistent with her report.

Dr. Landre testified the testing Petitioner underwent includes performance validity and symptom validity measures designed to ensure the patient is giving his/her best effort and to identify over-reporting of symptoms. Resp.'s Ex. 2, p. 22-24. Dr. Landre testified Petitioner failed "a bunch of those," which tells the clinician that "the patient profile is likely very exaggerated and probably is portraying her as more distressed or dysfunctional from a mental health cognitive or somatic standpoint than is actually the case." Resp.'s Ex. 2, p. 24-25. Dr. Landre explained that, based on those findings, Petitioner's cognitive test results and her psychological test results were not valid for interpretation because they did not provide a reliable or valid estimate of her status. Resp.'s Ex. 2, p. 25. The doctor testified Petitioner's scores on the cognitive tests were "essentially meaningless" and the psychological tests were of "questionable validity" such that "there might be pieces of those that are reliable and valid, but you really can't know for sure because again she's over reporting symptoms in that case." Resp.'s Ex. 2, p. 25-26.

Dr. Landre opined Petitioner "satisfied the criteria for probable malingering." Resp.'s Ex. 2, p. 31-32. The doctor provided the basis of her opinion:

> The basis for that opinion is her test results including her failure of both performance and symptom validity measures. Her improbably poor findings on the standards [*sic*] neuropsychological indices and inconsistencies between herself [*sic*] reported the symptoms and what we know about the natural course of recovery

> from concussion as well as other inconsistencies between her self report and information available from other sources. Resp.'s Ex. 2, p. 32.

Dr. Landre further opined Petitioner's test results suggested probable symptom magnification. Resp.'s Ex. 2, p. 33. Asked what Petitioner's neuropsychological level of functioning was as of August 19, 2013, Dr. Landre responded as follows:

> Because of insufficient effort and probable symptom exaggeration, I was unable to provide a valid estimate of her true cognitive or emotional status. But based upon the fact that she was driving without restrictions and attending college and obtaining passing grades following both of these injuries, my best estimate was that her true functional status was within normal limits. Resp.'s Ex. 2, p. 33.

Dr. Landre did not believe Petitioner required additional treatment, stating Petitioner had already received more treatment than would be anticipated and she had failed to respond as expected; the doctor further noted Petitioner's test results indicated her complaints were driven by factors unrelated to her injury, such as secondary gain, work avoidance, or financial compensation. Resp.'s Ex. 2, p. 34.

Turning to causal connection, Dr. Landre opined Petitioner's complaints as of August 19, 2013 were not causally related to the two work injuries. Resp.'s Ex. 2, p. 35. The doctor explained her opinion was based on published literature on the natural course of recovery from concussion as well as her test results, experience, and training. Resp.'s Ex. 2, p. 35. Dr. Landre further opined Petitioner was able to return to work full duty without restrictions and should have been symptom-free three months post-injury. Resp.'s Ex. 2, p. 35-36.

On cross-examination, Dr. Landre testified it was "not entirely clear" that Petitioner sustained a head injury. Resp.'s Ex. 2, p. 36. Dr. Landre testified there could have been a head injury the first time, specifically noting, "I had information that there were witnesses," but Dr. Landre stated the mechanism of injury of the second incident, *i.e.*, being pushed from behind, does not necessarily satisfy criteria for concussion. Resp.'s Ex. 2, p. 36. Dr. Landre conceded the March 19, 2013 Central DuPage Hospital records reflect that when Petitioner was evaluated in the emergency room on the date of accident, she reported being punched in the back of the head, but according to Dr. Landre, "she didn't report that initially so it almost seemed like the injury - - her characterization of the injury changed over time." Resp.'s Ex. 2, p. 37.

Dr. Landre testified the American Congress of Rehab Medicine defines concussion as involving either direct injury to the head or an acceleration/deceleration injury as well as some sort of alteration of consciousness at the moment of impact: "They don't have to lose consciousness, frankly. But they have to be dazed or confused or feel out of it temporarily and/or demonstrate some sort of a focal neurologic deficit." Resp.'s Ex. 2, p. 38. Dr. Landre agreed the severity of a blow to the head can be indicated by other physical damage caused by the blow, such as a ruptured eardrum. Resp.'s Ex. 2, p. 38-39. Dr. Landre testified she thought it was likely that Petitioner probably had a concussion with the first incident, but she could not say with 100 percent certainty. Resp.'s Ex. 2, p. 39.

Dr. Landre agreed she asked Petitioner to describe her current complaints prior to giving her the checklist for post-concussive syndrome symptoms, and Petitioner reported nervousness, dizziness, memory difficulties, headaches, stomach aches, sensitivity to the sun and noise, disturbed sleep, vision problems, and depression. Resp.'s Ex. 2, p. 44-46. Dr. Landre confirmed that anxiety, depression, difficulty concentrating, irritability, and fatigue are symptoms associated with both PTSD and post-concussion syndrome. Resp.'s Ex. 2, p. 49-50.

Dr. Landre confirmed her opinion was that work avoidance was a factor in Petitioner's presentation. Resp.'s Ex. 2, p. 61. The doctor then agreed Petitioner returned to work the day after the first incident and worked for some time thereafter. Resp.'s Ex. 2, p. 61. The doctor was unaware if the employer offered Petitioner a job after the second incident. Resp.'s Ex. 2, p. 61.

The April 10, 2017 evidence deposition of Dr. Alexander Obolsky was admitted as Respondent's Exhibit 4. Dr. Obolsky is board certified in general, addiction, and forensic psychiatry. Resp.'s Ex. 4, p. 5.

At Respondent's request, Dr. Obolsky conducted a forensic psychiatric evaluation of Petitioner. Resp.'s Ex. 4, p. 7. Dr. Obolsky explained his process:

> The forensic psychiatric evaluation sits on three major activities that the focus of each is to generate reliable clinical data. One of these activities is a review of the available records. The other activity is the forensic psychological or neuropsychological testing, and the third activity is the forensic psychiatric interview. Resp.'s Ex. 4, p. 8.

Dr. Obolsky testified psychological testing was conducted on Petitioner on April 29, 2014 and he interviewed her on May 16, 2014. Resp.'s Ex. 4, p. 14. The doctor issued his report on December 31, 2014. Resp.'s Ex. 4, p. 11. Dr. Obolsky testified consistent with his report.

Dr. Obolsky emphasized the behaviors he observed which were inconsistent with PTSD, major depression, and cognitive deficiency. The doctor noted Petitioner did not exhibit any bizarre or odd behaviors which would impair her ability to work with other people. Resp.'s Ex. 4, p. 18. The doctor further noted Petitioner provided a detailed description of the school and classroom where the injuries occurred without exhibiting any emotional distress. Resp.'s Ex. 4, p. 20. Dr. Obolsky testified that Petitioner reported experiencing emotional distress, but the doctor felt Petitioner "misattributes" it to the work injuries as opposed to her pre-existing performance anxiety. Resp.'s Ex. 4, p. 21. Dr. Obolsky testified the inconsistencies indicated that Petitioner was malingering. Resp.'s Ex. 4, p. 23. Dr. Obolsky acknowledged that the diagnostic criteria for PTSD have changed so that they no longer include fear for life, but nonetheless felt that was an important factor when considering the severity of the event to a particular individual. Resp.'s Ex. 4, p. 25.

Dr. Obolsky testified the neurocognitive testing by Dr. Devereux and Dr. Lambert [*sic*] showed that Petitioner malingered, exaggerated her cognitive complaints, and her report of complaints was untrustworthy. Resp.'s Ex. 4, p. 41. Dr. Obolsky stated Petitioner's performance on RBANS, a cognitive test of memory, concentration, attention, and executive functioning, was in the lowest .01 percentile, matching people who have severe end-stage dementia; Dr. Obolsky

opined the only explanation is that Petitioner was malingering. Resp.'s Ex. 4, p. 48-49. While Dr. Devereux concluded Petitioner exhibited post-traumatic stress disorder, Dr. Obolsky stated Petitioner's test results are "incontrovertible evidence that Miss Wellman started to malinger and exaggerate her symptoms very soon after the injury." Resp.'s Ex. 4, p. 50-51.

Dr. Obolsky diagnosed Petitioner as exhibiting malingering as well as exhibiting avoidant, dependent, and compulsive personality features. Resp.'s Ex. 4, p. 67. Dr. Obolsky testified the diagnosis of PTSD was inappropriate based on the totality of the data available. Resp.'s Ex. 4, p. 69. The doctor opined Petitioner "is untrustworthy reporter of her symptoms, and she misattributes the causation that I already testified. She misreports symptoms. She manipulates symptoms. Sometimes she feigns symptoms. And so her credibility as a historian of her own symptoms is undermined significantly because she is clearly malingering." Resp.'s Ex. 4, p. 71.

Dr. Obolsky concluded that Petitioner did not develop any condition of mental ill-being causally related to either the October 23, 2012, or March 19, 2013 work events. Resp.'s Ex. 4, p. 76. The basis of his opinion was his review of the available records, review of the psychological testing by Dr. Devereux, Dr. Landon [*sic*], and Dr. Felske, and his forensic interview with Petitioner. Resp.'s Ex. 4, p. 77. Dr. Obolsky further opined Petitioner did not require any further mental health treatment as a result of either work incident, and she was fit for full-time competitive employment and had no limitations or restrictions causally related to either work event. Resp.'s Ex. 4, p. 77-78.

On cross-examination, Dr. Obolsky confirmed he reviewed the report of Dr. Karen Levine, the neurologist who evaluated Petitioner at Respondent's request on March 7, 2013. Resp.'s Ex. 4, p. 91. As to Dr. Levine's diagnosis of mild post-concussion syndrome, Dr. Obolsky stated, "Inconsistent with the available data, Dr. Levine made that error and that diagnosis." Resp.'s Ex. 4, p. 92. Dr. Obolsky confirmed he noted in his report that Dr. Levine did not appreciate the significance of Petitioner not knowing what "country" she was in; the follow exchange occurred:

> Q. Doctor, I'm actually going to refer you to Page 3 of Dr. Levine's report right after it says Neurological Examination. Didn't she say she didn't know that county she was in?
> A. My error. It says county.
>
> Q. So that would be a little less bizarre, right, that a person wouldn't know what county they were in, right, than not knowing what country they were in, right?
> A. I don't think so. I think that not knowing what county you are in in Chicagoland area would be quite bizarre.
>
> Q. Doctor, what county are you in when you're in Bensenville, Illinois?
> A. I don't know where Bensenville is. Resp.'s Ex. 4, p. 92-93.

Dr. Obolsky believes Petitioner exhibited a lifelong set of personality features which interfere with her interpersonal functioning and have led to dysthymia, anxiety, worries, fears, and somatic complaints. Resp.'s Ex. 4, p. 94-95. The doctor confirmed people with somatic complaints are not lying and do experience them. Resp.'s Ex. 4, p. 96. Dr. Obolsky agreed personality features

can sometimes become pathological such that the person cannot work or engage in interpersonal relationships. Resp.'s Ex. 4, p. 100-101. Dr. Obolsky testified Petitioner's personality issues are not of the severity to interfere with her going back to work at her previous occupation or any other occupation. Resp.'s Ex. 4, p. 102. Dr. Obolsky highlighted that the Marianjoy physicians diagnosed post-concussive syndrome without knowing whether Petitioner lost consciousness, and "[y]ou cannot do that." Resp.'s Ex. 4, p. 127.

III. CONCLUSIONS OF LAW

A. Corrections

At the outset, the Commission makes the following corrections to the Decisions of the Arbitrator ("Decisions" or "Decision"):

Corrections to the Decision in Case No. 13 WC 13675

1. The Commission corrects the accident date in the heading on page 18 of the Decision from "November 23, 2012" to "October 23, 2012" consistent with the parties' stipulations

2. The Commission corrects Petitioner's age on page 23 of the Decision from 35 years old on the date of accident to 34 years old on the date of accident consistent with the parties' stipulations.

Corrections to the Decision in Case. No. 13 WC 13676

1. The Commission corrects the date of accident under the Findings section on page 2 of the "ICArbDec" decision form, from "3/19/19" to "3/19/13" consistent with the parties' stipulations.

2. The Commission corrects the Petitioner's marital status under the Findings section on page 2 of the "ICArbDec" decision form, from "single" to "married" consistent with the parties' stipulations.

3. The Commission corrects the accrual date under the Order section on page 2 of the "ICArbDec" decision form, from "March 19, 2013 through July 15, 2015" to "March 19, 2013 through July 15, 2019."

4. The Commission corrects the date of accident in the last paragraph on page 18 of the Decision from "October 23, 2013" to "October 23, 2012."

B. Credibility

The Arbitrator found Petitioner's testimony was not credible. The Commission views Petitioner's credibility differently and finds that the reasons relied on by the Arbitrator are refuted and contextualized by the evidence.

The Commission exercises original jurisdiction and is not bound by an arbitrator's findings. *See R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866, 923 N.E.2d 870, 877 (1st Dist. 2010) (finding that when evaluating whether the Commission's credibility findings which are contrary to those of the arbitrator are against the manifest weight of the evidence, "resolution of the question can only rest upon the reasons given by the Commission for the variance.")

The Commission makes the following findings as to Petitioner's credibility:

1. The Arbitrator found that "Petitioner was not diagnosed with a concussion, post-concussion syndrome nor did she report any concussion related symptoms to Dr. Patel, Dr. Celmer or Dr. Hsu," and that Petitioner did not report any headache symptoms or concussion symptoms until she saw Dr. Marzo on February 13, 2013.

The Commission acknowledges that Petitioner was not diagnosed with a concussion or post-concussion syndrome by Dr. Patel, Dr. Celmer or Dr. Hsu and that she did not report any headaches to these three doctors (following the October 23, 2012 accident). However, the Commission notes that Petitioner's reports of ear pain and decreased hearing on the right side to Dr. Patel on October 23, 2012 were consistent with her testimony and history of being punched in the head by a student. Further, the Commission notes that Dr. Patel referred Petitioner to Dr. Celmer, who is an ENT physician, specifically for the diagnosis of traumatic right ear tympanic membrane perforation. The Commission also notes that Dr. Celmer referred Petitioner to Dr. Hsu, who is an ENT surgeon, specifically to discuss undergoing a tympanoplasty to the right ear. With this contextual backdrop, the Commission finds that an analysis of the totality of the evidence indicates Petitioner did indeed sustain concussions after each accident and developed post-concussion syndrome.

The Commission does not agree that Petitioner did not report any concussion related symptoms or that she did not report any concussion symptoms until she saw Dr. Marzo on February 13, 2013 as the record shows several physicians diagnosed Petitioner with concussions and post-concussion syndrome. On February 11, 2013, Dr. Sam Marzo evaluated Petitioner who reported being hit in the head with a fist multiple times during an incident at work in October 2012 and reported that she had been diagnosed with post-concussion syndrome by a neurologist. Dr. Marzo diagnosed Petitioner, *inter alia*, with post-concussion syndrome for which he recommended neurologic management. The Commission notes that it would be speculative to state that Dr. Marzo diagnosed Petitioner with post-concussion syndrome based only on her report that another physician had diagnosed her with the same, when there is no evidence or deposition testimony to support this assertion.

Similarly, on March 7, 2013, Dr. Karen Levine, who performed a section 12 neurological examination of Petitioner at Respondent's request, diagnosed Petitioner with migraines and mild post-concussion syndrome. Dr. Levine opined that Petitioner's migraines were pre-existing and were aggravated by the work injury. Furthermore, even Dr. Landre, who performed an additional section 12 neurological evaluation of Petitioner at Respondent's request, acknowledged "it's likely that [Petitioner] probably had a concussion with this first [accident]," although she could not say with 100 percent certainty. Dr. Landre explained that the American Congress of Rehab Medicine

defines concussion as involving either direct injury to the head or an acceleration/deceleration injury as well as some sort of alteration of consciousness at the moment of impact: "They don't have to lose consciousness, frankly. But they have to be dazed or confused or feel out of it temporarily and/or demonstrate some sort of a focal neurologic deficit." Resp.'s Ex. 2, p. 38. Dr. Landre agreed the severity of a blow to the head can be indicated by other physical damage caused by the blow, such as a ruptured eardrum. Resp.'s Ex. 2, p. 38-39.

2. The Arbitrator found Petitioner's testimony that she hit her head on a wall and blacked out on October 23, 2012 is not consistent with the Employee's Report of Injury.

The Commission acknowledges that the Employee's Report of Injury from October 23, 2012 does not state Petitioner hit her head on a wall and blacked out. However, the Commission notes the Employee's Report of Injury states Petitioner was punched in the forehead, nose, and right temporal area/ear by a student while she was trying to calm the student. On the form, Petitioner indicated that she had pain in her right cheek, ear, right eye, and neck. The Commission finds that based on the information which is contained in the Employee's Report of Injury and the totality of the evidence, whether Petitioner hit her head against a wall and blacked out is inconsequential and does not negate the fact that Petitioner sustained a serious head injury on October 23, 2012. Petitioner credibly testified that she was punched in the face, nose, and right ear which is well documented on the Employee's Report of Injury and in various medical records. These injuries, regardless of whether she also hit her head on a wall and blacked out, were traumatic and serious – so serious that her injuries caused a traumatic right ear tympanic membrane perforation and she was later diagnosed with a concussion or post-concussion syndrome by several physicians.

3. The Arbitrator found Petitioner did not provide complete medical histories to various doctors regarding her preexisting symptoms.

The Commission finds that based on the evidence, most of the physicians who examined Petitioner had some knowledge of Petitioner's medical history and pre-existing conditions, however, because the medical records are not sufficiently detailed, it is unclear exactly how much information each physician had regarding Petitioner's medical history. The Commission first notes that Dr. Patel is Petitioner's family physician who treated Petitioner for migraines and associated facial numbness and tingling prior to the October 23, 2012 accident. Petitioner returned to Dr. Patel, who already knew of Petitioner's medical history, after the October 23, 2012 accident. Further, on March 7, 2013, Dr. Levine opined that Petitioner's work injury could have aggravated Petitioner's pre-existing migraines, indicating that Dr. Levine had some knowledge of Petitioner's pre-existing condition.

After the undisputed March 19, 2013 accident, Petitioner treated with Dr. Mehta who practiced with Marianjoy Medical Group. On April 11, 2013, Dr. Mehta acknowledged that Petitioner had a pre-existing history of mild depression and opined that it was likely exacerbated by multiple assaults/concussions. Dr. Mehta referred Petitioner to Dr. Jordania, a neuropsychiatrist who also practiced with Marianjoy to address Petitioner's depression and anxiety. On November 4, 2013, Dr. Mehta transferred Petitioner's care to Dr. Sayyad who also practiced with Marianjoy. The Commission finds the evidence demonstrates Dr. Patel, Dr. Mehta, and Dr. Levine had

knowledge of Petitioner's pre-existing medical history. Further, Drs. Jordania and Sayyad both practiced at Marianjoy with Dr. Mehta and most likely had access to Petitioner's records which document pre-existing conditions. In fact, Dr. Sayyad testified that she reviewed Dr. Mehta's treatment notes when she took over Petitioner's care. The Commission finds there is no evidence indicating that Petitioner purposely withheld information about her previous medical history or pre-existing conditions.

Based on the above, the Commission finds Petitioner's testimony was credible and supports her claim of suffering concussions, post-concussion syndrome, migraines, PTSD, anxiety, and depression as a result of both undisputed work accidents where Petitioner was attacked by a student on both occasions.

C. Causal Connection

The Commission finds Petitioner proved by a preponderance of the evidence that the undisputed accidents on October 23, 2012 and March 19, 2013: (1) caused Petitioner to suffer concussions and post-concussion syndrome, which resolved by July 18, 2013; (2) aggravated Petitioner's migraines and resolved by July 18, 2013; (3) caused Petitioner to suffer PTSD, which resolved by September 20, 2016; and (4) aggravated and exacerbated Petitioner's anxiety and depression, which resolved by September 20, 2016.

It is well settled that employers take their employees as they find them; even when an employee has a pre-existing condition which makes him more vulnerable to injury, and recovery for an accidental injury will not be denied as long as it can be shown that the employment was a causative factor. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193, 205 (2003). An employee need only prove that some act or phase of his employment was a causative factor of the resulting injury, and the mere fact that he might have suffered the same disease, even if not working, is immaterial. *Twice Over Clean, Inc. v. Indus. Comm'n*, 214 Ill.2d 403, 414 (2005).

Moreover, with respect to the applicability of a "chain of events" analysis to a case involving a preexisting condition, courts have found that "if a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration." *Schroeder v. Ill. Workers' Comp. Comm'n*, 2017 IL App (4th) 160192WC, ¶¶ 25-26, 79 N.E.3d 833, 839. "The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been." *Id.* The appellate court also noted that "the principle is nothing but a common-sense, factual inference. *Schroeder*, 2017 IL App (4th) ¶ 26; *see also Price v. Industrial Comm'n*, 278 Ill. App. 3d 848, 853-54, 663 N.E.2d 1057, 1060-061 (4th Dist. 1996).

The Commission finds the opinions of Dr. Marzo, Dr. Levine, Dr. Mehta, and Dr. Sayyad to be credible, persuasive, and supported by the record. Additionally, the Commission finds that based on a chain of events analysis, Petitioner proved that the conditions of concussion, post-concussion syndrome, migraines, PTSD, anxiety, and depression were either caused or aggravated by the undisputed accidents.

On February 11, 2013, Dr. Marzo examined Petitioner and diagnosed her with, *inter alia*, post-concussion syndrome and recommended Petitioner continue treating for the condition with a neurologist. On March 7, 2013, Dr. Levine, Respondent's section 12 examining physician, diagnosed Petitioner with mild post-concussion syndrome and opined that Petitioner's pre-existing migraines could have been aggravated by the work injury. After the March 19, 2013 accident, the emergency room physicians at Central DuPage Hospital diagnosed Petitioner with a "new concussion," "post concussive syndrome from a head injury a few months ago," and PTSD from the first concussion. On April 11, 2013, Dr. Mehta diagnosed Petitioner with post-concussion syndrome, neurobehavioral deficits/neurocognitive, impaired balance, insomnia, anxiety/ depression/PTSD, and chronic post-concussion headaches. Dr. Mehta opined that Petitioner had a pre-existing history of mild depression likely exacerbated by multiple assaults/concussions. On April 22, 2013, Dr. Jordania performed an initial psychiatric evaluation and diagnosed Petitioner with post-concussive syndrome, anxiety due to post-concussive syndrome, PTSD, and insomnia due to PTSD. Petitioner continued to treat with Dr. Jordania and undergo speech therapy, occupational therapy, and day rehab. On June 13, 2013, Petitioner was discharged from speech therapy. Petitioner was discharged from occupational therapy the next day. On July 2, 2013, Dr. Mehta noted Petitioner had completed a day rehab program and transitioned to a home exercise program. Dr. Mehta noted Petitioner was steadily improving but she continued to have significant PTSD symptoms.

On July 18, 2013, Petitioner followed up with Dr. Jordania and reported significant improvement in her headaches, but her PTSD was still very symptomatic. Petitioner described having persistent fear of children and people in public places as well as fear of being attacked. Petitioner continued to treat with Dr. Mehta (until her care was transferred to Dr. Sayyad), Dr. Jordania, and counselor Cromer. On September 20, 2016, Petitioner followed up at Marianjoy with Dr. Sayyad's nurse practitioner, which is the last documented medical visit in the record and reported that she was much less tired during the day and she was doing well in her classes. However, Petitioner reported that her headaches had returned, her blood pressure was slowly climbing, and she was still looking for a psychiatrist to replace Dr. Jordania who had left Marianjoy. Dr. Sayyad's nurse diagnosed Petitioner with, *inter alia,* major depressive disorder, single episode, unspecified and posttraumatic stress disorder; provided Petitioner with names of potential psychiatrists; adjusted Petitioner's medication; and encouraged Petitioner to continue taking classes. Dr. Sayyad testified that Petitioner had started to show some signs of improvement by this date and Petitioner's headaches waxed and waned throughout her treatment. At her deposition, Dr. Sayyad testified that "there is a connection between Ms. Wellman being punched in the head by a student and these diagnoses [post-concussion syndrome, PTSD, neurocognitive deficits associated with PTSD, post-concussion syndrome, and post-traumatic headache]."

The Commission finds that Petitioner was able to work her full job duties prior to the October 23, 2012 accident, and to her credit, even managed to return to work following the October 23, 2012 attack while undergoing treatment for her right ear perforated tympanic membrane. However, after the March 19, 2013 attack, Petitioner was unable to complete her job duties and return to work. The medical records indicate that her concussion, post-concussion syndrome, and migraine conditions improved over time and seemed to resolve or plateau by July 18, 2013. However, the medical records indicate Petitioner's PTSD and associated anxiety and depression

did not improve as quickly and Petitioner required substantial treatment and therapy through September 20, 2016.

Furthermore, the Commission is not persuaded by the opinions of Dr. Landre, which were based on inaccurate facts and speculation. Dr. Landre's opinion that it was not clear whether Petitioner sustained a head injury during the second accident (March 19, 2013) is contradicted by the evidence. Dr. Landre testified that Petitioner's March 19, 2013 accident consisted of "being pushed from behind," which did not satisfy the criteria for a concussion. The Commission notes that the Central DuPage Hospital emergency room records state Petitioner was hit from behind and punched in the occiput by a student. The emergency room physicians diagnosed Petitioner with a "new concussion," post-concussion syndrome and PTSD from the first concussion. Additionally, the Employee's Report of Injury for the March 19, 2013 accident (dated March 20, 2013) states that a student pushed and hit Petitioner in the back of the head. Further, Dr. Landre testified that Petitioner "failed" several performance validity tests in the neurological evaluation and initially opined that it meant Petitioner was likely exaggerating or malingering. However, Dr. Landre later testified that the failed performance validity tests meant the test results were not valid for interpretation and were not a reliable estimate of Petitioner's status. The Commission finds that Dr. Landre's reliance on invalid and unreliable testing to form her opinion that Petitioner was malingering casts doubt on the credibility of her opinion.

Additionally, the Commission is not persuaded by Dr. Obolsky's opinions which were also based on inaccurate facts and speculation. Dr. Obolsky opined that the results of his forensic psychiatric evaluation indicated Petitioner was malingering and exaggerating her complaints. Dr. Obolsky opined that Petitioner did not exhibit any "bizarre" or "odd" behaviors that would impair her ability to work with other people but did not explain what a "bizarre" or "odd" behavior was and did not explain the scientific significance of such behaviors. Additionally, Dr. Obolsky opined that Petitioner did not develop any condition of mental ill-being causally related to either undisputed accident, which contradicts the opinions of the emergency room physicians at Central DuPage Hospital, Dr. Mehta, Dr. Sayyad, Dr. Jordania, and licensed clinical professional counselor Cromer. Finally, Dr. Obolsky inaccurately believed Petitioner had reported not knowing what "country" she was in when Dr. Levine evaluated her, when in actuality, Petitioner had reported not knowing what "county" she was in when she saw Dr. Levine.

Finally, the Commission notes that Dr. Landre and Dr. Obolsky's opinions contradict each other and undermine the credibility of both opinions. On one hand, Dr. Landre testified that in order to be diagnosed with a concussion, loss of consciousness is not required, and Petitioner probably had a concussion after the first accident. Dr. Landre also confirmed that anxiety, depression, difficulty concentrating, irritability, and fatigue are symptoms associated with both PTSD and post-concussion syndrome. On the other hand, Dr. Obolsky testified that the doctors at Marianjoy diagnosed Petitioner with post-concussion syndrome without knowing whether Petitioner lost consciousness and ""[y]ou cannot do that." Dr. Obolsky appeared to opine that loss of consciousness is required for a diagnosis of concussion or post-concussion syndrome.

D. Medical Benefits

Based on the Commission's findings and conclusions above, and with respect to both cases 13 WC 13675 (October 23, 2012 accident) and 13 WC 13676 (March 19, 2013 accident) the Commission finds Petitioner's treatment for concussion, post-concussion syndrome, and migraines was reasonable and necessary, and awards medical expenses for treatment for those conditions through July 18, 2013 pursuant to sections 8(a) and 8.2 of the Act. The Commission finds that with respect to both cases 13 WC 13675 (October 23, 2012 accident) and 13 WC 13676 (March 19, 2013 accident) Petitioner's treatment for PTSD, anxiety, and depression was reasonable and necessary, and awards medical expenses for treatment for those conditions through September 20, 2016 pursuant to sections 8(a) and 8.2 of the Act.

E. Temporary Total Disability Benefits

Based on the Commission's findings and conclusions above, and with respect to case no. 13 WC 13676 (March 19, 2013 accident) the Commission finds Petitioner is entitled to temporary total disability ("TTD") benefits from March 20, 2013 through September 20, 2016. Respondent is entitled to credit for TTD benefits already paid.

F. Permanent Disability Benefits

Our conclusion that Petitioner's concussion, post-concussion syndrome, migraine, PTSD, anxiety, and depression conditions are causally related to the undisputed work accidents, necessarily implicates an analysis of Petitioner's permanent disability with respect to these conditions. The Commission finds the majority of the injuries Petitioner sustained following each undisputed accident are not separate and distinct, but rather, Petitioner was attacked and sustained injuries to her head during both accidents and her diagnoses and treatment for the conditions of concussion, post-concussion syndrome, migraine, PTSD, anxiety, and depression following both accidents, overlapped considerably. Further, the Commission finds that the concussion, post-concussion syndrome, migraine, PTSD, anxiety, and depression conditions Petitioner sustained during the second accident were amplified and more serious due to the prior injuries Petitioner sustained during the first accident and the evidence does not support delineation of the nature and extent of permanency attributable to each accident for these conditions. Accordingly, the Commission finds that with respect to the conditions of concussion, post-concussion syndrome, migraine, PTSD, anxiety, and depression, it can only award permanency for the second accident, case no. 13 WC 13676 (March 19, 2013 accident). *See City of Chicago v. Illinois Workers' Compensation Commission*, 409 Ill. App. 3d 258, 265, 947 N.E.2d 863, 869 (2011). The Commission affirms the Arbitrator's award of permanent partial disability benefits to the extent of 10% loss of the person-as-a-whole for the conditions of perforated right eardrum and neck injuries sustained during the first accident, case no. 13 WC 13675 (October 23, 2012 accident), as those conditions are distinct and easily separable from the injuries sustained during the second accident on March 19, 2013.

The Commission analyzes the §8.1b factors as follows and modifies the Arbitrator's permanency award with respect to case no. 13 WC 13676:

Section 8.1b(b)(i) – impairment rating

Neither party submitted an impairment rating. As such, the Commission assigns no weight to this factor and will assess Petitioner's permanent disability based upon the remaining enumerated factors.

Section 8.1b(b)(ii) – occupation of the injured employee

Petitioner worked as a Health Assistant for Respondent for approximately six years. Petitioner has not returned to her employment with Respondent or any other employer since the March 19, 2013 accident. The Commission gives this factor moderate weight and finds this factor is indicative of increased permanent disability.

Section 8.1b(b)(iii) – age at the time of the injury

Petitioner was 34 years old on the date of the October 23, 2012 undisputed accident. Petitioner was 35 years old on the date of the March 19, 2013 undisputed accident. Petitioner was relatively young at the time of the accidents and has many years to attempt to adapt to her residual deficits. The Commission gives this factor moderate weight and finds this factor is indicative of increased permanent disability.

Section 8.1b(b)(iv) – future earning capacity

Petitioner did not return to her pre-accident job with Respondent and Petitioner's physicians continue to place her off work. Petitioner earned an Associate's Degree in 2019 and is taking additional classes to help her find suitable employment. Petitioner submitted into evidence a vocational assessment report dated November 11, 2013 indicating she had a vocational history of EMT certification, certified phlebotomist, CNA, certification to perform school vision and hearing screenings, licensed cosmetologist, and she had paramedic training. However, Petitioner also had vocational barriers of post-traumatic stress disorder, ruptured eardrum, hand tremors, migraine headaches, jaw problems, eye problems, depression, and anxiety. Respondent submitted into evidence a labor market survey report dated February 29, 2016, which indicated appropriate vocational goals for Petitioner included claims clerk, receptionist, collections clerk, hospital-admitting clerk, radio dispatcher, administrative clerk, customer service clerk, home attendant, and teacher's aide. The wage range for those positions within a 50-mile radius was $12.00 to $23.00 per hour. The Commission gives this factor moderate weight and finds this factor is indicative of decreased permanent disability.

Section 8.1b(b)(v) – evidence of disability corroborated by treating medical records

Petitioner testified she returned to school at the College of DuPage in 2017 and completed an Associate's Degree in Applied Science in Human Services for Addictions Counseling in May 2019. Petitioner described her time in college as difficult and she required substantial help and accommodations while she was in school. The medical records corroborate Petitioner's testimony in that they indicate Petitioner failed several classes in 2014 before she was finally able to pass her classes at the College of DuPage. Petitioner testified she has problems sleeping and has nightmares about "these issues occasionally." She gets dizzy and can lose her balance if she stands too quickly

from a seated position. She experiences loud ringing in her ears when she gets anxious, which causes her to get "light-headed." Petitioner gets nervous around a lot of people "in newer situations" and she becomes anxious in public. Petitioner continues to take multiple prescription medications.

On September 20, 2016, Petitioner followed up at Marianjoy with Dr. Sayyad's nurse practitioner and reported that she was much less tired during the day and she was doing well in her classes. However, Petitioner reported that her headaches had returned, and her blood pressure was slowly climbing. Dr. Sayyad's nurse diagnosed Petitioner with major depressive disorder, single episode, unspecified; posttraumatic stress disorder, *inter alia*; adjusted Petitioner's medication; and encouraged Petitioner to continue taking classes. Dr. Sayyad testified that at the time of this visit, Petitioner had started to show some signs of improvement by this date and Petitioner's headaches waxed and waned throughout her treatment. The Commission gives this factor significant weight and finds this factor is indicative of increased permanent disability.

Based on the above, the Commission finds Petitioner sustained 17.5% loss of the person-as-a whole as a result of the concussion, post-concussion syndrome, migraine, PTSD, anxiety, and depression conditions. The Commission affirms the Arbitrator's finding that Petitioner sustained 10% loss of the person-as-a-whole for the perforated right eardrum and neck injuries sustained during the October 23, 2012 accident, case no. 13 WC 13675. All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 3, 2019, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that with respect to both case nos. 13 WC 13675 and 13 WC 13676, Respondent shall pay to Petitioner medical expenses as provided in §8(a), subject to §8.2 of the Act, for treatment for Petitioner's concussion, post-concussion syndrome, and migraines through July 18, 2013.

IT IS FURTHER ORDERED BY THE COMMISSION that with respect to both case nos. 13 WC 13675 and 13 WC 13676, Respondent shall pay to Petitioner medical expenses as provided in §8(a), subject to §8.2 of the Act, for treatment for Petitioner's PTSD, anxiety, and depression through September 20, 2016.

IT IS FURTHER ORDERED BY THE COMMISSION that with respect to case no. 13 WC 13676, Respondent shall pay to Petitioner the sum of $337.46 per week for a period of 183 weeks, representing March 20, 2013 through September 20, 2016, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that with respect to case no. 13 WC 13675, Respondent shall pay to Petitioner the sum of $319.00 per week for a period of 50 weeks, as provided in §8(d)2 of the Act, for the reason that the perforated right eardrum and neck injuries sustained caused 10% loss of the person-as-a-whole.

IT IS FURTHER ORDERED BY THE COMMISSION that with respect to case no. 13 WC 13676, Respondent shall pay to Petitioner the sum of $319.00 per week for a period of 87.5

weeks, as provided in §8(d)2 of the Act, for the reason that the concussion, post-concussion syndrome, migraine, PTSD, anxiety, and depression conditions sustained caused 17.5% loss of the person-as-a-whole.

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. Respondent shall be given a credit for TTD benefits paid in the amount of $6,122.63 and credit for an advance in permanent disability benefits in the amount of $8,385.14. Respondent shall also be given a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in §8(j) of the Act.

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

SEPTEMBER 7, 2021

DJB/mck /s/ *Deborah J. Baker*

O: 6/9/21 /s/ *Stephen Mathis*

43 /s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

WELLMAN, JACKLYN
Employee/Petitioner

Case# **13WC013675**

13WC013676

CASE: GLENWOOD ACADEMY
Employer/Respondent

On 10/3/2019, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 1.79% 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:

0147 CULLEN HASKINS NICHOLSON ET AL
DAVID B MENCHETTI
10 S LASALLE ST SUITE 1250
CHICAGO, IL 60603

1120 BRADY CONNOLLY & MASUDA PC
PETER J STAVEOPOULOS
10 S LASALLE ST SUITE 900
CHICAGO, IL 60603

STATE OF ILLINOIS)
)SS.
COUNTY OF DuPage)

- ☐ 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

JACLYN WELLMAN
Employee/Petitioner

v.

CASE: GLENWOOD ACADEMY
Employer/Respondent

Case # 13 WC 013675 consolidated with
13 WC 13676

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 **Frank Soto**, Arbitrator of the Commission, in the city of **Wheaton**, on **July 15, 2019**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **10/23/12**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**26,321.88**; the average weekly wage was $**506.19**.

On the date of accident, Petitioner was **34** years of age, ***married*** with **2** dependent children.

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

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

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

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $319.00 /week for 50 weeks, because the injuries sustained caused the 10% loss of the person as a whole, as provided in Section 8(d)2 of the Act, as set forth in the Conclusions of Law attached hereto.

Respondent shall pay to Petitioner compensation that has accrued from October 23, 2012 through July 15, 2019 and shall pay the remainder of the award, if any, in weekly payments, as set forth in the Conclusions of Law attached hereto.

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

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

Signature of Arbitrator

10/1/2019
Date

OCT 3 - 2019

Procedural History

This matter was tried on July 15, 2019. The disputed issues involve: whether the Petitioner's current condition of ill-being is causally connected to the accidental injuries sustained on October 23, 2012; whether Respondent is liable for medical bills; and the nature and extend of Petitioner's injuries. The parties stipulated that Respondent paid certain medical bills totaling $14,507.77. (Arb. Ex. #1, 2)

Findings of Fact

The parties stipulate that on October 23, 2012, an employer/employee relationship existed between the parties and that Jaclyn Wellman (hereafter referred to as "Petitioner") was employed as a health assistant for CASE Glenwood Academy (hereafter referred to as "Respondent"), which was a school for children with behavior disorders and physical disabilities. (T. 10-13). Petitioner's job entailed dealing directly with the students surrounding their health issues. (T. 13).

It is also stipulated that, on October 23, 2012, Petitioner sustained compensable accidental injuries when she was punched by a seven-year-old student. (T 13-14). Petitioner testified that the student, who was in first grade, weighed between 50 and 60 pounds. (T 15-16).

Prior Medical Treatment

On April 16, 2012, Petitioner treated with Dr. Sapan Patel, of DuPage Medical Group, for migraines. At that visit, Petitioner reported her migraines were getting worse and were occurring more frequently, for longer durations and were becoming more severe. Petitioner reported additional symptoms of blurry vision, fatigue, sensory changes, facial numbness and tingling. Petitioner also reported other symptoms including difficulty talking. Dr. Patel proscribed Topamaz and advised Petitioner to taper off Fioricet which, he said, could be contributing to her symptoms. Dr. Patel ordered an MRI and CT of the brain which he compared to a prior MRI and CT of the brain taken on May 27, 2008. Dr. Patel indicated the scans were normal. Petitioner was diagnosed with chronic migraines. (PX 12)

On August 23, 2010, Petitioner reported to Dr. Patel, symptoms of blurry vision in the left eye, headaches, numbness on the left side of her face and tingling involving the left side of her face, eye, tongue, neck and down her arm. Petitioner also reported being

very fatigued and that she gets tired with even minimal activity. Those records show that Petitioner was taking Xanax, Lexapro and Petitioner had a family history of migraines. (PX 12)

Petitioner's past medical history also included left ear tympanoplasty, depression, anxiety, sleep disorder, psychotropic medications dating back to 2009, celiac disease and being allergic to glutens which causes nausea and vomiting. (RX 1 and PX 5).

Petitioner testimony regarding her health prior to the incidents.

Petitioner testified that prior to October 23, 2012, she could exercise on a regular basis, could run, did not take medication for any reason, and could see properly. (T. 29).

Petitioner's testimony regarding her work Accidents

Petitioner testified that the first incident occurred on October 23, 2012, when a student was brought down to her office after a fight. The student was seven years old, in first grade, and maybe weighed between 50-60 pounds. Petitioner testified that the student punched her in the bridge of her nose, mouth and right ear and jaw. Petitioner also testified that she flew back and hit her head on the wall and that she blacked out. Petitioner testified that when she woke up, another staff member was in the room taking the student away. Petitioner testified that she completed an incident or accident report. (T. 16). Petitioner testified that she continued to work after this incident.

Petitioner testified that, on March 19, 2013, she was struck by another student who was eight years old and weighed between 60-70 pounds. Petitioner testified that she was in a classroom administering medication when a student punched her in in the middle of her back, jumped on her back and started punching her in the neck and back of the head. Petitioner testified that as she tried to move she hit her forehead on the wall in the front of the room and blacked out. (T. 20-22). Petitioner testified that she competed a second accident report. (T. 22).

Accident Reports

On October 23, 2012, Petitioner completed an Employee's Report of Injury. On the form, Petitioner indicted that she was punched in the forehead, nose and right temporal area or ear. Petitioner listed her pain areas as the cheek, ear, neck, and right eye. (PX 1). A co-worker who witnessed the incident, Denise Polick, completed a

statement. Ms. Polick stated that Petitioner was hit in the bridge of her nose, end of her nose, and the area of her right ear. (PX 1).

On November 16, 2012, Petitioner filed a police report with the Glendale Heights Police Department for the October 23, 2012 incident. At that time, Petitioner reported being punched once in the bridge of her nose, twice on the tip of her nose and three times in the temporal area. Petitioner also reported hearing loss and her nose was swollen. (PX 1).[1]

On March 20, 2013, Petitioner completed an Employee's Report of Injury for the March 19, 2013 incident. On that form, Petitioner indicated that she was pushed on her back, was hit her in the back of the head, and her head whipped back. Petitioner reported that her head and neck were injured. Petitioner listed the areas of pain as the head, eyes, ears and neck. (PX 1).

Medical Treatment

On October 23, 2012, Petitioner treated with Dr. Patel, of DuPage Medical Group. At that visit, Petitioner reported being hit in the forehead, nose and ear. Petitioner complained of right ear pain and decreased hearing. The examination of Petitioner's head showed no contusions, ecchymosis, and Petitioner's facial bones were stable. The examination of the right ear showed a central perforation of the tympanic membrane or TM. Dr. Patel diagnosed a right ear perforation and he recommended Petitioner follow up with an ENT. (PX 12).

On October 24, 2012, Petitioner was examined by Dr. Andrew Celmer, of the Glen Ellen Clinic Department of Otolaryngology. At that visit, Petitioner complained of right ear pain and hearing loss. Petitioner reported being struck in the head and nose by a student. Dr. Celmer's records state that Petitioner had no other complaints other than a sore nose. Dr. Celmer assessed a right ear tympanic membrane (TM) tear and he attempted to apply a patch, but Petitioner could not tolerate it. Dr. Celmer recommended dry ear precautions and he believed the TM would likely heal on its own. A follow up appointment was scheduled in six weeks. (PX 3).

[1] The Arbitrator notes that Petitioner's Report of Injury, Police Report and witness statement do not indicate that Petitioner struck her head on a wall and blacked out.

On December 5, 2012, Petitioner returned to Dr. Celmer who noted that Petitioner's symptoms remained unchanged. Dr. Celmer's records state that Petitioner had no other complaints. Dr. Celmer indicated that Petitioner would likely need a tympanoplasty and he referred Petitioner to Dr. Hsu. (PX 3).

On December 14, 2012, Petitioner was seen by Dr. Gregory Doefler, DDS. Petitioner reported being struck by a client, on October 23, 2012, and she felt a pop in her ear and, after a few hours, her jaw stiffened up. Petitioner also reported a popping on her right side. Dr. Doefler ordered a CT scan of the oral and maxillofacial structures which showed no osseous or soft-tissues abnormalities. (PX 11).

On December 18, 2012, Petitioner started treating with Dr. Hsu, of the Glen Ellen Clinic. At that visit, Petitioner reported hearing loss after being struck in the right ear. Dr. Hsu recommended tympanoplasty and allograft reconstruction which was performed on January 7, 2013. The operative findings revealed a 20% perforation. (PX 13)

Petitioner returned to Dr. Hsu on January 22, 2013, February 21, 2013 and March 7, 2013. Dr. Hsu's records state that Petitioner communicated well, was comfortable and under no apparent distress. Petitioner complained of muffled hearing. Audiological diagnostic testing was ordered for the following visit. (PX 13).

On February 13, 2013, Petitioner was examined by Dr. Sam Marzo, of Loyola Medicine, pursuant to Section 12 of the Act, for evaluation of the right ear and head. Petitioner reported being struck multiple times with fists by a student. Petitioner reported to Dr. Marzo that she was told by a neurologist that she had post-concussive syndrome, occipital neuralgia, tinnitus in both ears, and TMJ.[2] Petitioner complained of a stiff jaw.

Dr. Marzo assessed central perforation of tympanic membrane, post-concussion syndrome, conductive hearing loss, subjective tinnitus and otogenic pain. Dr. Marzo indicated that Petitioner's ear pain and tinnitus should improve over time and Petitioner should continue treating with her neurologist for post-concussive syndrome and TMJ. (PX 16).

[2] The Arbitrator notes that Petitioner did not testify that she treated with a neurologist and was diagnosed with post-concussive syndrome, occipital neuralgia, tinnitus or TMJ between October 23, 2012 and March 19, 2013. The Arbitrator also notes that Petitioner did not submit into evidence the records from Dr. Chang or any other neurologist she treated with between October 23, 2012 and March 19, 2013.

After the second incident, on March 19, 2013, Petitioner went to the emergency room at Central DuPage Hospital. At that time, Petitioner reported being pushed by a student, and was punched in the back of the head near the base of her head. Petitioner reported dizziness and nausea. The emergency room records indicated that Petitioner reported treating with a neurologist, at DuPage Medical Group, for post-concussion syndrome from an October head injury.[3] The emergency room records state that Petitioner reported "*at work-shoved by a student, my head went back, then he went to punch me again and he hit me in the back of the skull, I have post-concussion from another student and have constant headaches which is worse now, I feel nauseated and dizzy.*" (PX 15). Petitioner reported suffering a "significant concussion" by Dr. Chang. The emergency room records state that Petitioner did not suffer a loss of consciousness, numbness, tingling or weakness anywhere. A CT scan performed which was negative. The emergency room clinical impression was listed as no diagnosis found. (PX 15).

The emergency room records also state that patient had a new concussion with post-concussive syndrome from a head injury a few months ago, and that she appears to be also be suffering from PTSD from her first concussion. Petitioner was released from the hospital, given a name of a neurologist and told to follow up with her primary care physician. (PX 15).

On April 4, 2013, Petitioner was examined by Dr Sachin Mehta of Marianjoy Medical Group. The medical records state the reason for the visit was post-concussive (10/23/2012) and PTSD (3/19/2013). At that visit, Petitioner reported an initial traumatic event in October 2012 when she was punched by a student between the eyes and on the right side of her scalp. Petitioner reported suffering a ruptured tympanic membrane. Petitioner also reported being diagnosed with post-concussion syndrome and that she was been treating with Dr. Chang a neurologist.[4] Dr. Mehta's records show that Petitioner complained of ongoing headaches, impaired balance, insomnia, mood issues and that she returned to work. Petitioner reported that a second incident that occurred at work on

[3] The records from DuPage Medical Group do not show that Petitioner was treating with a neurologist for post-concussion syndrome after Petitioner's October 23, 2012 accident.

[4] The Arbitrator notes that Petitioner did not testify that she treated with Dr. Cheng, a neurologist, was diagnosed with post-concussion syndrome after the October 23, 2012 accident.

March 19, 2013. Petitioner said she has hit from behind by a student, punched in the occiput. (PX 8)

At this visit, Petitioner complained of trouble with "flipping letters, numbers, directions" calculating difficulties, being more irritable and less tolerant of her kids. Petitioner also reported constant headaches and eye twitching. Petitioner reported feeling nervous, anxious, and feeling fatigued most of the day. Petitioner said that she was advised that she has PTSD. Dr. Mehta noted that Petitioner reported feeling a loss of control over her life because she was working 37 hours a week, attending classes 2-6 hours a week, her husband was not working and was on disability and not helping around the house, and that she was the primary caregiver for her children. Dr. Mehta diagnosed post-concussion syndrome, neurobehavioral deficits/neurocognitive, impaired balance, insomnia, anxiety/depression/PTSD, chronic post-concussion headaches. (PX 8)

On April 15, 2013, Petitioner was seen in the emergency room of Glen Oaks Hospital. The records state that Petitioner was well until 12:30, in the afternoon, when she developed a right-sided headache and numbness on the left side of her tongue and left lips. Petitioner also reported numbness in her left arm and left leg. The records state that Petitioner has a history of migraines with atypical aura of "flashing light" and that she takes Topamax, 75 mg twice daily, and prophylaxis, and butalbital. The emergency room records show that Petitioner reported being punched in the face, in October, and experiencing a brief loss of consciousness. The records also show that Petitioner reported sustaining a second head injury, in March, after being hit from behind. The emergency room records show that Petitioner reported headaches, frequent nausea, postural dizziness and difficulty with balance since October of 2012. CT scans taken of the brain were normal. Petitioner was told that she could increase her Topamax to 100 mg twice daily. Petitioner was diagnosed with migraine syndrome. (PX 14).

On April 22, 2013, Petitioner was seen by Dr. Nina Jordania, MD, of the psychiatry department of Behavioral Health Services at Central DuPage Hospital. At that time, Petitioner reported a history of two consecutive concussions. Dr. Mehta refereed Petitioner to Dr. Jordania for the treatment of Petitioner's anxiety. At that visit, Petitioner reported that since her first concussion she had been experiencing constant headaches, with photo and phonophobia, arm/elbow tingling, can't focus, can't sleep,

nausea, twitching, sadness, fear, unable to drive due to poor balance, irritability, and worrying.[5] Petitioner also reported ringing in her ears like sirens in her head. Dr. Jordania noted that Petitioner past medical history included mild depression, anxiety, celiac disease and that she is allergic to glutens which cause nausea and vomiting. Dr. Jordania diagnosed Petitioner with anxiety due to post-concussion syndrome, PTSD, post-concussion syndrome and insomnia due to PTSD. (PX 5).

On June 6, 2013, returned to Dr. Hsu. At that time the audiogram was taken which showed normal hearing. At that visit, Petitioner reported that she was treating with a neurologist and at Marianjoy. Petitioner complained of headaches, balance problems, and ringing in both ears. Dr. Hsu released Petitioner from care. (PX 13).

On July 18, 2013, Petitioner returned to Dr. Jordinia reporting a significant reduction of headaches after switching to Dexakote from Topamax. (PX 6).

On July 31, 2013, at the recommendation of Dr. Mehta, Petitioner sought counseling services from Steve Cromer, LCPC, at Pathways Psychological Services. Mr. Cromer provided individual counseling to Petitioner until July 1, 2015. Mr. Cromer reported that Petitioner was depressed, overwhelmed, exhausted, sad and angry and he related Petitioner's inability to work was due to fears and symptoms of PTSD. (PX 5).

On August 19, 2013, Petitioner was examined by Dr. Nancy Landre, a licensed clinical psychologist who is board certified in clinical neuropsychology, pursuant to Section 12 of the Act. At that visit, Petitioner reported being stuck by a 7-year-old in the nose and right temporal/ear area on October 23, 2012. Petitioner reported seeing her PCP and ENT (Dr. Celmer) and undergoing an audiological evaluation on March 7, 2013, which showed normal hearing sensitivity and excellent speech discrimination abilities. Petitioner also reported she later developed persistent tinnitus which her treating doctor opined was unrelated to her hear injury. (RX 1).

Petitioner reported that after returning to work she started to experience headaches, jaw pain, fever, and dizziness. Petitioner advised Dr. Landre that she started seeing Dr. Rikert, whom she previously treated with for headaches. Petitioner also advised Dr. Landre that she started to experience eye twitching, nausea, sleep

[5] Dr. Jordania's records do not indicate that Petitioner was treating with Dr. Patel prior to the October 2012 for migraines and that she previously experienced symptoms of headaches, blurry vision, facial numbness and tingling, sensory changes, fatigue, and episodes of being unable to talk.

disturbances and other post-concussive symptoms. Petitioner reported that she was symptomatic but continued to work until March 3, 2013. On that day, Petitioner reported that she was pushed from behind by a second grader. Dr. Landre noted the Employer's Report of Injury, states that Petitioner was pushed from behind causing her to stumble but she did not fall or strike her head on anything. Dr. Landre also noted that Petitioner treated at Central DuPage Hospital and those records showed that Petitioner did not report a loss of consciousness, a CT scan taken that day was normal, and her examination was found to be unremarkable. Petitioner was discharged with no diagnoses being found. (RX 1).

Dr. Landre noted that Petitioner said that she stopped working after the second incident and that she was referred to Dr. Mehta, Marianjoy, by Dr. Cheng and another neurologist, which she sought a consultation.[6] Dr. Landre indicated that Petitioner underwent a neuropsychological evaluation with Dr. Nancy Devereux, on May 1, 2013, who found Petitioner's evaluation to be invalid. Dr. Landre noted that Dr. Devereux determined that Petitioner significantly under-reporting her mental/personal problems while over-reported her somatic and cognitive problems. Dr. Landre noted that Dr. Devereux recommended a treatment plan for PTSD, which Petitioner declined. Dr. Landre also noted that Petitioner's past medical history included migraines, left ear tympanoplasty, significant psychiatric history for treatment of depression, anxiety, sleep disorder with psychotropic medications dating back to 2009. (RX 1).

Dr. Landre noted that Petitioner failed several stand-alone and embedded validity measures. Dr. Landre stated that Petitioner showed significant elevated scores on self-reported measures intended to identify malingering and her scores showed marked symptom over-reporting. Dr. Landre noted that Petitioner's cognitive tests were not valid because they portray her much more impaired than she was. Dr. Landre opined that Petitioner's self-reporting injuries related symptomatology was not credible. Dr. Landre also found Petitioner's performance on standard cognitive results were improbably low, at a level typically seen in patients with severe brain injuries or advanced dementia. (RX 1).

[6] Petitioner did not submit into evidence the records of Dr. Cheng or the other neurologist which she sought a consultation.

Dr. Landre opined that Petitioner's cognitive tests results and responses to self-reporting measures reflect probable symptom magnification. Dr. Landre further opined that Petitioner does not need further treatment and that any complaints she has would be driven by factors unrelated to her injuries. Dr. Landre opined that Petitioner's complaints were not causally related to her work injuries but were being maintained by other factors such as work avoidance or possible financial renumeration. Dr. Landre also opined that Petitioner could return to work full duty without restrictions. (RX 1).

On August 27, 2014, Petitioner returned to Dr. Jordaia who indicated that Petitioner scored 30/30 on a MMSE. Dr. Jordania's records state that the test was not useful, in Petitioner's case, to detect cognitive defect. Petitioner continued to treat with Dr. Jordania until May 11, 2016. (PX 6).

Petitioner returned to Marianjoy on September 20, 2016 and was seen by Dr. Sayyad's nurse practitioner, Sylvia Duraski. Petitioner reported a return of headaches. The medical records state that Petitioner was alert, oriented, appeared to be smiling more and was more optimistic. Petitioner was given the names of potential psychiatrists to follow up since Dr. Jordania left the area. Petitioner was encouraged to continue taking classes she enjoys so she will be more successful. Petitioner was advised to return in six months or sooner should a problem arise. Petitioner did not return for additional treatment. (PX 4).

On December 31, 2014, Dr. Obolsky performed a Forensic Psychiatric Examination, pursuant to Section 12 of the Act. The forensic psychiatric evaluation was performed to assess Petitioner's reported mental health as a consequence of the Petitioner's work accidents. The forensic psychiatric evaluation consisted of over 36 hours of record review, forensic psychiatric interview, forensic psychological and cognitive testing and data analysis. (RX 3).

Dr Obolsky opined that Petitioner's complaints of subjective trauma-related mental, emotional, and cognitive symptoms were not reliable. In his report, Dr. Obolsky stated that the objective evidence does not support Petitioner's reported subjective complaints. Dr. Obolsky opined that Petitioner was malingering (i.e. symptom exaggeration for secondary gain) and that she suffers from avoidant dependent and compulsive personality features not causally related to her work accidents. (RX 3).

In his report, Dr. Obolsky opined there was no objective evidence that Petitioner's work accidents caused any clinically significant mental, emotional or cognitive dysfunctions. Dr. Obolsky noted that Petitioner endorsed over 40 current assorted symptoms involving various bodily systems on medical psychiatric questionnaires. Dr. Obolsky stated that, on the forensic psychological testing, Petitioner exaggerated somatic and cognitive complaints consistent with malingered neurocognitive dysfunction and she also inconsistently magnified her psychiatric symptoms.

Dr. Obolsky stated that that Petitioner's reported posttraumatic symptoms during the forensic psychiatric interview but her description of some of the pathognomonic posttraumatic stress disorder symptoms were phenomenologically inauthentic. Dr. Obolsky noted that Petitioner's performance on forensic psychological testing was erratic. Dr. Obolsky stated that Petitioner made deliberate and unsophisticated attempts to represent herself in an unrealistically virtuous way on the MMPI-2 test. (RX 3).

Dr. Obolsky determined that Petitioner made non-credible over report of psychiatric, cognitive and physical symptoms. In the report, Dr. Obolsky noted that five months after Petitioner's second work injury, Dr. Landre noted that Petitioner failed symptoms validity testing and she displayed abnormal performance on multiple neurocognitive tests. Dr. Obolsky further noted that Dr. Landre assessed malingering after Petitioner's neurocognitive and psychological tests results were found invalid because of multiple failed symptoms validity indicators and evidence of over reporting on self-reporting measures. (RX 3).

Dr. Obolsky opined that the results of two neuropsychological evaluations don't offer objective evidence of mental, emotional or cognitive symptoms of post-concussion syndrome. Dr. Obolsky further opined that Petitioner did not develop post-traumatic stress disorder due to her work accidents and Petitioner could return to work full duty. (RX 3).

Surveillance

Beginning April 24, 2013 and ending through May 7, 2017, on six separate dates, Respondent conducted surveillance of Petitioner. During the surveillance, Petitioner was observed opening her front door, carrying a garden hose and two rakes, putting items into

a trash container, carrying a bag of trash, shipping at a store and pushing a shopping cart, getting mail and carrying empty bags and sitting and walking in a playground. (RX 6).

Evidence Depositions

Dr. Sayyad/Treating physician

Dr. Sayyad testified by evidence deposition on March 1, 2017. (PX 10). Dr. Sayyad testified that she did not see the Petitioner until January 30, 2014 because she previously treated with her partner, Dr. Mehta. (PX 10).

Dr. Sayyad testified that Petitioner complained of light and sound sensitively, lightheaded, and had problems with attention, memory, concentration, dizziness. Dr. Sayyad testified that Petitioner reported to the nurse that she also had ringing in both ears, vision concerns, blurred vision in the left eye and headaches. Dr. Sayyad testified that Petitioner said her symptoms were the result of post-concussion syndrome and PTSD as a result of being punched in the head in October of 2012. (PX 10).

Dr. Sayyad testified that she last saw Petitioner on September 20, 2016 and, at that time, Petitioner had a much brighter affect, was smiling and appeared more optimistic and her speech was fluent. Dr. Sayyad testified that his partner had diagnosed Petitioner with post-concussion syndrome, PTSD, neurocognitive deficits associated with PTSD, post-concussion syndrome and post-traumatic headaches. Dr. Sayyad opined there was a connection between the Petitioner being punched in the head and her diagnoses. Dr. Sayyad testified that her opinion was based upon her medical judgment and that you need a pretty significant trauma to the head to have a diagnoses of post-concussion syndrome and the associated symptoms. (PX 10).

Dr. Sayyad also opined that, as of September 20, 2016, Petitioner was unable to work because her headaches had not completely resolved and because her condition was not stabilized since Petitioner was still looking for a new psychiatrist. (PX 10).

On cross-examination, Dr. Sayyad testified that she had not reviewed any of Petitioner's neuropsychological testing. Dr. Sayyad acknowledged ordering neuropsychological testing, on January 6, 2015, which was not completed in more than two years. (PX 10).

Dr. Sayyad testified that she only reviewed the medical records from Marianjoy and she was not aware that Petitioner suffered form headaches in 2007. Dr. Sayyad

further testified that she could not give an opinion as to Petitioner's current condition because she had not examined Petitioned in over two years. (PX 10).

Dr. Nancy Landre/Section 12 Examiner

Dr. Nancy Landre was deposed on March 9, 2017. Dr. Landre is a clinical psychologist specialty trained in neuropsychology. Dr. Landre testified that she sees patients in the areas of dementia, learning disabilities, ADHD, head injuries and other neurological disorders. Dr. Landre testified that she was the clinical neuropsychologist that consulted with the level one trauma center at Lutheran General Hospital in the traumatic brain injury program. (RX 2)

Dr. Landre testified that Petitioner's past medical history was significant for migraines, which Petitioner attributed to fluorescent lights in her work place, left ear tympanoplasty, depression, anxiety, sleep disorder, and celiac disease. Petitioner's depression and sleep disorders dated back to 2009. (RX 2)

Dr. Landre testified that Petitioner reported being struck by a 7-year-old student and that she did not lose consciousness, but she did feel dizzy and saw stars. Petitioner was diagnosed with a right TM perforation and she had surgery on January 17, 2013. Dr. Landre noted that an audiogram, taken 2 months later, showed normal hearing sensitivity and excellent speech discrimination ability in the ear. Dr. Landre testified that Petitioner reported complaining of tinnitus, but her doctor opined that it was unrelated to her injury and discharged Petitioner from care. (RX 2)

Dr. Landre testified that Petitioner reported a second accident, occurring on March 19, 2013, when she was pushed from behind by a second-grade student. Petitioner reported that she briefly lost her balance, but she did not fall or strike her had on anything. Petitioner was treated at Central DuPage Hospital. Dr. Landre testified that Central DuPage Hospital records showed that Petitioner's examination was unremarkable, and a CT scan was negative. Petitioner reported being referred to Dr. Mehta, at Marianjoy, who diagnosed post-concussion syndrome and recommended the outpatient brain injury day rehab program at Marianjoy. (RX 2)

Dr. Landre testified that, on May 1, 2013, Petitioner saw Dr. Devereux who determined that Petitioner showed insufficient effort and performance during symptom validity testing. Dr. Landre testified that she also conducted neuropsychological testing

and her findings, just as Dr. Devereux findings, also showed problems with Petitioner's effort and credibility regarding self-report of injury related symptoms. Dr. Landre noted that Dr. Devereux recommended a highly effective treatment for PTSD which Petitioner declined. The treatment involved exposure to work. Dr. Landre testified that one of the best available treatments for PTSD is exposure to work. Dr. Landre testified that when asked about returning to work, Petitioner responded that thinking about returning to work made her feel nauseous. (RX 2)

Dr. Landre testified that one of the best measures of symptom validation tests is the MMPI (Minnesota Multiphasic Personality Inventory). Dr. Landre testified that Petitioner failed a number of the symptom validity tests which showed that Petitioner was over-reporting her symptoms. (RX 2)

Dr. Landre testified that Petitioner's cognitive test and psychological tests results were found not to be valid for interpretation because the tests did not provide reliable or valid estimate of what was really going in those domains. Dr. Landre testified that on some of the performance validity tests, Petitioner performed worse than patients with severe dementia in a hospital setting. (RX 2)

Dr. Landre testified that there is a predictable pattern of performance with mild head injuries, and Petitioner's patterns of deficits were not consistent with those predictable patterns. Dr. Landre testified that she would never expect to see someone with severely negative impaired spatial abilities, like Petitioner, or someone with moderately impaired fine motor skills, like Petitioner, in a case involving a mild head injury. Dr. Landre testified that she would not expect to see any effect at all on fine motor skills. (RX 2)

Dr. Landre's opined Petitioner's symptoms are related to malingering. Dr. Landre testified that she based her opinion upon the test results, Petitioner's failure on both performance and symptoms validity measures, Petitioner's poor finding on the standard neuropsychological indices and inconsistencies between self-reported and what we know about the nature and course of recovery from concussions. (RX 2)

Dr. Landre also opined that Petitioner's current condition were related to symptom magnification. Dr. Landre testified that she was unable to provide a valid estimate of Petitioner's true cognitive or emotional status based upon the testing because

of Petitioner's insufficient effort during testing and symptom exaggeration. Dr. Landre opined that Petitioner's true functioning status was within normal limits based upon Petitioner attending college, passing classes, and driving without restrictions. (RX 2)

Dr. Landre opined that based upon the test results, history of reported symptoms Petitioner's complaints is being maintained by secondary gain, work avoidance or financial compensation. (RX 2)

Dr. Obolsky/Section 12 Examiner

Dr. Obolsky's evidence deposition occurred on April 10, 2017. Dr. Obolsky is board certified in general and forensic psychiatry. Dr. Obolsky testified that Petitioner did not report a loss of consciousness, mental status changes or post-traumatic amnesia when she described her work accidents which, he said, was consistent with the emergency room findings. (PX 4).

Dr. Obolsky testified that Petitioner said she reported, after the March incident, that she was experiencing dizziness, nausea, slurred speech, confusion and nonreactive pupils. Dr. Obolsky testified nonreactive pupils are present post-traumatically when you have a very sever traumatic brain injury are signs of virtual death. Dr. Obolsky testified that had a patient presented to the emergency room with nonreactive pupils and slurred speech the emergency room would have taken life saving measures and, if such symptoms existed, it would had been documented in the emergency room records. Dr. Obolsky noted that the emergency room records indicated that Petitioner's speech was not slurred, her pupils were equal in diameter and reactive to light, and she was not confused and was alert and oriented in all spheres. (PX 4).

Dr. Obolsky testified that Petitioner is a medical professional who has some medical education and she may know the term nonreactive pupils, but most lay people do not. Dr. Obolsky testified that the use of these terms reflects a conscious exaggeration of symptom. (PX 4).

Dr. Obolsky also testified that Petitioner reported her jaw was knocked out of place and she had jaw symptoms after the first incident. Dr. Obolsky testified that Petitioner's jaw symptoms did not appear in any medical records until February 6, 2013, three and a half months after the October 2012 event. Dr. Obolsky testified that this

shows that Petitioner is purposefully not giving a clear history of her illness suggesting symptom exaggeration. (PX 4).

Dr. Obolsky testified that, after reviewing the results from the psychological testing, Petitioner is misattributing causation. Dr. Obolsky testified that Petitioner is piling up every symptom she can think of, whether it's present or not, and she claims they are all caused by either the first or second injury. Dr. Obolsky testified that Petitioner is misattributing causation of her physical symptoms to an event for which she could receive compensation which is malingering. (PX 4).

Dr. Obolsky testified that Petitioner reported that she started to experience memory difficulties after the March 2013 incident. Dr. Obolsky noted that the first time Petitioner reported memory difficulties was during the IME, with Dr. Lnadre, on March 7, 2013, one week before the March incident. Dr. Obolsky testified that, at that time, Petitioner reported that she did not know what country or town she was in. Dr. Obolsky testified that one must have a very significant traumatic brain injury not to know that you are in United States or Chicago. (PX 4).

Dr. Obolsky testified that a neurologist, Dr. Cheng, performed an evaluation of Petitioner on February 7, 2013, one week before she was examined by Dr. Levine, and also performed a mental status exam which found Petitioner to be alert, oriented in all spheres and her memory, attention and concentration was normal. Dr. Obolsky testified that, based upon Dr. Cheng's examination, one month before Petitioner's second accident, her mental state was normal. Dr. Obolsky testified that this issue is significant because it shows that Petitioner did not have any cognitive symptoms after her first injury and it also shows that Petitioner started lying before the second accident. (PX 4).

Dr. Obolsky testified that the way traumatic brain injuries work is that something happens, your brain is bruised, and you, immediately, develop symptoms and, over time, the symptoms improve. Dr.Obolsky testified that the symptoms should steadily improve and resolve within 3 months of the event. (RX 4).

Dr. Obolsky further testified that after reviewing all of the physical symptoms reported and Petitioner's complaints listed in the questionnaire Petitioner endorsed over 50 separate physical complaints. Dr. Obolsky opined that both Dr. Devereux and Dr.

Landre's neurocognitive testing shows that Petitioner malingered, exaggerated cognitive complaints and her subjective cognitive complaints are untrustworthy. (RX 4).

Dr. Obolsky testified that Dr. Devereux's neuropsychological testing, performed on May 1, 2013, six weeks after the second work accident, shows that Petitioner was malingering her symptom. Dr. Obolsky testified that on the RBANS test, Petitioner performed in the lowest .01 percentile and her scores were the same as people with severe end-staged dementia. Dr. Obolsky testified that the RBANS test is a cognitive test of memory, concentration, attention, and executive functioning. Dr. Obolsky opined that the MMPI-2 test showed that Petitioner was exaggerating her physical symptoms. (RX 4).

Dr. Obolsky further opined the VSVT showed that Petitioner was a malinger. Dr. Obolsky testified that a person is who is a malinger will perform well on the part of the VSVT they believe is easy and will do poorly on the part of the test they believe is hard. Dr. Obolsky testified that both parts of the test are of equal difficulty. Dr. Obolsky testified that Petitioner performed in a valid range on the perceived easy part of the test and she performed in the questionable range on the perceived hard part of the test. (RX 4).

Dr. Obolsky diagnosed malingering with avoidant dependent and compulsive personality features. Dr. Obolsky testified that his diagnoses were based upon the review of the medical records, performance of psychological testing, review of the psychological neurocognitive tests and his interview with Petitioner. (RX 4).

Dr. Obolsky opined that Petitioner did not suffer any post-traumatic disorder based upon the totality of the data which included the medical records, psychological testing, and neurocognitive testing. Dr. Obolsky testified that symptoms were missing to diagnose PTSD. Dr. Obolsky testified that Petitioner's intrusive symptoms were not authentic, her avoidance symptoms were inconsistent, and her hyperarousal symptoms were not authentic. Dr. Obolsky opined that it is inappropriate to diagnose PTSD, in this case, because Petitioner was an untrustworthy reporter of her symptoms, she misattributes the causation, misreports symptoms and she manipulates symptoms. (PX 4).

Dr. Obolsky further testified that Petitioner's credibility, as a historian of her own symptoms, is undermined significantly because she clearly malingering. Dr. Obolsky testified that it is inappropriate to diagnose PTSD under such conditions. Dr. Obolsky

noted that Petitioner refused PTSD treatment offered by Dr. Devereux and the people who diagnosed PTSD did not treat Petitioner as if she had PTSD. (RX 4).

Dr. Obolsky also opined that Petitioner did not suffer a concussion in either work accident. Dr. Obolsky testified to be diagnose with a concussion you have to exhibit one of the four symptoms immediately after the physical force is applied to the head. Dr. Obolsky testified to be diagnosed with a concussion, you must, immediately, develop a loss of consciousness or mental state changes or post-traumatic amnesia or focal neurological signs. Dr. Obolsky testified that Petitioner did not immediately develop any of the four symptoms for both incidents. (RX 4).

Dr. Obolsky opined that Petitioner did not develop any condition of mental ill-being causally related to either the October 23, 2012 or March 19, 2013 work events. Dr. Obolsky further opined that Petitioner does not require additional medical care and she could return to work full duty, without restrictions. (RX 4).

Petitioner's Education

Petitioner testified that after the March 19, 2013 accident she started to take classes at College of DuPage. In May of 2019, Petitioner received an associate degree in applied science and human services for addiction counseling. Petitioner testified that the degree takes two years to complete. Petitioner testified that she also has an associate degree in in general studies and she is certified as an emergency medical technician, both earned prior to 2012. (T. 34).

Petitioner's Current Complaints

Petitioner testified that she still suffers sleeping problems, dizziness, when she stands up too quickly, and the tinnitus causes ringing in her ears which gets louder when she gets light-headed. Petitioner testified that she gets anxious when the ringing gets louder. Petitioner testified that she gets tingly everywhere. very dizzy and she needs to lay down. Petitioner testified that she gets nervous around a lot of people, in new situations and she needs to know whose around. Petitioner testified that she gets anxious in grocery stores and needs to find landmarks when going to the park, so she could find her car. (T. 36-38).

The Arbitrator does not find the testimony of Petitioner to be credible.

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of her claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223.Ill App. 3d 706 (1992).

In support of the Arbitrator's decision related to issue (F): Is Petitioner's Current Condition of Ill-Being Causally Connected to the Accidental Injuries of November 23, 2012, the Arbitrator makes the following conclusions:

Accidental injuries need not be the sole cause of the Petitioner's current condition of ill-being as long as the accidental injuries are a causative factor resulting in the current condition of ill-being. *Sisbro, Inc. v. Industrial Commission*, 207 Ill.2d 193 (2003).

The Arbitrator finds, after reviewing all of the evidence, that Petitioner has proven by the preponderance of the evidence, that her perforated right eardrum and neck pain was causally related to the October 23, 2012 accident. The Arbitrator further finds that Petitioner failed to prove by the preponderance of the evidence that she sustained a concussion, post-concussion syndrome, PTSD, TMJ, tinnitus, occipital neuralgia, anxiety, migraines are causally related to the October 23, 2012 accident.

The Arbitrator finds the Petitioner's testimony was not credible. The Arbitrator notes that Petitioner was not diagnosed with a concussion, post-concussion syndrome nor did she report any concussion related symptoms to Dr. Patel, Dr. Celmer or Dr. Hsu. Petitioner reported to Dr. Patel that she was only experiencing ear pain and hearing loss. When Petitioner saw Dr. Celmer, on October 24, 2012 and December 5, 2012, Petitioner only complained of right ear pain and a sore nose. Dr. Celmer's records state that Petitioner had no other complaints. Petitioner did not report any concussion related symptoms to Dr. Hsu when she saw him on December 18, 2012, January 22, 2013, February 21, 2013 and March 7, 2013. (PX 13).

Petitioner testified that during the October 23, 2012 incident she hit her head on the wall and blacked out. (T. 14-15). The Employee's Report of Injury, completed by Petitioner, does not state that she hit her head on a wall and blacked out. Petitioner reported only pain in the ear, cheek, right eye on the Employee's Report of Injury. Denise Polick, a co-worker who completed a witness statement, indicated that Petitioner

was hit on the nose and right ear. Ms. Polick's report did not state that Petitioner struck her head on the wall and that she blacked out. On November 16, 2012, Petitioner filed a police report. The report states that Petitioner complained of hearing loss and swelling on the nose. The police report did not state that Petitioner struck her head on a wall and she blacked out. (PX 1). The Arbitrator finds the Employee's Report of Injury, police report and medical histories given to Drs. Patel, Celmer and Hsu to be consistent and conflict with Petitioner's trial testimony.

Petitioner did not report any headache symptoms or concussion related symptoms until she saw Dr. Marzo, on February 13, 2013, who performed a Section 12 examination. The Arbitrator notes that Petitioner did not report to the medical providers that she struck her head struck a wall and blacked out. The Arbitrator also notes that Petitioner did not provide complete medical histories to various doctors regarding her preexisting symptoms, many of which were the same or similar symptoms Petitioner attributed to her work incident. Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicated unreliability. *Gilbert. V. Martin & Bayley/Hucks*, 08 IL.W.C. 004187 (Ill. Indus. Comm'n., 2010).

Petitioner testified that prior to the October 23, 2012 incident she was not taking medication for any reason and could regularly exercise. Petitioner's medical records show that Petitioner treated with Dr. Patel, on April 16, 2012, and was proscribed Topamaz and told to reduce her use of Fioricet. At that time, Petitioner reported that the severity, intensity and frequency of her headaches was increasing. Petitioner reported other symptoms such as fatigue, blurry vision, facial numbness and tingling and difficulty completing sentences. Two years earlier, Petitioner was complaining of migraines, tingling involving the left side of her face, eye, tongue, necks and down her arm as well as blurry vision in the left eye and that she is very fatigued even with minimal activity. The Arbitrator finds that Petitioner's testimony regarding the condition of her health prior to the October 23, 2012 incident was not credible.

The Arbitrator finds the opinions of Drs. Landre and Obolsky to be persuasive. The Arbitrator does not find the opinions of Drs. Sayyad, Mehta, Jordania to be persuasive. The Arbitrator also does not find the diagnoses, related to concussion, post-

concussion syndrome and PTSD, in the Central DuPage Hospital medical records to be persuasive. The Arbitrator finds that those opinions were based upon inaccurate histories or information provided by Petitioner. It is axiomatic that the weigh accorded an expert opinion is measured by the facts supporting it and the reasons given for it; an expert opinion cannot be based on guess, surmise, or conjecture. *Wilfert v. Retirement Board*, 318 Ill.App.3d 507, 514-515 (First Dist. 2000).

Petitioner advised Dr. Mehta that she was previously diagnosed by a neurologist, Dr. Cheng, with a concussion and post-concussion syndrome. Petitioner did not place Dr. Chang's records into evidence. The Arbitrator notes that none of Petitioner's initial treating physicians diagnosed a concussion, post-concussion syndrome, TMJ or PTSD after the October 23. 2012 incident.

The Arbitrator finds that Petitioner failed to prove that she sustained a concussion or post-concussion syndrome after the October 23, 2012 incident. The medical records of Drs. Patel, Celmer, and Hsu do not support that Petitioner suffered a concussion or post-concussion syndrome after the October 23, 2012 incident nor do the records reference that Petitioner experienced concussion related symptoms. Dr. Celmer's records state that Petitioner had no other complaints other than ear pain and hearing loss.

The Arbitrator does not find the testimony of Dr. Sayyad to be persuasive. Dr. Sayyad testified that he was not aware the Petitioner previously treated for headaches and he did not review Petitioner's neuropsychological testing and he only reviewed Petitioner's medical records from Marianjoy. The Arbitrator notes that Dr. Sayyad could not offer an opinion as to Petitioner's current condition of ill-being because he had not examined Petitioner in more than two years prior to his testimony.

The Arbitrator finds the opinions of Drs. Landre and Obolsy persuasive. The Arbitrator notes that both doctors reviewed Petitioner's medical records, examined Petitioner, and reviewed her neuropsychological testing. Dr. Obolsky diagnosed Petitioner as malingerer. Dr. Obolsky opined that Petitioner did not suffer PTSD. Dr. Obolsky based his opinion upon the medical records, psychological testing and neurocognitive testing. Dr. Obolsky testified that the neurocognitive testing showed that Petitioner was malingering and exaggerating her cognitive complaints. On the RBANS test, Petitioner scored in the .01 percentile similar to people who are in severe end-state

dementia. The Arbitrator notes that at the time of the testing, Petitioner was taking and passing college classes. Dr. Obolsky testified the MMPI-2 test showed that Petitioner was exaggerating her physical symptoms.

Dr. Obolsky also opined that Petitioner did not suffer a concussion or post-concussion syndrome. Dr. Obolsky testified that Petitioner did not have any of the four symptoms needed to properly diagnose a concussion. Dr. Obolsky testified to diagnose a concussion you must immediately exhibit one of four symptoms (i.e. loss of consciousness, mental state changes, post-traumatic amnesia or focal neurological signs). Dr. Obolsky found that Petitioner did not have any of the four symptoms immediately after either work accident.

Dr. Landre opined that Petitioner's complaints were not causally related to her work injury and were being maintained by other factors such work avoidance or financial renumeration. Dr. Landre opined that Petitioner's performance on some of the standard cognitive test were improbably low and were at a level typically seen in patients with severe brain injuries or advanced dementia.

Dr. Landre also opined that Petitioner's complaints and course of recover, with delayed onset of many symptoms, and little or no improvement and/or worsening of alleged injury-related symptomatology are inconsistent with her injuries. Dr. Landre opined that Petitioner's cognitive tests and results and responses to self-reporting measures reflect probable symptom magnification. (RX 1).

Dr. Sayyad testified that when Petitioner started treating at Marianjoy she complained of blurred vision in the left eye, headaches, sensitivity to light and problems with attention and memory all the result of being punched in the head in October of 2012.

On April 16, 2012 and August 23, 2010, prior to the October 23, 2012 incident, Petitioner reported symptoms of blurry vision in the left eye, migraines increasing in frequency and duration, sensory changes, tingling down the left side of her face, difficulty talking and felt fatigued. (PX 12)

The Arbitrator notes the symptoms Petitioner's claims were related to her October 23, 2012 incident existed prior that incident and that Petitioner failed to fully report these preexisting symptoms to her treating physicians. The Arbitrator further finds that Petitioner's actions supports the opinions of Dr. Obolsy who testified that after reviewing

the results from the psychological testing, Petitioner was misattributing causation Petitioner was piling up every symptom she can think of, whether it's present or not, and claim they were all caused by either the first or second injury. (PX 4).

In support of the Arbitrator's decision relating to issue, (J), has Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds the following facts:

An examination of the bills in petitioner's medical bills exhibit reveals that all medical bills related to the October 23, 2012, incident are satisfied. (PX 9). Therefore, petitioner is awarded no additional benefits for unpaid medical bills. *Id.*

In support of the Arbitrator's decision relating to issue, (L), what is the nature and extent of the injury, the Arbitrator finds the following facts:

Section 8.1b of the Illinois Workers' Compensation Act ("Act") addresses the factors that must be considered in determining the extent of permanent partial disability for accidents occurring on or after September 1, 2011. 820 ILCS 305/8.1b (LEXIS 2011). Specifically, Section 8.1b states:

> For accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:
>
> (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.
>
> (b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:
>
> (i) the reported level of impairment pursuant to subsection (a);
> (ii) the occupation of the injured employee;
> (iii) the age of the employee at the time of the injury;
> (iv) the employee's future earning capacity; and
> (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant

> of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order. *Id.*

Considering these factors in light of the evidence submitted at trial, the Arbitrator addresses the factors delineated in the Act for determining permanent partial disability.

With regard to subsection (i) of Section 8.1b(b), the reported level of impairment pursuant to Section 8.1b(a), the Arbitrator notes that neither party submitted into evidence an AMA impairment rating. Thus, the Arbitrator considers the parties to have waived their right to do so and assigns no weight to this factor.

With regard to subsection (ii) of Section 8.1b(b), the occupation of the injured employee, the evidence established that Petitioner was a health assistant in a school with children with behavior disorders and physical limitations. As such, it is reasonable to assume, Petitioner would continue to be at risk of being hit or struck by a child with behavior issues. Therefore, the Arbitrator find that this factor increases the amount of permanency.

With regard to subsection (iii) of Section 8.1b(b), the age of the employee at the time of the injury, the evidence established that Petitioner was 35 years old on the date of the accident. As employees age, the body becomes less capable of recovering from injuries as someone younger than Petitioner. As such, the Arbitrator finds that this factor only slightly increases the amount of Permanency.

With regard to subsection (iv) of Section 8.1b(b), Petitioner's future earnings capacity, the Arbitrator finds that Petitioner is capable of returning to work without restrictions but that has not for reasons unrelated to her work accident. As such, the Arbitrator finds that this factor has no impact upon the amount of permanency.

With regard to subsection (v) of Section 8.1b(b), evidence of disability corroborated by the treating medical records, Petitioner testified to symptoms unrelated to her work accident. The Arbitrator finds that Petitioner's testimony, regarding evidence of disability, was not corroborated by the treating medical records. Petitioner suffered a 20% perforation of her eardrum, which was repaired. Tests conducted weeks after the surgery show that Petitioner's hearing was normal. Petitioner did make some soft-tissue

complaints of pain involving her neck and nose. As such, the Arbitrator finds that this factor lessens the amount of permanency.

In consideration of the factors enumerated in Section 8.1b, which does not simply require a calculation, but rather a measured evaluation of all five factors of which no single factor is conclusive on the issue of permanency, the Arbitrator finds that Petitioner suffered permanent partial disability of 10% loss of use of man as a whole pursuant to Section 8(d)(2) of the Act, at the applicable minimum permanent partial disability rate, for this date, of accident of $319.00.

In support of the Arbitrator's decision relating to issue, (N), is Respondent due any credit, the Arbitrator finds the following facts:

Pursuant to the agreement made by the parties on the record at the commencement of this trial, the Arbitrator elects to apply Respondent's credit for the permanent partial disability advance to Petitioner's other case, 13 WC 13676, as the Parties assumed it may have greater permanency value.

STATE OF ILLINOIS)
) SS:
COUNTY OF DUPAGE)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JACLYN WELLMAN,

Petitioner,

vs. NO: 13 WC 13676
IWCC: 21IWCC0403

CASE: GLENWOOD ACADEMY,

Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

A Petition under Section 19(f) of the Illinois Workers' Compensation Act to Correct Clerical Error in the Decision and Opinion on Review dated August 9, 2021 has been filed by Respondent herein. Upon consideration of said Petition, the Commission is of the opinion that it should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated August 9, 2021, is hereby vacated and recalled pursuant to Section 19(f) for clerical error contained therein.

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

SEPTEMBER 7, 2021

DJB/mck /s/ *Deborah J. Baker*
43 Deborah J. Baker

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

☐ 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 Causal Connection, Medical, TTD, PPD	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JACLYN WELLMAN,

Petitioner,

vs.

NO: 13 WC 13676
IWCC: 21IWCC0403

CASE: GLENWOOD ACADEMY,

Respondent.

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 whether: the date of accident is correct, the benefit rates are correct, the wage calculations are correct, Petitioner's current condition of ill-being is causally connected to the accident, Petitioner is entitled to medical expenses both previously incurred and prospective, Petitioner's previously incurred medical treatment was reasonable and necessary, Petitioner is entitled to temporary disability benefits, Petitioner is entitled to permanent disability benefits, and "clerical errors," and being advised of the facts and law, modifies the Decision of the Arbitrator as set forth below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

I. HISTORY & SUMMARY

Petitioner filed two claims alleging injuries while employed by Respondent: 13 WC 13675 (acute trauma on October 23, 2012); and 13 WC 13676 (acute trauma on March 19, 2013). Both matters were consolidated for hearing. At the hearing, the parties stipulated that both accidents arose out of and in the course of her employment with Respondent. The Arbitrator thereafter issued two separate decisions.

In case no. 13 WC 13675, the Arbitrator found Petitioner's perforated right eardrum and neck pain were causally related to the undisputed October 23, 2012 accident where a student punched Petitioner. The Arbitrator found further that Petitioner failed to prove she sustained a concussion, post-concussion syndrome, PTSD, TMJ, tinnitus, occipital neuralgia, anxiety, and migraines as a result of the October 23, 2012 accident. The Arbitrator found Respondent had paid all associated medical bills and thus awarded no medical benefits. The parties stipulated that temporary total disability ("TTD") benefits were not at issue in this case. The Arbitrator found Petitioner's injuries caused a 10% loss of the person-as-a-whole pursuant to section 8(d)(2) of the Act.

In case no. 13 WC 13676, the Arbitrator found Petitioner failed to prove she sustained a concussion, post-concussion syndrome, PTSD, TMJ, tinnitus, occipital neuralgia, anxiety, and migraines that were causally related to the undisputed March 19, 2013 accident where a student pushed and hit Petitioner for a second time. The Arbitrator found Petitioner's unspecified condition had resolved as of August 19, 2013 based on Dr. Landre's section 12 examination opinions and awarded medical and TTD benefits through August 19, 2013. The Arbitrator further found Petitioner's injuries caused a 7.5% loss of the person-as-a-whole pursuant to section 8(d)(2) of the Act. The Arbitrator noted the parties stipulated Respondent was entitled to a credit for TTD benefits and an advance in PPD benefits totaling $14,507.77.

Petitioner filed a Petition For Review of both Decisions of the Arbitrator. On review, Petitioner argues: (1) the conditions of post-concussion syndrome, PTSD, and insomnia due to PTSD are causally related to one or both undisputed accidents; (2) Petitioner is owed additional temporary total disability benefits; and (3) the permanent disability awards in both cases are inadequate. Respondent did not file a Petition For Review of either case and did not challenge the Arbitrator's Decisions. Specifically, in case no. 13WC13675, Respondent did not challenge the Arbitrator's finding that "Petitioner has proven by the preponderance of the evidence, that her perforated right eardrum and neck pain was causally related to the October 23, 2012 accident," and did not challenge the award of 10% loss of the person-as-a-whole.

The Commission agrees with the Arbitrator, in part, and finds Petitioner failed to prove that the TMJ, tinnitus, and occipital neuralgia conditions were caused by either the undisputed October 23, 2012 or the March 19, 2013 accidents. However, the Commission disagrees with the Arbitrator, in part, and finds Petitioner proved by a preponderance of the evidence that: (1) the undisputed accidents caused Petitioner to suffer concussions and post-concussion syndrome, which resolved by July 18, 2013; (2) the undisputed accidents aggravated Petitioner's migraines and resolved by July 18, 2013; (3) the undisputed accidents caused Petitioner to suffer PTSD, which resolved by September 20, 2016; and (4) the undisputed accidents aggravated and exacerbated Petitioner's anxiety and depression, which resolved by September 20, 2016.

II. ADDITIONAL FINDINGS OF FACT

In September 2007, Petitioner began working as a health assistant for Respondent, Cooperative Association for Special Education ("CASE")/Glenwood Academy. T. 10. Petitioner explained Glenwood Academy includes kindergarten through 12th grade, and all the students have a mental disability, physical disability, or behavioral problem. T. 13. Petitioner's job was to

provide for the health needs of the students: she administered medication as needed; prepared health files for Individualized Education Plan meetings; and participated in daily or weekly meetings with each student and his/her social worker, psychologist, and physician. T. 11. She would accompany the students on certain field trips if medication issues made it necessary. T. 12. Petitioner is trained in Crisis Prevention and Intervention, and she assisted students who had trouble performing certain activities. T. 12. She was also a paraprofessional for the school, so she assisted students during physical education and helped in classrooms that were short-staffed. T. 12.

On August 23, 2010, Petitioner presented to her family physician, Dr. Sapan Patel at DuPage Medical Group's Wheaton Medical Clinic. Petitioner reported numbness and tingling in her left side face and arm for approximately three years. Petitioner also reported having severe headaches on the left side with blurry vision, anxiety when her migraines progressed, and fatigue. Dr. Patel diagnosed Petitioner with numbness and tingling, chronic left-sided headaches, and fatigue and recommended that Petitioner undergo an MRI of the brain to rule out a mass or other structural abnormality. Dr. Patel referred Petitioner to neurology for possible complex migraines. On August 30, 2010, Petitioner underwent an MRI of the brain which was within normal limits. Pet.'s Ex. 1; Pet.'s Ex. 12.

On April 16, 2012, Petitioner returned to Dr. Patel and reported that her migraines were getting worse over the last couple of months and she experienced facial numbness, blurry vision, tingling and sensory changes when she had severe migraines. Petitioner also reported a deep pain in the head that she had not experienced before. Dr. Patel noted that she had no focal abnormalities on a comprehensive neuro exam and diagnosed Petitioner with chronic migraines. Dr. Patel recommended Petitioner undergo a CT of the brain and blood work, and adjusted Petitioner's medication, opining that one medication may have been contributing to Petitioner's "rebound symptoms." Petitioner underwent the CT scan of the brain that same day, which was unremarkable. Pet.'s Ex. 12.

The October 23, 2012 Undisputed Accident

The parties stipulated that Petitioner sustained an accidental injury arising out of and occurring in the course of her employment on October 23, 2012. Arb.'s Ex. 1. Petitioner testified she was exiting a classroom in the elementary wing, having just administered medication to a student, when she encountered a classroom aide and another student in the hallway; the student was yelling that he had been punched by a fellow student, and the aide was walking him to Petitioner's office to get an ice pack. T. 14. Petitioner explained the protocol is that students in any kind of crisis are supposed to have three staff members with them, but the classroom aide left Petitioner alone with the student and "when I was asking him how did this happen, how he was hurt, he was yelling and swearing and then he started punching me." T. 14. Petitioner explained the student struck her with a fist using both hands. Petitioner also testified that the student punched her on the bridge of her nose, in the mouth, in the right ear, and jaw. Petitioner testified that she could not hear immediately after the student punched her in the ear. Petitioner testified further that she hit hear head on the wall and blacked out after being punched. T. 15. Petitioner testified the student was a first grader; he weighed 50 or 60 pounds and his height was below Petitioner's

shoulder level. T. 15-16. Petitioner is 5'1" and she weighed approximately 110 pounds at that time. T. 16. Petitioner testified that she reported the incident. T. 16.

Petitioner sought medical care that day at DuPage Medical Group's Wheaton Medical Clinic where she was evaluated by Dr. Patel who had treated Petitioner previously. Pet.'s Ex. 12. Dr. Patel memorialized that Petitioner reported being punched in the face by a student, with blows landing on her forehead, nose, and right ear, and complained of ear pain and decreased hearing on the right side. Pet.'s Ex. 12. The doctor noted Petitioner denied vision changes and loss of consciousness. Pet.'s Ex. 12. Dr. Patel's physical examination revealed no large contusions to the head and facial bones stable to palpation, however the right tympanic membrane had a central perforation. Pet.'s Ex. 12. Diagnosing a traumatic right ear perforation, Dr. Patel prescribed Cipro ear drops and referred Petitioner for evaluation by an ear, nose, and throat specialist. Pet.'s Ex. 12. At trial, Petitioner testified she continued working after the injury. T. 29.

On October 24, 2012, Petitioner was evaluated by Dr. Andrew Celmer, an otolaryngologist. Pet.'s Ex. 3. Dr. Celmer noted Petitioner had been referred by Dr. Patel for right tympanic membrane perforation. Pet.'s Ex. 3. Petitioner provided a consistent history of the altercation the day before followed by sudden ear pain and hearing loss; Petitioner also indicated she was struck in the nose and complained her nose was sore, but her breathing was unaffected. Pet.'s Ex. 3. Following an examination, Dr. Celmer diagnosed traumatic right ear perforation with conductive hearing loss as well as nasal trauma without evidence of fracture. Pet.'s Ex. 3. Dr. Celmer attempted a paper patch myringoplasty, but Petitioner could not tolerate the procedure so the doctor instead recommended dry ear precautions with the hope the tympanic membrane would heal on its own. Pet.'s Ex. 3.

That same day, Petitioner completed an Employee Report of Injury. Pet.'s Ex. 1. Therein, Petitioner memorialized that she was attempting to calm a student when he "punched me in the forehead, nose, and [right] temporal area/ear." Pet.'s Ex. 1. A witness statement prepared by Denise Polick reflects Petitioner was struck repeatedly in the nose and the ear area. Pet.'s Ex. 1.

On November 16, 2012, the incident was reported to the Glendale Heights Police Department. The report reflects Petitioner was punched three times in the nose and three times in the temporal/ear area. Pet.'s Ex. 1. The responding officer memorialized Petitioner wanted to document the incident but did not wish to pursue a complaint. Pet.'s Ex. 1.

On December 5, 2012, Petitioner was re-evaluated by Dr. Celmer, who noted dry ear precautions had been unsuccessful: there had been no closure of the perforation and Petitioner had persistent hearing loss and right ear pain. Concluding Petitioner likely required formal tympanoplasty, Dr. Celmer referred Petitioner to Dr. Griffith Hsu for an otology consultation. Pet.'s Ex. 3.

At trial, Petitioner testified that in the weeks after her accident, in addition to her ear symptoms, she also had pain in her teeth and jaw. T. 18. Pursuant to a referral from Dr. Ismail, Petitioner consulted with Gregory Doerfler, D.D.S., on December 14, 2012. T. 18. Dr. Doerfler noted Petitioner complained of pain with function as well as "popping" on the right side after being struck three times in the right side of the face; Petitioner did not lose consciousness but did slide

to the floor, and over the next hours, her jaw stiffened up. Cone-bean CT dental imaging was completed and was negative for significant osseous or soft-tissue abnormality, and Dr. Doerfler indicated further imaging should be considered. Pet.'s Ex. 11.

On December 18, 2012, Petitioner was evaluated by Dr. Hsu. Upon examining Petitioner's tympanic membrane perforation and conducting an audiogram and tympanogram, Dr. Hsu recommended proceeding with tympanoplasty. Pet.'s Ex. 13. On January 7, 2013, Dr. Hsu performed a right tympanoplasty and right allograft reconstruction. Pet.'s Ex. 13. Post-operatively, Petitioner attended routine follow-up appointments with Dr. Hsu.

On February 11, 2013, Petitioner was evaluated pursuant to §12 by Dr. Sam Marzo. T. 28-29. Petitioner gave a history of being hit in the head with a fist multiple times in October 2012. She was thereafter diagnosed with a perforated tympanic membrane and underwent a tympanoplasty in January. She advised she was recently seen by a neurologist who diagnosed post-concussive syndrome as well as occipital neuralgia and performed a nerve block, and Petitioner had further been told she has TMJ. Upon examination and hearing tests, Dr. Marzo's diagnoses included central perforation of tympanic membrane; post-concussion syndrome; conductive hearing loss, tympanic membrane; subjective tinnitus; otogenic pain; ear pressure; and temporomandibular joint disorders, unspecified. Dr. Marzo noted Petitioner's right ear appeared to be healing nicely and recommended she undergo an audiogram as soon as it healed completely. The doctor observed Petitioner's pain and tinnitus should improve with time. Dr. Marzo further recommended Petitioner continue TMJ treatment as well as neurologic management of her post-concussive syndrome. Pet.'s Ex. 16.

At the March 7, 2013 follow-up with Dr. Hsu, Petitioner indicated she continued to experience muffled hearing. On examination, Dr. Hsu observed Petitioner's tympanic membrane was intact; an audiogram revealed Petitioner's right conductive hearing loss had resolved. Dr. Hsu released Petitioner from care. Pet.'s Ex. 13.

That same day, March 7, 2013, Dr. Karen Levine performed a neurological evaluation of Petitioner at Respondent's request. The record reflects Dr. Levine opined Petitioner's pre-existing migraines could have been aggravated by the work injury, and the doctor recommended further workup with an MRI; Dr. Levine's diagnosis was mild post-concussion syndrome. Resp.'s Ex. 4.

The March 19, 2013 Undisputed Accident

The parties stipulated that Petitioner sustained a second accidental injury arising out of and occurring in the course of her employment on March 19, 2013. Arb.'s Ex. 2. Petitioner testified she was attacked while in an elementary classroom to administer medication:

> And I went to one student to give him his medication; and I bent down to give it to him and another thought that it was his turn for medication and it was not, so he got angry and was yelling and swearing at me and he ran out of the classroom. So the classroom assistant ran out after him and I could not leave the room with the other students in it, they can't be alone. So I finished what I was doing with the other students and their medication, and the student that ran out of the room came back in

> the room running and swearing at me. And my back was to the area he was coming from. He punched me in the middle of my back, jumped on my back, started punching me in the neck and in my head, the back of my head. And I tried to get him off me and he kept punching me, and I hit the wall in the front and blacked out and had to have somebody walk me to my office. I couldn't walk straight. T. 21-22.

The student was eight years old and weighed 60 or 70 pounds; he punched Petitioner with both fists. T. 22. Petitioner explained her forehead and face hit the wall before she blacked out. T. 22.

Petitioner sought treatment that day at the Central DuPage Hospital emergency room where she was seen by Kerri Manning, PA-C, and Joseph Boyle, D.O. The records reflect Petitioner presented with a chief complaint of concussion and provided the following history:

> The patient is a 35-year-old female who comes in today after an injury at work. The patient in October was punched by a student at an alternative school, where she works at and sustained a pretty significant concussion with a ruptured tympanic membrane. She supposedly suffers from postconcussive syndrome and has been under the care of Dr. Cheng of neurology. She continues to have headaches and some occipital neuralgia. The patient has been back at work and today was hit from behind by a student and punched in the occiput. Has worsening head pain and dizziness as well as nausea at this time. There is no loss of consciousness, no numbness, tingling, or weakness anywhere. The patient took Fioricet with no relief of her pain. Pet.'s Ex. 15.

Examination findings included normocephalic and atraumatic head; pupils equal, round, and reactive to light; and Petitioner was alert and oriented to person, place, and time with normal mood and affect. After diagnostic workup, Dr. Boyle's impression was as follows:

> Pt with neg. CT. Pt with new concussion. Unfortunately, the pt. Has [*sic*] post-concussive syndrome from a head injury a few months ago. Pt seems to be suffering from PTSD from first concussion. Pt met with social worker who assisted with f/u for this pt. Pt given new neurologist as well. Pet.'s Ex. 15.

Petitioner was authorized off work for the remainder of the week and discharged with instructions to follow-up with her primary care physician. Pet.'s Ex. 15. Petitioner testified she has not worked since the March 19, 2013 accident. T. 30.

The next day, March 20, 2013, Petitioner completed an Employee's Report of Injury. Petitioner memorialized that a student ran into the classroom "and pushed me in the back and hit the back of my head, my head whipped back," and identified injuries to her head, neck, back, and another concussion. Pet.'s Ex. 1.

Petitioner testified that while she was under the care of Dr. Cheng, she underwent some injections. Ultimately, however, Dr. Cheng referred her to Marianjoy for further evaluation and treatment with a brain injury specialist. T. 24.

On April 11, 2013, Petitioner consulted with Dr. Sachin Mehta at Marianjoy Medical Group. The records reflect Petitioner's chief complaint was post-concussion neuro behavioral deficit, neuro cognitive deficit, impaired balance, visual spatial, headache, and insomnia. The two work injuries were detailed in the history of illness and Petitioner's current symptoms were as follows:

> She [complains of] TROUBLE WITH "FLIPPING LETTERS, NUMBERS, DIRECTIONS", CALCULATING DIFFICULTIES. HER HUSBAND NOTED THAT SHE WROTE "NAVERPILE INSTEAD OF NAPERVILLE." SHE STATES SHE IS MORE IRRITABLE, LESS TOLERANT OF HER KIDS [*sic*] ACTIONS. SHE [CONTINUES TO COMPLAIN OF] CONSTANT [HEADACHES] AND [BILATERAL] EYE TWITCHING. SHE RECEIVED AN [RIGHT] OCCIPITAL NERVE BLOCK BY DR. CHANG [*sic*] WHICH IMPROVED THE [RIGHT] EYE TWITCHING BUT ONLY HELPED [HEADACHE] FOR 3-4 DAYS.
> HER MOOD IS DOWN. SHE FEELS NERVOUS AND ANXIOUS. SHE STATES SHE HAS BEEN TOLD SHE HAS PTSD. SHE [COMPLAINS OF] FEELING FATIGUED MOST OF THE DAY AS WELL AS JITTERY. APPETITE IS POOR AND SHE MUST FORCE HERSELF TO EAT BUT THEN DEVELOPS NAUSEA.
> SHE FEELS LOSS OF CONTROL OVER HER LIFE. IN ADDITION TO WORKING 37 HOURS/WEEK, SHE WAS ALSO ATTENDING CLASSES 2-6 HOURS/WEEK. HER HUSBAND IS ON DISABILITY AND CANNOT WORK OR HELP MUCH RUN THE HOUSE. SHE IS THE PRIMARY CAREGIVER FOR HER CHILDREN. Pet.'s Ex. 8 (Emphasis in original).

The Post-Concussion Physical Exam findings included tenderness to the neck/upper back and right occipital nerve, decreased neck range of motion, slow and guarded gait, abnormal balance, and mild convergence deficits; cognition findings included recent and remote memory intact, lethargy, anxiety, depression, and flat affect. Petitioner was noted to be anxious and tearful throughout the examination. Dr. Mehta's assessment was post-concussion syndrome, neurobehavioral deficits/neurocognitive, impaired balance, insomnia, anxiety/depression/PTSD, and chronic post-concussion headaches. The treatment recommendation was multifaceted. For the post-concussion syndrome, Dr. Mehta recommended enrollment in the post-concussion day rehab program with therapy for vestibular dysfunction, visual-spatial deficits, and neurocognitive deficits; a neuropsychology evaluation prior to initiating therapy to assist with coping and validity assessment; and a neuro-optometry evaluation for visual-spatial deficits. Noting Petitioner had a pre-existing history of mild depression likely exacerbated by multiple assaults/concussions, Dr. Mehta referred Petitioner to Dr. Jordania, a neuropsychiatrist, and to neuropsychology to address Petitioner's depression/anxiety. Dr. Mehta prescribed Nortriptyline, Xanax, and Melatonin for Petitioner's insomnia; Ritalin for her daytime fatigue; and Nortriptyline and Fioricet for headaches. Finally, Dr. Mehta authorized Petitioner off work and directed her not to drive. Pet.'s Ex. 8.

On April 15, 2013, Petitioner presented to the Glen Oaks Hospital emergency room complaining of an onset of left paresthesia and altered speech 20 minutes prior. Dr. Daniel O'Reilly consulted and noted Petitioner had developed a right-sided headache followed shortly

thereafter by numbness on the left side of her tongue and lip with some slurred speech and then developed numbness in her left arm and her left leg. It was further noted Petitioner had a prior history of being punched in the face with brief loss of consciousness in October as well as a second assault in March, and she was in treatment for post-concussion syndrome, which she described as headache which was constant since October, frequent nausea, postural dizziness, and difficulty with her balance. Petitioner was worked up for possible stroke with a CT and MRI of the head/brain; when the testing was negative for TIA, Petitioner was discharged with instructions to follow-up with her neurologist and primary care physician. Pet.'s Ex. 14.

On April 22, 2013, Dr. Nina Jordania performed an initial psychiatric evaluation of Petitioner as recommended by Dr. Mehta. The record reflects Petitioner reported headaches with photo and phonophobia, jumpiness and nervousness, and feeling very anxious and fearful dating back to her first concussion. Petitioner also reported poor balance, difficulty focusing, fear of being alone with strangers, nightmares, constantly rewinding the events, hypervigilance, as well as multiple somatic symptoms. Dr. Jordania's assessment was anxiety due to medical condition (post-concussive syndrome) and PTSD, insomnia due to PTSD, and post-concussive syndrome. Dr. Jordania discussed psychoeducation strategies and adjusted Petitioner's medications. Pet.'s Ex. 6.

In late April and early May, Respondent conducted surveillance of Petitioner. The Commission has reviewed the video offered into evidence as Respondent's Exhibit. 6.

On April 30, 2013, Petitioner commenced therapy through Marianjoy's day rehab program. Over the next several weeks, Petitioner attended approximately twice weekly occupational, physical, and speech therapy. Pet.'s Ex. 7.

At the May 16, 2013 follow-up appointment with Dr. Mehta, Petitioner reported she was making progress with therapy; she continued to have constant right-sided headache but was learning strategies to manage the pain. Dr. Mehta noted the therapy staff reported Petitioner's headaches were slightly improved, her overall balance was better, her tolerance for eye movements was improved, and she had improved attention and executive functioning, especially with structured tasks with breaks. Dr. Mehta further noted Petitioner underwent a neuropsychological evaluation with Dr. Devereux, and Petitioner indicated there were problems with computer color, which could affect Petitioner's performance. Dr. Mehta spoke with Dr. Devereaux, who indicated Petitioner performed on the test as poorly as someone who has Alzheimer's although she does not function in her daily life as someone who does have Alzheimer's disease. Dr. Mehta adjusted Petitioner's Ritalin dosing and directed Petitioner to continue with the comprehensive day rehab program as well as follow-up with Dr. Jordania. Pet.'s Ex. 8.

Over the next weeks, Petitioner underwent further therapy at Marianjoy and also saw Dr. Jordania, who adjusted Petitioner's medication. Pet.'s Ex. 6.

On June 6, 2013, Petitioner presented to Dr. Hsu; the record reflects Dr. Celmer requested the consultation to evaluate Petitioner's complaints of balance problems, ringing in both ears, and decreased hearing on the right. A hearing assessment was performed and revealed a slight decrease to thresholds compared to the March 17, 2013 assessment. Dr. Hsu's assessment was tinnitus most

likely secondary to concussion and unspecified hearing loss. Petitioner was directed to return if her symptoms failed to improve. Pet.'s Ex. 13.

Petitioner was discharged from speech therapy on June 13, 2013. The speech language pathologist documented Petitioner demonstrated independent use of strategies. Pet.'s Ex. 7. The next day, June 14, Petitioner was discharged from occupational therapy. The discharge summary reflects Petitioner had achieved all therapy goals but had remaining impairments and limitations:

> [Patient] with good progress in OT meeting all goals set at evaluation. Patient has demonstrated a steady improvement in her ability to return to IADL and community level tasks by implementing strategies learned in OT to reduce stimulation and reduce exacerbation of post concussive symptoms. [Patient] demonstrates improved ocularmotor function with only mild impairment with movements to outer areas of the visual field only rarely. Patient is now able to turn her eyes and head to see her full environment without increased symptoms during her sessions in the clinic. Patient still fatigues more quickly than baseline but with good planning she can manage this to maximize her productivity. Her area of greatest limitation is still in navigating a large, busy area in the community for tasks that require greater amounts of visual scanning and locating items such as during grocery shopping. [Patient] also does still have headache pain although it is more manageable at a 4/10 or less most times. Pet.'s Ex. 7.

On June 21, 2013, Petitioner underwent a driver rehabilitation evaluation at Marianjoy. The occupational therapist opined Petitioner demonstrated the necessary skills for independent driving and no further sessions were indicated. Pet.'s Ex. 5, Pet.'s Ex. 7.

Petitioner was re-evaluated by Dr. Mehta on July 2, 2013. Dr. Mehta noted Petitioner completed the day rehab program and transitioned to a home exercise program; it was further noted Petitioner finished seeing Dr. Devereux who diagnosed Petitioner with PTSD. Dr. Mehta concluded Petitioner was steadily improving from a concussion standpoint but continued to have significant PTSD symptoms. Dr. Mehta recommended Petitioner continue seeing Dr. Jordania for medical management of her PTSD and also referred her to a psychologist specializing in post-traumatic stress counseling. Pet.'s Ex. 5, Pet's Ex. 8.

At the July 18, 2013 follow-up appointment with Dr. Jordania, Petitioner reported significant improvement in her headaches, but her PTSD was still very symptomatic. She described persistent fear of children and people in public places as well as fear of being attacked. Dr. Jordania diagnosed anxiety due to medical condition (post-concussive syndrome), PTSD, and insomnia due to PTSD, and adjusted Petitioner's medications. Pet.'s Ex. 6. On July 23, Dr. Jordania authored a letter indicating Petitioner was unable to work due to post-concussion symptoms. Pet.'s Ex. 5.

Pursuant to Dr. Mehta's referral, Petitioner sought treatment at Pathways Psychology Services; the initial consultation with Steve Cromer, L.C.P.C., took place on July 31, 2013. Diagnosing PTSD and concussions - beat up at work, Cromer recommended individual therapy to address Petitioner's PTSD and fear/anxiety. Pet.'s Ex. 5. Petitioner attended therapy sessions with Cromer for the next several months. Pet.'s Ex. 5.

On August 19, 2013, Dr. Nancy Landre performed a neuropsychological evaluation pursuant to §12 at Respondent's request. Dr. Landre's report reflects Petitioner's performance on the symptom validity assessment was abnormal, indicating the cognitive test results were not valid for interpretation as they likely portrayed her as much more impaired than she was. Dr. Landre noted Petitioner's level of performance on some standard cognitive indices was improbably low, at a level typically seen in patients with severe brain injuries or advanced dementia. Dr. Landre concluded as follows: "Available evidence, therefore, suggest that factors other than the injury itself underlie Ms. Wellman's continued complaints. Petitioner is capable of resuming full-time work activity without any restrictions at this time. No further recommended treatment." Resp.'s Ex. 1.

A week later, on August 26, 2013, Dr. Mehta authored a note indicating Petitioner remained under his care for post-concussive syndrome complicated by post-traumatic stress symptoms and was unable to return to work. Pet.'s Ex. 5.

Over the next two months, Petitioner remained off work and attended counseling sessions with Cromer and follow-up appointments with Dr. Mehta and Dr. Jordania. At the November 4, 2013 re-evaluation with Dr. Mehta, Petitioner reported continuing difficulties with headaches, dizziness with certain movements, and anxiety; Petitioner described experiencing agoraphobia, flashbacks, and trouble sleeping, with occasional nightmares. Petitioner advised the doctor that she hoped to return to work but was unable to go back to her previous job, and she inquired about other options. Dr. Mehta directed Petitioner to continue seeing Dr. Jordania and her counselor, and ordered a vocational assessment:

> We did write an order for vocational counseling to assess her current condition. She is unable to return to her previous job. I would like her to have some idea as to other options that she can tolerate. She has significant PTSD, which may prevent her from returning to the previous job. She also continues to have some neurobehavioral, neurocognitive deficits at this time. Therefore any type of return to work, she would need a full neuropsychology battery. Pet.'s Ex. 8.

The doctor further documented he was leaving Marianjoy, and Petitioner's care would thereafter be overseen by Dr. Sayyad. Pet.'s Ex. 8.

On November 11, 2013, Petitioner met with Ken Skord, M.S., C.R.C., for a vocational rehabilitation consultation. Skord documented Petitioner's vocational history included EMT certification, certified phlebotomist, CNA, certification to perform school vision and hearing screenings, and licensed cosmetologist; Petitioner additionally had paramedic training and had nearly completed an AA degree in science. Pet.'s Ex. 7. Vocational barriers were identified as post-traumatic stress disorder, ruptured eardrum, hand tremors, migraine headaches, jaw problems, eye problems, depression, and anxiety. Petitioner reported she wished to work again but expressed significant fears and concerns about returning to work to her current employer or similar work. She indicated she was contemplating applying for a part-time position as a breast-feeding counselor assisting women who want and need training, as she has interest and previous training in this area. Skord encouraged Petitioner to contact him if she wished to pursue formal vocational

evaluation and counseling and provided her with a resource for finding volunteer opportunities. Pet.'s Ex. 7.

Follow-up appointments with Dr. Jordania and counseling sessions with Cromer continued through the end of 2013 and into 2014. On January 30, 2014, Petitioner presented for an initial evaluation with Dr. Anjum Sayyad. Dr. Sayyad noted Petitioner's past medical history was significant for post-concussive syndrome with posttraumatic stress disorder, associated with neurobehavioral deficits. Petitioner recently had her Ritalin increased and reported improvement in her attention and concentration; however, she continued to have poor sleep, light and sound sensitivity, hypervigilance, memory problems, and dizziness with position changes. Dr. Sayyad's impression was ADL mobility dysfunction with neurocognitive and neurobehavioral deficits associated with post concussive syndrome and PTSD. The doctor recommended continued treatment with Dr. Jordania and authorized Petitioner to remain off work. Pet.'s Ex. 4.

Over the next several months, Petitioner underwent regular counseling with Cromer and attended routine follow-up appointments with Dr. Jordania and Dr. Sayyad. Pet.'s Ex. 5, Pet.'s Ex. 6, Pet.'s Ex. 7. In May 2014, Petitioner reported she completed two classes but did not feel that she did well. Dr. Sayyad's nurse practitioner, Sylvia Duraski, APN, encouraged Petitioner to take another class, indicating speech therapy could be ordered to assist with Petitioner's attention and memory deficits. When Petitioner followed up on September 4, 2014, she reported she had taken additional classes but failed both; APN Duraski directed Petitioner to continue treatment with Dr. Jordania and counseling with Cromer, and also ordered speech therapy to help Petitioner in her classes. Petitioner was to remain off work and neuropsychological testing was ordered to assess whether Petitioner was ready to return to work. Pet.'s Ex. 4, Pet.'s Ex. 8.

The recommended therapy evaluation took place on November 13, 2014. The therapist concluded Petitioner required skilled speech language pathology services to facilitate functional cognitive communication skills to enable safety and independence with daily tasks and responsibilities at home, in the community, and at work. A course of three sessions per week for four to six weeks was recommended. Pet.'s Ex. 7. Petitioner started therapy on November 25, 2014 and continued through the end of the year.

On December 31, 2014, Dr. Alexander Obolsky issued a report summarizing the psychiatric examination of Petitioner he conducted pursuant to §12 at Respondent's request. Petitioner had undergone testing at Dr. Obolsky's direction on April 29, 2014 and met with him on May 16, 2014. Dr. Obolsky concluded Petitioner exhibited malingering as well as avoidant, dependent, and compulsive personality features. Dr. Obolsky opined there was no objective evidence that Petitioner's "alleged work events caused clinically significant mental, emotional, or cognitive dysfunction." Resp.'s Ex. 3. The doctor indicated that during the forensic psychiatric evaluation, Petitioner did not present with behavioral symptoms of anxiety, distress, or avoidance when describing the alleged traumatic events, and she had no difficulties with recall, describing events in detail, and showed neither anxiety nor hyperarousal when recalling and discussing these events. In contrast, on the medical psychiatric questionnaire, she endorsed over 40 current assorted symptoms involving various bodily symptoms, and on forensic psychological testing, Petitioner exaggerated somatic and cognitive complaints and inconsistently magnified psychiatric symptoms. Dr. Obolsky opined Petitioner's observed behaviors during the two days of the evaluation were

incongruent with her self-reported subjective complaints. Dr. Obolsky further felt Petitioner's self-report of subjective symptoms was unreliable due to her reporting inauthentic, exaggerated, and inconsistent symptoms. Dr. Obolsky opined Petitioner had been exaggerating her various mental, emotional, and cognitive complaints "as far back as several weeks after the alleged second injury." Resp.'s Ex. 3. Dr. Obolsky believed Petitioner exhibited "life-long maladaptive avoidant, dependent, and obsessive-compulsive personality features." Resp.'s Ex. 3. Dr. Obolsky concluded as follows:

> …Ms. Wellman reports multiple and various subjective mental, emotional, and cognitive symptoms. Her self-report is unreliable as evidenced by exaggeration of symptoms, inconsistencies, and discrepancies noted above. There is no objective evidence to support presence of reported symptoms and the alleged causal connection of such symptoms to the work events in 2012 and 2013. On the other hand, Ms. Wellman exhibits a life-long personality features [*sic*] that interfere with her interpersonal functioning leading to dysthymia, anxiety, worries, fears, and somatic complaints. Ms. Wellman has decided not to return to her employment, she is claiming mental, emotional, and cognitive symptoms as justification for remaining off work. Resp.'s Ex. 3.

Dr. Obolsky further concluded Petitioner did not develop post-traumatic stress disorder due to the work events. Resp.'s Ex. 3.

Follow-up treatment with Dr. Jordania and Dr. Sayyad and counseling with Cromer continued into 2015. On April 21, 2015, Petitioner was re-evaluated by Dr. Jordania. Dr. Jordania memorialized that upon Petitioner's initial presentation, Petitioner's symptom complex included problems with sleep, constant headaches with photo and phonophobia, nervousness, heightened anxiety, inability to focus, memory difficulties, nightmares, fear of everything, ringing in her ears, vision problems, and inability to drive due to poor balance. Petitioner's current symptoms were noted to be headaches with increasing sensitivity to different stimuli as the day progresses, persistent ringing in the ears, improved palpitations, and continuing jumpiness but without automatically assuming that it is a bad thing. The doctor observed Petitioner was "very disturbed by the review of independent Neuropsychological evaluation concluding that her presentation and symptoms do not meet the criteria of PTSD not postconcussive syndrome, diagnosing her with Malingering and Somatization." Pet.'s Ex. 6. Upon discussing Petitioner's cognitive and mood status, Dr. Jordania concluded Petitioner had "achieved MMI with the present medication regimen." Pet.'s Ex. 6. Dr. Jordania's assessment remained anxiety due to medical condition (post-concussive syndrome), PTSD, and insomnia due to PTSD; the treatment plan was to "keep her meds as is and add amantadine." Pet.'s Ex. 6.

On July 7, 2015, Petitioner followed up at Marianjoy. The record reflects Petitioner's symptoms were unchanged. Pet.'s Ex. 4.

In early 2016, Respondent obtained a labor market survey. Resp.'s Ex. 5. The February 29, 2016 report indicates appropriate vocational goals for Petitioner include claims clerk, receptionist, collections clerk, hospital-admitting clerk, radio dispatcher, administrative clerk, customer service clerk, home attendant, and teacher aide. The wage range for those positions within a 50-mile radius was $12.00 to $23.00 per hour. Resp.'s Ex. 5.

Petitioner's next follow-up visit at Marianjoy occurred on March 25, 2016. Petitioner reported her headaches were under control since Dr. Jordania increased her Depakote dose; Petitioner continued to get headaches but they did not occur until evening, though the side effect of Depakote was Petitioner got tired in the afternoon. Petitioner further advised she recently resumed taking classes and was enrolled in a criminal investigation class as well as a grief therapy class; she reported the grief class was helping with her PTSD. After discussion with Dr. Sayyad, Petitioner was advised to try a small dose of Amanatadine to address her fatigue. She was otherwise to continue with the treatment plan of ongoing follow up with Dr. Jordania and the psychologist. Pet.'s Ex. 4, Pet.'s Ex. 8.

On May 18, 2016, Petitioner saw Dr. Jordania for the last time; the record reflects the doctor advised Petitioner that she would be moving from the area. Dr. Jordania reiterated that Petitioner remained at maximum medical improvement with her present medication regimen, and discussed transitioning her care to another psychiatrist. Pet.'s Ex. 6.

The last medical visit in the record is the September 20, 2016 follow-up at Marianjoy. Petitioner reported she started taking Amantadine as directed at the last visit and was much less tired during the day. She further advised headaches on the right side of her head had returned, her blood pressure was slowly climbing, and she was still looking for a psychiatrist to replace Dr. Jordania. Petitioner reported that she was doing well in her classes and was taking more counseling classes. The diagnoses on that date included post-concussion syndrome; major depressive disorder, single episode, unspecified; posttraumatic stress disorder; posttraumatic headache, unspecified, not intractable; insomnia, unspecified; and other symptoms and signs involving cognitive functions. Dr. Sayyad's nurse practitioner provided names of potential psychiatrists, adjusted Petitioner's Ritalin dose, encouraged Petitioner to continue taking classes, and directed Petitioner to remain off work. Pet.'s Ex. 4, Pet.'s Ex. 8.

At trial, Petitioner described what she experienced from April 2013 to 2018. Petitioner testified her vision and hearing were getting worse, balance was a problem, lights and noises would cause ringing in her ears, and she became dizzy if she moved too fast. T. 27. There was a period where she could not drive because she had diminished peripheral vision and depth perception in her left eye. T. 27-28. Prior to her initial work accident, Petitioner exercised on a regular basis, did not take medication for any reason, and could sleep, go running, use the stethoscope properly, and see properly. T. 29.

Petitioner testified she returned to school at College of DuPage in 2017 and completed an Associate Degree in Applied Science in Human Services for Addictions Counseling in May 2019. T. 31-32. Petitioner described her time in college as difficult: "I had some roadblocks to try to complete it. I had a lot of help with my professors and counselors and advisors at COD to help me through. Marianjoy had given me an order for accommodations while I was in school." T. 32. Petitioner explained her accommodations included extra testing time, extra time for work, and a private area to feel safe studying. T. 32. Petitioner had trouble "flipping numbers around" and problems comprehending what she was reading. T. 33.

Petitioner described her current difficulties. She has problems sleeping and has nightmares about "these issues occasionally." T. 36. She gets dizzy and can lose her balance if she stands too

quickly from a seated position. T. 36. She experiences loud ringing in her ears when she gets anxious, which causes her to get "light-headed." T. 36. She is sensitive to bright lights and she gets nervous around a lot of people "in newer situations." T. 36. She becomes anxious in public. T. 37. She uses landmarks to remember where she parked her car because she has difficulty remembering things when she gets nervous. T. 38. Petitioner takes multiple prescription medications: Lamictal for migraines, Lexapro for depression, Buspar for anxiety, Ritalin for concentration, and potassium to counteract cardiac side effects of her other medications. T. 35.

Depositions

The March 1, 2017 evidence deposition of Dr. Anjum Sayyad was admitted as Petitioner's Exhibit 10. Dr. Sayyad is board-certified in brain injury medicine as well as physical medicine and rehabilitation. Pet.'s Ex. 10, p. 5-6. Dr. Sayyad is the residency director of the physical medicine and rehabilitation medical residency program at Marianjoy Rehabilitation Hospital and is a former medical director of Marianjoy's inpatient and day rehabilitation brain injury program. Pet.'s Ex. 10, Dep. Ex. 1.

Dr. Sayyad testified she assumed Petitioner's care when Dr. Mehta left the practice; Dr. Sayyad reviewed Dr. Mehta's treatment notes prior to seeing Petitioner. Pet.'s. Ex. 10, p. 10. Dr. Sayyad first evaluated Petitioner on January 30, 2014; this was in connection with Dr. Sayyad's role as medical director of Marianjoy's Brain Injury Program. Pet.'s. Ex. 10, p. 9. At that initial evaluation, Petitioner complained of problems with concentration, headaches, and problems with sleep. Pet.'s. Ex. 10, p. 10-11. Petitioner reported Dr. Jordania was managing her medication, and her current Ritalin regimen helped her attention and concentration difficulties. Pet.'s. Ex. 10, p. 11. Petitioner further advised she was taking online classes and was also undergoing vocational rehabilitation counseling with a goal of returning to work when she was better able to perform on the cognitive tests; Dr. Sayyad explained Petitioner "was very sensitive to light and sound and was hyper-vigilant, which would be consistent with her diagnosis of PTSD." Pet.'s. Ex. 10, p. 12. Dr. Sayyad performed a physical examination and observed findings of anxiety and depression as well as a flat affect. Pet.'s. Ex. 10, p. 13. Dr. Sayyad authorized Petitioner off work and recommended she follow up with Dr. Jordania for medication management of her post-concussion neurocognitive issues with attention and concentration. Pet.'s. Ex. 10, p. 14-15.

Dr. Sayyad continued to see Petitioner every three to four months until September 2016. Pet.'s. Ex. 10, p. 17. Dr. Sayyad summarized Petitioner's treatment over that period:

> But in short, she continued to have significant amounts of anxiety, where she for a few visits continued to exhibit picking at her scalp, having problems with attention and concentration. We would occasionally make changes in some of those medications, but her anxiety was such that sometimes she could not incorporate the changes we'd recommend. One example was we had recommended trialing Inderal, which can be very helpful for headache pain and for anxiety, but she was so concerned about blood pressure changes, she couldn't really make herself take the medicine or fill the prescription. It would take a couple of visits to kind of convince her to follow through on some of the treatment because of her anxiety being so great. By the time I saw her in her last visit, September 20th of 2016, she started to

> show some signs of some improvement. She was taking new medicines at that point to help with her attention and focus. She continued to have headaches. They would wax and wane throughout these visits. She still had one by the last visit. She was tolerating the Ritalin. And she was, at one point, as you recall, she was seeing Dr. Jordania, but Dr. Jordania had moved to Florida so she didn't have a psychiatrist to follow-up with and was trying to identify one at that point. And she was doing a little bit better in her classes by the last visit that I saw her. Pet.'s. Ex. 10, p. 17-19.

Directed to the September 20, 2016 visit, Dr. Sayyad testified that the progress note indicated Petitioner had a much brighter affect, was smiling and appeared more optimistic on examination. Pet.'s. Ex. 10, p. 19. The assessment was post-concussion syndrome, major depressive disorder, post-traumatic stress disorder, post-traumatic headache, insomnia, and signs and symptoms involving cognitive function. Pet.'s. Ex. 10, p. 20. The treatment plan was for Petitioner to find a new psychiatrist as soon as possible, increase her Ritalin dose to combat her headaches, and Petitioner was also encouraged to continue with school. Pet.'s. Ex. 10, p. 20-21. Dr. Sayyad opined Petitioner was not yet ready to return to work as of September 20, 2016 because she had not stabilized: Petitioner was doing better in some areas, but she still had headache symptoms and her medications were being adjusted. Pet.'s. Ex. 10, p. 26-27. Dr. Sayyad clarified that her nurse practitioner, Sylvia Duraski, APN, saw Petitioner on September 20, 2016, and Dr. Sayyad thereafter discussed the case with her and signed off on the chart note. Pet.'s. Ex. 10, p. 22.

Dr. Sayyad testified that Dr. Mehta had diagnosed Petitioner with post-concussion syndrome, PTSD, neurocognitive deficits associated with the PTSD and post-concussion syndrome, and post-traumatic headache. Pet.'s. Ex. 10, p. 24. Dr. Sayyad agreed with that diagnosis and she had carried it forward as she treated Petitioner over the next three years. Pet.'s. Ex. 10, p. 24. Turning to causation, Dr. Sayyad concluded "there is a connection between Ms. Wellman being punched in the head by a student and these diagnoses." Pet.'s. Ex. 10, p. 25.

On cross-examination, Dr. Sayyad agreed she ordered neuropsychological testing on January 6, 2015; the doctor explained she ordered the testing so "we could track what her - - objectively what the difficulties she was having with her attention and concentration issue that she was reporting difficulty. It also helps us determine a baseline from which we can compare either future or past results with." Pet.'s. Ex. 10, p. 30. Dr. Sayyad confirmed the testing would also identify areas of weakness and assess whether Petitioner was ready to return to work. Pet.'s. Ex. 10, p. 30. Dr. Sayyad testified that January 6, 2015 was the last time she saw Petitioner; the remaining visits were conducted by her nurse practitioner and discussed with the doctor afterwards. Pet.'s. Ex. 10, p. 33. Dr. Sayyad did not have a record of the testing being completed and she had not reviewed any neuropsychological testing results. Pet.'s. Ex. 10, p. 29. Dr. Sayyad agreed that absent this testing there is no objective basis for work restrictions. Pet.'s. Ex. 10, p. 33.

The March 9, 2017 evidence deposition of Dr. Nancy Landre was admitted as Respondent's Exhibit 2. Dr. Landre is a board-certified clinical psychologist with specialty training in neuropsychology. Resp.'s Ex. 2, p. 5. Dr. Landre sees a variety of patients for dementia, learning disabilities, ADHD, head injuries, and other neurological disorders such as stroke and MS. Resp.'s Ex. 2, p. 5. She does both treatment and legal evaluation. Resp.'s Ex. 2, p. 5. Dr. Landre was

formerly the clinical neuropsychologist for the traumatic brain injury program at Lutheran General Hospital. Resp.'s Ex. 2, p. 6.

At Respondent's request, Dr. Landre performed a neurological evaluation of Petitioner on August 19, 2013. Resp.'s Ex. 2, p. 8. The doctor explained her evaluation process:

> …I receive the records ahead of time, and I would glance at those and just get an overview of what's going on with the case. And then the patient would come in. I would meet with them first for a clinical interview that normally lasts between an hour to an hour and a half, during which time I would get information about their injury, their medical history, their academic history, their work history, current lifestyle, things of that nature. And then I would decide what tests I would like to have the patient be administered as part of the evaluation. So I would indicate that and give the test battery to my technician. And my technician would then take over at that point and do all of the testing with the patient. Then they score everything out, they give it back to me. I look over the test results and I would write a report and interpret them and then write a report based on my interpretation. Resp.'s Ex. 2, p. 9-10.

The battery of testing that Petitioner underwent takes between four and five hours depending on how quickly the patient works. Resp.'s Ex. 2, p. 10.

Directed to her August 19, 2013 report, Dr. Landre testified she took a history from Petitioner and reviewed outside records, and the history within the report is a combination of the two. Resp.'s Ex. 2, p. 10-11. Dr. Landre testified consistent with her report.

Dr. Landre testified the testing Petitioner underwent includes performance validity and symptom validity measures designed to ensure the patient is giving his/her best effort and to identify over-reporting of symptoms. Resp.'s Ex. 2, p. 22-24. Dr. Landre testified Petitioner failed "a bunch of those," which tells the clinician that "the patient profile is likely very exaggerated and probably is portraying her as more distressed or dysfunctional from a mental health cognitive or somatic standpoint than is actually the case." Resp.'s Ex. 2, p. 24-25. Dr. Landre explained that, based on those findings, Petitioner's cognitive test results and her psychological test results were not valid for interpretation because they did not provide a reliable or valid estimate of her status. Resp.'s Ex. 2, p. 25. The doctor testified Petitioner's scores on the cognitive tests were "essentially meaningless" and the psychological tests were of "questionable validity" such that "there might be pieces of those that are reliable and valid, but you really can't know for sure because again she's over reporting symptoms in that case." Resp.'s Ex. 2, p. 25-26.

Dr. Landre opined Petitioner "satisfied the criteria for probable malingering." Resp.'s Ex. 2, p. 31-32. The doctor provided the basis of her opinion:

> The basis for that opinion is her test results including her failure of both performance and symptom validity measures. Her improbably poor findings on the standards [*sic*] neuropsychological indices and inconsistencies between herself [*sic*] reported the symptoms and what we know about the natural course of recovery

> from concussion as well as other inconsistencies between her self report and information available from other sources. Resp.'s Ex. 2, p. 32.

Dr. Landre further opined Petitioner's test results suggested probable symptom magnification. Resp.'s Ex. 2, p. 33. Asked what Petitioner's neuropsychological level of functioning was as of August 19, 2013, Dr. Landre responded as follows:

> Because of insufficient effort and probable symptom exaggeration, I was unable to provide a valid estimate of her true cognitive or emotional status. But based upon the fact that she was driving without restrictions and attending college and obtaining passing grades following both of these injuries, my best estimate was that her true functional status was within normal limits. Resp.'s Ex. 2, p. 33.

Dr. Landre did not believe Petitioner required additional treatment, stating Petitioner had already received more treatment than would be anticipated and she had failed to respond as expected; the doctor further noted Petitioner's test results indicated her complaints were driven by factors unrelated to her injury, such as secondary gain, work avoidance, or financial compensation. Resp.'s Ex. 2, p. 34.

Turning to causal connection, Dr. Landre opined Petitioner's complaints as of August 19, 2013 were not causally related to the two work injuries. Resp.'s Ex. 2, p. 35. The doctor explained her opinion was based on published literature on the natural course of recovery from concussion as well as her test results, experience, and training. Resp.'s Ex. 2, p. 35. Dr. Landre further opined Petitioner was able to return to work full duty without restrictions and should have been symptom-free three months post-injury. Resp.'s Ex. 2, p. 35-36.

On cross-examination, Dr. Landre testified it was "not entirely clear" that Petitioner sustained a head injury. Resp.'s Ex. 2, p. 36. Dr. Landre testified there could have been a head injury the first time, specifically noting, "I had information that there were witnesses," but Dr. Landre stated the mechanism of injury of the second incident, *i.e.*, being pushed from behind, does not necessarily satisfy criteria for concussion. Resp.'s Ex. 2, p. 36. Dr. Landre conceded the March 19, 2013 Central DuPage Hospital records reflect that when Petitioner was evaluated in the emergency room on the date of accident, she reported being punched in the back of the head, but according to Dr. Landre, "she didn't report that initially so it almost seemed like the injury - - her characterization of the injury changed over time." Resp.'s Ex. 2, p. 37.

Dr. Landre testified the American Congress of Rehab Medicine defines concussion as involving either direct injury to the head or an acceleration/deceleration injury as well as some sort of alteration of consciousness at the moment of impact: "They don't have to lose consciousness, frankly. But they have to be dazed or confused or feel out of it temporarily and/or demonstrate some sort of a focal neurologic deficit." Resp.'s Ex. 2, p. 38. Dr. Landre agreed the severity of a blow to the head can be indicated by other physical damage caused by the blow, such as a ruptured eardrum. Resp.'s Ex. 2, p. 38-39. Dr. Landre testified she thought it was likely that Petitioner probably had a concussion with the first incident, but she could not say with 100 percent certainty. Resp.'s Ex. 2, p. 39.

Dr. Landre agreed she asked Petitioner to describe her current complaints prior to giving her the checklist for post-concussive syndrome symptoms, and Petitioner reported nervousness, dizziness, memory difficulties, headaches, stomach aches, sensitivity to the sun and noise, disturbed sleep, vision problems, and depression. Resp.'s Ex. 2, p. 44-46. Dr. Landre confirmed that anxiety, depression, difficulty concentrating, irritability, and fatigue are symptoms associated with both PTSD and post-concussion syndrome. Resp.'s Ex. 2, p. 49-50.

Dr. Landre confirmed her opinion was that work avoidance was a factor in Petitioner's presentation. Resp.'s Ex. 2, p. 61. The doctor then agreed Petitioner returned to work the day after the first incident and worked for some time thereafter. Resp.'s Ex. 2, p. 61. The doctor was unaware if the employer offered Petitioner a job after the second incident. Resp.'s Ex. 2, p. 61.

The April 10, 2017 evidence deposition of Dr. Alexander Obolsky was admitted as Respondent's Exhibit 4. Dr. Obolsky is board certified in general, addiction, and forensic psychiatry. Resp.'s Ex. 4, p. 5.

At Respondent's request, Dr. Obolsky conducted a forensic psychiatric evaluation of Petitioner. Resp.'s Ex. 4, p. 7. Dr. Obolsky explained his process:

> The forensic psychiatric evaluation sits on three major activities that the focus of each is to generate reliable clinical data. One of these activities is a review of the available records. The other activity is the forensic psychological or neuropsychological testing, and the third activity is the forensic psychiatric interview. Resp.'s Ex. 4, p. 8.

Dr. Obolsky testified psychological testing was conducted on Petitioner on April 29, 2014 and he interviewed her on May 16, 2014. Resp.'s Ex. 4, p. 14. The doctor issued his report on December 31, 2014. Resp.'s Ex. 4, p. 11. Dr. Obolsky testified consistent with his report.

Dr. Obolsky emphasized the behaviors he observed which were inconsistent with PTSD, major depression, and cognitive deficiency. The doctor noted Petitioner did not exhibit any bizarre or odd behaviors which would impair her ability to work with other people. Resp.'s Ex. 4, p. 18. The doctor further noted Petitioner provided a detailed description of the school and classroom where the injuries occurred without exhibiting any emotional distress. Resp.'s Ex. 4, p. 20. Dr. Obolsky testified that Petitioner reported experiencing emotional distress, but the doctor felt Petitioner "misattributes" it to the work injuries as opposed to her pre-existing performance anxiety. Resp.'s Ex. 4, p. 21. Dr. Obolsky testified the inconsistencies indicated that Petitioner was malingering. Resp.'s Ex. 4, p. 23. Dr. Obolsky acknowledged that the diagnostic criteria for PTSD have changed so that they no longer include fear for life, but nonetheless felt that was an important factor when considering the severity of the event to a particular individual. Resp.'s Ex. 4, p. 25.

Dr. Obolsky testified the neurocognitive testing by Dr. Devereux and Dr. Lambert [*sic*] showed that Petitioner malingered, exaggerated her cognitive complaints, and her report of complaints was untrustworthy. Resp.'s Ex. 4, p. 41. Dr. Obolsky stated Petitioner's performance on RBANS, a cognitive test of memory, concentration, attention, and executive functioning, was in the lowest .01 percentile, matching people who have severe end-stage dementia; Dr. Obolsky

opined the only explanation is that Petitioner was malingering. Resp.'s Ex. 4, p. 48-49. While Dr. Devereux concluded Petitioner exhibited post-traumatic stress disorder, Dr. Obolsky stated Petitioner's test results are "incontrovertible evidence that Miss Wellman started to malinger and exaggerate her symptoms very soon after the injury." Resp.'s Ex. 4, p. 50-51.

Dr. Obolsky diagnosed Petitioner as exhibiting malingering as well as exhibiting avoidant, dependent, and compulsive personality features. Resp.'s Ex. 4, p. 67. Dr. Obolsky testified the diagnosis of PTSD was inappropriate based on the totality of the data available. Resp.'s Ex. 4, p. 69. The doctor opined Petitioner "is untrustworthy reporter of her symptoms, and she misattributes the causation that I already testified. She misreports symptoms. She manipulates symptoms. Sometimes she feigns symptoms. And so her credibility as a historian of her own symptoms is undermined significantly because she is clearly malingering." Resp.'s Ex. 4, p. 71.

Dr. Obolsky concluded that Petitioner did not develop any condition of mental ill-being causally related to either the October 23, 2012, or March 19, 2013 work events. Resp.'s Ex. 4, p. 76. The basis of his opinion was his review of the available records, review of the psychological testing by Dr. Devereux, Dr. Landon [*sic*], and Dr. Felske, and his forensic interview with Petitioner. Resp.'s Ex. 4, p. 77. Dr. Obolsky further opined Petitioner did not require any further mental health treatment as a result of either work incident, and she was fit for full-time competitive employment and had no limitations or restrictions causally related to either work event. Resp.'s Ex. 4, p. 77-78.

On cross-examination, Dr. Obolsky confirmed he reviewed the report of Dr. Karen Levine, the neurologist who evaluated Petitioner at Respondent's request on March 7, 2013. Resp.'s Ex. 4, p. 91. As to Dr. Levine's diagnosis of mild post-concussion syndrome, Dr. Obolsky stated, "Inconsistent with the available data, Dr. Levine made that error and that diagnosis." Resp.'s Ex. 4, p. 92. Dr. Obolsky confirmed he noted in his report that Dr. Levine did not appreciate the significance of Petitioner not knowing what "country" she was in; the follow exchange occurred:

> Q. Doctor, I'm actually going to refer you to Page 3 of Dr. Levine's report right after it says Neurological Examination. Didn't she say she didn't know that county she was in?
> A. My error. It says county.
>
> Q. So that would be a little less bizarre, right, that a person wouldn't know what county they were in, right, than not knowing what country they were in, right?
> A. I don't think so. I think that not knowing what county you are in in Chicagoland area would be quite bizarre.
>
> Q. Doctor, what county are you in when you're in Bensenville, Illinois?
> A. I don't know where Bensenville is. Resp.'s Ex. 4, p. 92-93.

Dr. Obolsky believes Petitioner exhibited a lifelong set of personality features which interfere with her interpersonal functioning and have led to dysthymia, anxiety, worries, fears, and somatic complaints. Resp.'s Ex. 4, p. 94-95. The doctor confirmed people with somatic complaints are not lying and do experience them. Resp.'s Ex. 4, p. 96. Dr. Obolsky agreed personality features

can sometimes become pathological such that the person cannot work or engage in interpersonal relationships. Resp.'s Ex. 4, p. 100-101. Dr. Obolsky testified Petitioner's personality issues are not of the severity to interfere with her going back to work at her previous occupation or any other occupation. Resp.'s Ex. 4, p. 102. Dr. Obolsky highlighted that the Marianjoy physicians diagnosed post-concussive syndrome without knowing whether Petitioner lost consciousness, and "[y]ou cannot do that." Resp.'s Ex. 4, p. 127.

III. CONCLUSIONS OF LAW

A. Corrections

At the outset, the Commission makes the following corrections to the Decisions of the Arbitrator ("Decisions" or "Decision"):

Corrections to the Decision in Case No. 13 WC 13675

1. The Commission corrects the accident date in the heading on page 18 of the Decision from "November 23, 2012" to "October 23, 2012" consistent with the parties' stipulations

2. The Commission corrects Petitioner's age on page 23 of the Decision from 35 years old on the date of accident to 34 years old on the date of accident consistent with the parties' stipulations.

Corrections to the Decision in Case. No. 13 WC 13676

1. The Commission corrects the date of accident under the Findings section on page 2 of the "ICArbDec" decision form, from "3/19/19" to "3/19/13" consistent with the parties' stipulations.

2. The Commission corrects the Petitioner's marital status under the Findings section on page 2 of the "ICArbDec" decision form, from "single" to "married" consistent with the parties' stipulations.

3. The Commission corrects the accrual date under the Order section on page 2 of the "ICArbDec" decision form, from "March 19, 2013 through July 15, 2015" to "March 19, 2013 through July 15, 2019."

4. The Commission corrects the date of accident in the last paragraph on page 18 of the Decision from "October 23, 2013" to "October 23, 2012."

B. Credibility

The Arbitrator found Petitioner's testimony was not credible. The Commission views Petitioner's credibility differently and finds that the reasons relied on by the Arbitrator are refuted and contextualized by the evidence.

The Commission exercises original jurisdiction and is not bound by an arbitrator's findings. *See R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866, 923 N.E.2d 870, 877 (1st Dist. 2010) (finding that when evaluating whether the Commission's credibility findings which are contrary to those of the arbitrator are against the manifest weight of the evidence, "resolution of the question can only rest upon the reasons given by the Commission for the variance.")

The Commission makes the following findings as to Petitioner's credibility:

1. The Arbitrator found that "Petitioner was not diagnosed with a concussion, post-concussion syndrome nor did she report any concussion related symptoms to Dr. Patel, Dr. Celmer or Dr. Hsu," and that Petitioner did not report any headache symptoms or concussion symptoms until she saw Dr. Marzo on February 13, 2013.

The Commission acknowledges that Petitioner was not diagnosed with a concussion or post-concussion syndrome by Dr. Patel, Dr. Celmer or Dr. Hsu and that she did not report any headaches to these three doctors (following the October 23, 2012 accident). However, the Commission notes that Petitioner's reports of ear pain and decreased hearing on the right side to Dr. Patel on October 23, 2012 were consistent with her testimony and history of being punched in the head by a student. Further, the Commission notes that Dr. Patel referred Petitioner to Dr. Celmer, who is an ENT physician, specifically for the diagnosis of traumatic right ear tympanic membrane perforation. The Commission also notes that Dr. Celmer referred Petitioner to Dr. Hsu, who is an ENT surgeon, specifically to discuss undergoing a tympanoplasty to the right ear. With this contextual backdrop, the Commission finds that an analysis of the totality of the evidence indicates Petitioner did indeed sustain concussions after each accident and developed post-concussion syndrome.

The Commission does not agree that Petitioner did not report any concussion related symptoms or that she did not report any concussion symptoms until she saw Dr. Marzo on February 13, 2013 as the record shows several physicians diagnosed Petitioner with concussions and post-concussion syndrome. On February 11, 2013, Dr. Sam Marzo evaluated Petitioner who reported being hit in the head with a fist multiple times during an incident at work in October 2012 and reported that she had been diagnosed with post-concussion syndrome by a neurologist. Dr. Marzo diagnosed Petitioner, *inter alia*, with post-concussion syndrome for which he recommended neurologic management. The Commission notes that it would be speculative to state that Dr. Marzo diagnosed Petitioner with post-concussion syndrome based only on her report that another physician had diagnosed her with the same, when there is no evidence or deposition testimony to support this assertion.

Similarly, on March 7, 2013, Dr. Karen Levine, who performed a section 12 neurological examination of Petitioner at Respondent's request, diagnosed Petitioner with migraines and mild post-concussion syndrome. Dr. Levine opined that Petitioner's migraines were pre-existing and were aggravated by the work injury. Furthermore, even Dr. Landre, who performed an additional section 12 neurological evaluation of Petitioner at Respondent's request, acknowledged "it's likely that [Petitioner] probably had a concussion with this first [accident]," although she could not say with 100 percent certainty. Dr. Landre explained that the American Congress of Rehab Medicine

defines concussion as involving either direct injury to the head or an acceleration/deceleration injury as well as some sort of alteration of consciousness at the moment of impact: "They don't have to lose consciousness, frankly. But they have to be dazed or confused or feel out of it temporarily and/or demonstrate some sort of a focal neurologic deficit." Resp.'s Ex. 2, p. 38. Dr. Landre agreed the severity of a blow to the head can be indicated by other physical damage caused by the blow, such as a ruptured eardrum. Resp.'s Ex. 2, p. 38-39.

2. The Arbitrator found Petitioner's testimony that she hit her head on a wall and blacked out on October 23, 2012 is not consistent with the Employee's Report of Injury.

The Commission acknowledges that the Employee's Report of Injury from October 23, 2012 does not state Petitioner hit her head on a wall and blacked out. However, the Commission notes the Employee's Report of Injury states Petitioner was punched in the forehead, nose, and right temporal area/ear by a student while she was trying to calm the student. On the form, Petitioner indicated that she had pain in her right cheek, ear, right eye, and neck. The Commission finds that based on the information which is contained in the Employee's Report of Injury and the totality of the evidence, whether Petitioner hit her head against a wall and blacked out is inconsequential and does not negate the fact that Petitioner sustained a serious head injury on October 23, 2012. Petitioner credibly testified that she was punched in the face, nose, and right ear which is well documented on the Employee's Report of Injury and in various medical records. These injuries, regardless of whether she also hit her head on a wall and blacked out, were traumatic and serious – so serious that her injuries caused a traumatic right ear tympanic membrane perforation and she was later diagnosed with a concussion or post-concussion syndrome by several physicians.

3. The Arbitrator found Petitioner did not provide complete medical histories to various doctors regarding her preexisting symptoms.

The Commission finds that based on the evidence, most of the physicians who examined Petitioner had some knowledge of Petitioner's medical history and pre-existing conditions, however, because the medical records are not sufficiently detailed, it is unclear exactly how much information each physician had regarding Petitioner's medical history. The Commission first notes that Dr. Patel is Petitioner's family physician who treated Petitioner for migraines and associated facial numbness and tingling prior to the October 23, 2012 accident. Petitioner returned to Dr. Patel, who already knew of Petitioner's medical history, after the October 23, 2012 accident. Further, on March 7, 2013, Dr. Levine opined that Petitioner's work injury could have aggravated Petitioner's pre-existing migraines, indicating that Dr. Levine had some knowledge of Petitioner's pre-existing condition.

After the undisputed March 19, 2013 accident, Petitioner treated with Dr. Mehta who practiced with Marianjoy Medical Group. On April 11, 2013, Dr. Mehta acknowledged that Petitioner had a pre-existing history of mild depression and opined that it was likely exacerbated by multiple assaults/concussions. Dr. Mehta referred Petitioner to Dr. Jordania, a neuropsychiatrist who also practiced with Marianjoy to address Petitioner's depression and anxiety. On November 4, 2013, Dr. Mehta transferred Petitioner's care to Dr. Sayyad who also practiced with Marianjoy. The Commission finds the evidence demonstrates Dr. Patel, Dr. Mehta, and Dr. Levine had

knowledge of Petitioner's pre-existing medical history. Further, Drs. Jordania and Sayyad both practiced at Marianjoy with Dr. Mehta and most likely had access to Petitioner's records which document pre-existing conditions. In fact, Dr. Sayyad testified that she reviewed Dr. Mehta's treatment notes when she took over Petitioner's care. The Commission finds there is no evidence indicating that Petitioner purposely withheld information about her previous medical history or pre-existing conditions.

Based on the above, the Commission finds Petitioner's testimony was credible and supports her claim of suffering concussions, post-concussion syndrome, migraines, PTSD, anxiety, and depression as a result of both undisputed work accidents where Petitioner was attacked by a student on both occasions.

C. Causal Connection

The Commission finds Petitioner proved by a preponderance of the evidence that the undisputed accidents on October 23, 2012 and March 19, 2013: (1) caused Petitioner to suffer concussions and post-concussion syndrome, which resolved by July 18, 2013; (2) aggravated Petitioner's migraines and resolved by July 18, 2013; (3) caused Petitioner to suffer PTSD, which resolved by September 20, 2016; and (4) aggravated and exacerbated Petitioner's anxiety and depression, which resolved by September 20, 2016.

It is well settled that employers take their employees as they find them; even when an employee has a pre-existing condition which makes him more vulnerable to injury, and recovery for an accidental injury will not be denied as long as it can be shown that the employment was a causative factor. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193, 205 (2003). An employee need only prove that some act or phase of his employment was a causative factor of the resulting injury, and the mere fact that he might have suffered the same disease, even if not working, is immaterial. *Twice Over Clean, Inc. v. Indus. Comm'n*, 214 Ill.2d 403, 414 (2005).

Moreover, with respect to the applicability of a "chain of events" analysis to a case involving a preexisting condition, courts have found that "if a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration." *Schroeder v. Ill. Workers' Comp. Comm'n*, 2017 IL App (4th) 160192WC, ¶¶ 25-26, 79 N.E.3d 833, 839. "The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been." *Id.* The appellate court also noted that "the principle is nothing but a common-sense, factual inference. *Schroeder*, 2017 IL App (4th) ¶ 26; *see also Price v. Industrial Comm'n*, 278 Ill. App. 3d 848, 853-54, 663 N.E.2d 1057, 1060-061 (4th Dist. 1996).

The Commission finds the opinions of Dr. Marzo, Dr. Levine, Dr. Mehta, and Dr. Sayyad to be credible, persuasive, and supported by the record. Additionally, the Commission finds that based on a chain of events analysis, Petitioner proved that the conditions of concussion, post-concussion syndrome, migraines, PTSD, anxiety, and depression were either caused or aggravated by the undisputed accidents.

On February 11, 2013, Dr. Marzo examined Petitioner and diagnosed her with, *inter alia*, post-concussion syndrome and recommended Petitioner continue treating for the condition with a neurologist. On March 7, 2013, Dr. Levine, Respondent's section 12 examining physician, diagnosed Petitioner with mild post-concussion syndrome and opined that Petitioner's pre-existing migraines could have been aggravated by the work injury. After the March 19, 2013 accident, the emergency room physicians at Central DuPage Hospital diagnosed Petitioner with a "new concussion," "post concussive syndrome from a head injury a few months ago," and PTSD from the first concussion. On April 11, 2013, Dr. Mehta diagnosed Petitioner with post-concussion syndrome, neurobehavioral deficits/neurocognitive, impaired balance, insomnia, anxiety/ depression/PTSD, and chronic post-concussion headaches. Dr. Mehta opined that Petitioner had a pre-existing history of mild depression likely exacerbated by multiple assaults/concussions. On April 22, 2013, Dr. Jordania performed an initial psychiatric evaluation and diagnosed Petitioner with post-concussive syndrome, anxiety due to post-concussive syndrome, PTSD, and insomnia due to PTSD. Petitioner continued to treat with Dr. Jordania and undergo speech therapy, occupational therapy, and day rehab. On June 13, 2013, Petitioner was discharged from speech therapy. Petitioner was discharged from occupational therapy the next day. On July 2, 2013, Dr. Mehta noted Petitioner had completed a day rehab program and transitioned to a home exercise program. Dr. Mehta noted Petitioner was steadily improving but she continued to have significant PTSD symptoms.

On July 18, 2013, Petitioner followed up with Dr. Jordania and reported significant improvement in her headaches, but her PTSD was still very symptomatic. Petitioner described having persistent fear of children and people in public places as well as fear of being attacked. Petitioner continued to treat with Dr. Mehta (until her care was transferred to Dr. Sayyad), Dr. Jordania, and counselor Cromer. On September 20, 2016, Petitioner followed up at Marianjoy with Dr. Sayyad's nurse practitioner, which is the last documented medical visit in the record and reported that she was much less tired during the day and she was doing well in her classes. However, Petitioner reported that her headaches had returned, her blood pressure was slowly climbing, and she was still looking for a psychiatrist to replace Dr. Jordania who had left Marianjoy. Dr. Sayyad's nurse diagnosed Petitioner with, *inter alia,* major depressive disorder, single episode, unspecified and posttraumatic stress disorder; provided Petitioner with names of potential psychiatrists; adjusted Petitioner's medication; and encouraged Petitioner to continue taking classes. Dr. Sayyad testified that Petitioner had started to show some signs of improvement by this date and Petitioner's headaches waxed and waned throughout her treatment. At her deposition, Dr. Sayyad testified that "there is a connection between Ms. Wellman being punched in the head by a student and these diagnoses [post-concussion syndrome, PTSD, neurocognitive deficits associated with PTSD, post-concussion syndrome, and post-traumatic headache]."

The Commission finds that Petitioner was able to work her full job duties prior to the October 23, 2012 accident, and to her credit, even managed to return to work following the October 23, 2012 attack while undergoing treatment for her right ear perforated tympanic membrane. However, after the March 19, 2013 attack, Petitioner was unable to complete her job duties and return to work. The medical records indicate that her concussion, post-concussion syndrome, and migraine conditions improved over time and seemed to resolve or plateau by July 18, 2013. However, the medical records indicate Petitioner's PTSD and associated anxiety and depression

did not improve as quickly and Petitioner required substantial treatment and therapy through September 20, 2016.

Furthermore, the Commission is not persuaded by the opinions of Dr. Landre, which were based on inaccurate facts and speculation. Dr. Landre's opinion that it was not clear whether Petitioner sustained a head injury during the second accident (March 19, 2013) is contradicted by the evidence. Dr. Landre testified that Petitioner's March 19, 2013 accident consisted of "being pushed from behind," which did not satisfy the criteria for a concussion. The Commission notes that the Central DuPage Hospital emergency room records state Petitioner was hit from behind and punched in the occiput by a student. The emergency room physicians diagnosed Petitioner with a "new concussion," post-concussion syndrome and PTSD from the first concussion. Additionally, the Employee's Report of Injury for the March 19, 2013 accident (dated March 20, 2013) states that a student pushed and hit Petitioner in the back of the head. Further, Dr. Landre testified that Petitioner "failed" several performance validity tests in the neurological evaluation and initially opined that it meant Petitioner was likely exaggerating or malingering. However, Dr. Landre later testified that the failed performance validity tests meant the test results were not valid for interpretation and were not a reliable estimate of Petitioner's status. The Commission finds that Dr. Landre's reliance on invalid and unreliable testing to form her opinion that Petitioner was malingering casts doubt on the credibility of her opinion.

Additionally, the Commission is not persuaded by Dr. Obolsky's opinions which were also based on inaccurate facts and speculation. Dr. Obolsky opined that the results of his forensic psychiatric evaluation indicated Petitioner was malingering and exaggerating her complaints. Dr. Obolsky opined that Petitioner did not exhibit any "bizarre" or "odd" behaviors that would impair her ability to work with other people but did not explain what a "bizarre" or "odd" behavior was and did not explain the scientific significance of such behaviors. Additionally, Dr. Obolsky opined that Petitioner did not develop any condition of mental ill-being causally related to either undisputed accident, which contradicts the opinions of the emergency room physicians at Central DuPage Hospital, Dr. Mehta, Dr. Sayyad, Dr. Jordania, and licensed clinical professional counselor Cromer. Finally, Dr. Obolsky inaccurately believed Petitioner had reported not knowing what "country" she was in when Dr. Levine evaluated her, when in actuality, Petitioner had reported not knowing what "county" she was in when she saw Dr. Levine.

Finally, the Commission notes that Dr. Landre and Dr. Obolsky's opinions contradict each other and undermine the credibility of both opinions. On one hand, Dr. Landre testified that in order to be diagnosed with a concussion, loss of consciousness is not required, and Petitioner probably had a concussion after the first accident. Dr. Landre also confirmed that anxiety, depression, difficulty concentrating, irritability, and fatigue are symptoms associated with both PTSD and post-concussion syndrome. On the other hand, Dr. Obolsky testified that the doctors at Marianjoy diagnosed Petitioner with post-concussion syndrome without knowing whether Petitioner lost consciousness and ""[y]ou cannot do that." Dr. Obolsky appeared to opine that loss of consciousness is required for a diagnosis of concussion or post-concussion syndrome.

D. Medical Benefits

Based on the Commission's findings and conclusions above, and with respect to both cases 13 WC 13675 (October 23, 2012 accident) and 13 WC 13676 (March 19, 2013 accident) the Commission finds Petitioner's treatment for concussion, post-concussion syndrome, and migraines was reasonable and necessary, and awards medical expenses for treatment for those conditions through July 18, 2013 pursuant to sections 8(a) and 8.2 of the Act. The Commission finds that with respect to both cases 13 WC 13675 (October 23, 2012 accident) and 13 WC 13676 (March 19, 2013 accident) Petitioner's treatment for PTSD, anxiety, and depression was reasonable and necessary, and awards medical expenses for treatment for those conditions through September 20, 2016 pursuant to sections 8(a) and 8.2 of the Act.

E. Temporary Total Disability Benefits

Based on the Commission's findings and conclusions above, and with respect to case no. 13 WC 13676 (March 19, 2013 accident) the Commission finds Petitioner is entitled to temporary total disability ("TTD") benefits from March 20, 2013 through September 20, 2016. Respondent is entitled to credit for TTD benefits already paid.

F. Permanent Disability Benefits

Our conclusion that Petitioner's concussion, post-concussion syndrome, migraine, PTSD, anxiety, and depression conditions are causally related to the undisputed work accidents, necessarily implicates an analysis of Petitioner's permanent disability with respect to these conditions. The Commission finds the majority of the injuries Petitioner sustained following each undisputed accident are not separate and distinct, but rather, Petitioner was attacked and sustained injuries to her head during both accidents and her diagnoses and treatment for the conditions of concussion, post-concussion syndrome, migraine, PTSD, anxiety, and depression following both accidents, overlapped considerably. Further, the Commission finds that the concussion, post-concussion syndrome, migraine, PTSD, anxiety, and depression conditions Petitioner sustained during the second accident were amplified and more serious due to the prior injuries Petitioner sustained during the first accident and the evidence does not support delineation of the nature and extent of permanency attributable to each accident for these conditions. Accordingly, the Commission finds that with respect to the conditions of concussion, post-concussion syndrome, migraine, PTSD, anxiety, and depression, it can only award permanency for the second accident, case no. 13 WC 13676 (March 19, 2013 accident). *See City of Chicago v. Illinois Workers' Compensation Commission*, 409 Ill. App. 3d 258, 265, 947 N.E.2d 863, 869 (2011). The Commission affirms the Arbitrator's award of permanent partial disability benefits to the extent of 10% loss of the person-as-a-whole for the conditions of perforated right eardrum and neck injuries sustained during the first accident, case no. 13 WC 13675 (October 23, 2012 accident), as those conditions are distinct and easily separable from the injuries sustained during the second accident on March 19, 2013.

The Commission analyzes the §8.1b factors as follows and modifies the Arbitrator's permanency award with respect to case no. 13 WC 13676:

Section 8.1b(b)(i) – impairment rating

Neither party submitted an impairment rating. As such, the Commission assigns no weight to this factor and will assess Petitioner's permanent disability based upon the remaining enumerated factors.

Section 8.1b(b)(ii) – occupation of the injured employee

Petitioner worked as a Health Assistant for Respondent for approximately six years. Petitioner has not returned to her employment with Respondent or any other employer since the March 19, 2013 accident. The Commission gives this factor moderate weight and finds this factor is indicative of increased permanent disability.

Section 8.1b(b)(iii) – age at the time of the injury

Petitioner was 34 years old on the date of the October 23, 2012 undisputed accident. Petitioner was 35 years old on the date of the March 19, 2013 undisputed accident. Petitioner was relatively young at the time of the accidents and has many years to attempt to adapt to her residual deficits. The Commission gives this factor moderate weight and finds this factor is indicative of increased permanent disability.

Section 8.1b(b)(iv) – future earning capacity

Petitioner did not return to her pre-accident job with Respondent and Petitioner's physicians continue to place her off work. Petitioner earned an Associate's Degree in 2019 and is taking additional classes to help her find suitable employment. Petitioner submitted into evidence a vocational assessment report dated November 11, 2013 indicating she had a vocational history of EMT certification, certified phlebotomist, CNA, certification to perform school vision and hearing screenings, licensed cosmetologist, and she had paramedic training. However, Petitioner also had vocational barriers of post-traumatic stress disorder, ruptured eardrum, hand tremors, migraine headaches, jaw problems, eye problems, depression, and anxiety. Respondent submitted into evidence a labor market survey report dated February 29, 2016, which indicated appropriate vocational goals for Petitioner included claims clerk, receptionist, collections clerk, hospital-admitting clerk, radio dispatcher, administrative clerk, customer service clerk, home attendant, and teacher's aide. The wage range for those positions within a 50-mile radius was $12.00 to $23.00 per hour. The Commission gives this factor moderate weight and finds this factor is indicative of decreased permanent disability.

Section 8.1b(b)(v) – evidence of disability corroborated by treating medical records

Petitioner testified she returned to school at the College of DuPage in 2017 and completed an Associate's Degree in Applied Science in Human Services for Addictions Counseling in May 2019. Petitioner described her time in college as difficult and she required substantial help and accommodations while she was in school. The medical records corroborate Petitioner's testimony in that they indicate Petitioner failed several classes in 2014 before she was finally able to pass her classes at the College of DuPage. Petitioner testified she has problems sleeping and has nightmares about "these issues occasionally." She gets dizzy and can lose her balance if she stands too quickly

from a seated position. She experiences loud ringing in her ears when she gets anxious, which causes her to get "light-headed." Petitioner gets nervous around a lot of people "in newer situations" and she becomes anxious in public. Petitioner continues to take multiple prescription medications.

On September 20, 2016, Petitioner followed up at Marianjoy with Dr. Sayyad's nurse practitioner and reported that she was much less tired during the day and she was doing well in her classes. However, Petitioner reported that her headaches had returned, and her blood pressure was slowly climbing. Dr. Sayyad's nurse diagnosed Petitioner with major depressive disorder, single episode, unspecified; posttraumatic stress disorder, *inter alia*; adjusted Petitioner's medication; and encouraged Petitioner to continue taking classes. Dr. Sayyad testified that at the time of this visit, Petitioner had started to show some signs of improvement by this date and Petitioner's headaches waxed and waned throughout her treatment. The Commission gives this factor significant weight and finds this factor is indicative of increased permanent disability.

Based on the above, the Commission finds Petitioner sustained 17.5% loss of the person-as-a whole as a result of the concussion, post-concussion syndrome, migraine, PTSD, anxiety, and depression conditions. The Commission affirms the Arbitrator's finding that Petitioner sustained 10% loss of the person-as-a-whole for the perforated right eardrum and neck injuries sustained during the October 23, 2012 accident, case no. 13 WC 13675. All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 3, 2019, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that with respect to both case nos. 13 WC 13675 and 13 WC 13676, Respondent shall pay to Petitioner medical expenses as provided in §8(a), subject to §8.2 of the Act, for treatment for Petitioner's concussion, post-concussion syndrome, and migraines through July 18, 2013.

IT IS FURTHER ORDERED BY THE COMMISSION that with respect to both case nos. 13 WC 13675 and 13 WC 13676, Respondent shall pay to Petitioner medical expenses as provided in §8(a), subject to §8.2 of the Act, for treatment for Petitioner's PTSD, anxiety, and depression through September 20, 2016.

IT IS FURTHER ORDERED BY THE COMMISSION that with respect to case no. 13 WC 13676, Respondent shall pay to Petitioner the sum of $337.46 per week for a period of 183 weeks, representing March 20, 2013 through September 20, 2016, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that with respect to case no. 13 WC 13675, Respondent shall pay to Petitioner the sum of $319.00 per week for a period of 50 weeks, as provided in §8(d)2 of the Act, for the reason that the perforated right eardrum and neck injuries sustained caused 10% loss of the person-as-a-whole.

IT IS FURTHER ORDERED BY THE COMMISSION that with respect to case no. 13 WC 13676, Respondent shall pay to Petitioner the sum of $319.00 per week for a period of 87.5

weeks, as provided in §8(d)2 of the Act, for the reason that the concussion, post-concussion syndrome, migraine, PTSD, anxiety, and depression conditions sustained caused 17.5% loss of the person-as-a-whole.

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. Respondent shall be given a credit for TTD benefits paid in the amount of $6,122.63 and credit for an advance in permanent disability benefits in the amount of $8,385.14. Respondent shall also be given a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in §8(j) of the Act.

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

SEPTEMBER 7, 2021

DJB/mck /s/ *Deborah J. Baker*

O: 6/9/21 /s/ *Stephen Mathis*

43 /s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

WELLMAN, JACKLYN
Employee/Petitioner

Case# **13WC013676**

13WC013675

CASE: GLENWOOD ACADEMY
Employer/Respondent

On 10/3/2019, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 1.79% 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:

0147 CULLEN HASKINS NICHOLSON ET AL
DAVID B MENCHETTI
10 S LASALLE ST SUITE 1250
CHICAGO, IL 60603

1120 BRADY CONNOLLY & MASUDA PC
PETER J STAVROPOULOS
10 S LASALLE ST SUITE 900
CHICAGO, IL 60603

STATE OF ILLINOIS)
)SS.
COUNTY OF DuPage)

- ☐ 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

JACLYN WELLMAN
Employee/Petitioner

v.

CASE: GLENWOOD ACADEMY
Employer/Respondent

Case # 13 WC 013676 consolidated with
13 WC 13675

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 **Frank Soto**, Arbitrator of the Commission, in the city of **Wheaton**, on **July 15, 2019**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **3/19/19**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**26,321.88**; the average weekly wage was $**506.19**.

On the date of accident, Petitioner was **35** years of age, ***single*** with **2** dependent children.

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

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

Respondent shall be given a credit of $**6,122.63** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**8,385.14** for other benefits, for a total credit of $**14,507.77**.

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $319.00 /week for 37.5 weeks, because the injuries sustained caused the 7.5% loss of the person as a whole, as provided in Section 8(d)2 of the Act, less the credit for benefits Respondent already paid. Respondent shall also pay 21 6/7 weeks of TTD for the period between 3/20/13 and 8/19/13, less the credit for benefits Respondent already paid, as set forth in the Conclusions of Law attached hereto.

Respondent shall pay to Petitioner compensation that has accrued from March 19, 2013 through July 15, 2015 and shall pay the remainder of the award, if any, in weekly payments, as set forth in the Conclusions of Law attached hereto.

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

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

Signature of Arbitrator

10/1/2019
Date

OCT 3 - 2019

Procedural History

This matter was tried on July 15, 2019. The disputed issues involve: whether the Petitioner's current condition of ill-being is causally connected to the accidental injuries sustained on March 19, 2013; whether Respondent is liable for medical bills; whether Petitioner is entitled to TTD benefits after August 19, 2013; and the nature and extend of Petitioner's injuries. The parties stipulated that Respondent paid certain medical bills totaling $14,507.77. (Arb. Ex. #1, 2)

Findings of Fact

The parties stipulate that on March 19, 2013, an employer/employee relationship existed between the parties and that Jaclyn Wellman (hereafter referred to as "Petitioner") was employed as a health assistant for CASE Glenwood Academy (hereafter referred to as "Respondent"), which was a school for children with behavior disorders and physical disabilities. (T. 10-13). Petitioner's job entailed dealing directly with the students surrounding their health issues. (T. 13).

It is also stipulated that, on March 19, 2013, Petitioner sustained compensable accidental injuries when she was struck by an eight-year-old student. (T 13-14). Petitioner testified that the student weighed between 60 and 70 pounds. (T 15-16).

Prior Medical Treatment

On April 16, 2012, Petitioner treated with Dr. Sapan Patel, of DuPage Medical Group, for migraines. At that visit, Petitioner reported her migraines were getting worse and were occurring more often and for longer durations and were higher in severity. Petitioner reported additional symptoms of blurry vision, fatigue, sensory changes, facial numbness and tingling. Petitioner also that she had been experiencing difficulties speaking and putting thoughts together. Dr. Patel also ordered and MRI and CT scans of the brain and compared them an MRI and CT scans taken on May 27, 2008. Dr. Patel found the scans to be normal. Dr. Patel diagnosed chronic migraines and her proscribed Topamax and told Petitioner to taper off Fioricet which could be contributing to her symptoms. (PX 12)

On August 23, 2010, Petitioner was seen by Dr. Patel. At that time, Petitioner was complaining of blurry vision in the left eye, numbness on the left side of her face, headaches, and tingling on the left side of her face, eye, tongue, neck and down her arm.

Petitioner reported being very fatigued and that she gets tired with even minimal activity. The records show that Petitioner was taking Xanax, Lexapro and Petitioner has a family history of migraines. (PX 12)

Petitioner's past medical history also included left ear tympanoplasty, depression, anxiety, sleep disorder, psychotropic medications dating back to 2009, celiac disease and being allergic to glutens which causes her nausea and vomiting. (RX 1 and PX 5).

Petitioner testimony regarding her health prior to the incidents.

Petitioner testified that prior to October 23, 2013, she could exercise on a regular basis, could run, did not take medication for any reason, and could see properly. (T. 29).

Petitioner's testimony regarding her work Accidents

Petitioner testified that the first incident occurred on October 23, 2012, when a student was brought down to her office after a fight. The student was seven years old, in first grade, and maybe weighed between 50-60 pounds. Petitioner testified that the student punched her in the bridge of her nose, mouth and right ear and jaw. Petitioner also testified that she flew back and hit her head on the wall and that she blacked out. Petitioner testified that when she woke up, another staff member was in the room taking the student away. Petitioner testified that she completed an incident or accident report. (T. 16). Petitioner testified that she continued to work after this incident.

Petitioner testified that, on March 19, 2013, she was struck by another student who was eight-years-old and weighed between 60-70 pounds. Petitioner testified that she was in a classroom administering medication when a student punched her in in the middle of her back, jumped on her back and started punching her in the neck and back of the head. Petitioner testified that as she tried to move she hit her head on the wall in the front of the room and blacked out. Petitioner further testified that her forehead and face hit the wall. (T. 20-22). Petitioner testified that she competed a second accident report. (T. 22).

Accident Reports

On October 23, 2012, Petitioner completed an Employee's Report of Injury. On the form, Petitioner indicted that she was punched in the forehead, nose and right temporal area or ear. Petitioner listed her pain areas as the cheek, ear, neck, and right eye. (PX 1). A co-worker who witnessed the incident, Denise Polick, completed a

statement. Ms. Polick stated that Petitioner was hit in the bridge of her nose, end of her nose, and the area of her right ear. (PX 1).

On November 16, 2012, Petitioner filed a police report with the Glendale Heights Police Department for the October 23, 2012 incident. At that time, Petitioner reported being punched once in the bridge of her nose, twice on the tip of her nose and three times in the temporal area. Petitioner also reported hearing loss and her nose was swollen. (PX 1).[1]

On March 20, 2013, Petitioner completed an Employee's Report of Injury for the March 19, 2013 incident. On that form, Petitioner indicated that she was pushed on her back, was hit her in the back of the head, and her head whipped back. Petitioner reported that her head and neck were injured. Petitioner also indicted that the location of her pain was her head, eyes, ears and neck. (PX 1).

Medical Treatment

On October 23, 2012, Petitioner treated with Dr. Patel, of DuPage Medical Group. At that visit, Petitioner reported being hit in the forehead, nose and ear. Petitioner complained of right ear pain and decreased hearing. The examination of Petitioner's head showed no contusions, ecchymosis, and Petitioner's facial bones were stable. The examination of the right ear showed a central perforation of the tympanic membrane or TM. Dr. Patel diagnosed a right ear perforation and he recommended Petitioner follow up with an ENT. (PX 12).

On October 24, 2012, Petitioner was examined by Dr. Andrew Celmer, of the Glen Ellen Clinic Department of Otolaryngology. At that visit, Petitioner complained of right ear pain and hearing loss. Petitioner reported being struck in the head and nose by a student. Dr. Celmer's records state that Petitioner had no other complaints other a sore nose. Dr. Celmer assessed a right ear tympanic membrane tear (TM) and he attempted to apply a patch but Petitioner did not tolerate the patch. Dr. Celmer recommended dry ear precautions and the TM would likely heal on its own. A follow up appointment was scheduled in six weeks. (PX 3).

[1] The Arbitrator notes that Petitioner's Report of Injury, Police Report and witness statement do not indicate that Petitioner struck her head on a wall and blacked out.

On December 5, 2012, Petitioner returned to Dr. Celmer who noted that Petitioner's symptoms remained unchanged. At this visit, Petitioner complained of right ear pain. Dr. Celmer's records state that Petitioner had no other complaints. Dr. Celmer indicated that Petitioner would likely need a tympanoplasty and he referred Petitioner to Dr. Hsu. (PX 3).

On December 14, 2012, Petitioner was seen by Dr. Gregory Doefler, DDS. Petitioner reported being struck by a client, on October 23, 2012, and she felt a pop in her ear and, after a few hours, her jaw stiffened up. Petitioner also reported a popping on her right side. Dr. Doefler ordered a CT scan of the oral and maxillofacial structures which showed no osseous or soft-tissues abnormalities. (PX 11).

On December 18, 2012, Petitioner started treating with Dr. Hsu, of the Glen Ellen Clinic. At that visit, Petitioner reported hearing loss after being struck in the right ear. Dr. Hsu recommended tympanoplasty and allograft reconstruction which was performed on January 7, 2013. The operative findings revealed a 20% perforation. (PX 13)

Petitioner returned to Dr. Hsu on January 22, 2013, February 21, 2013 and March 7, 2013. Dr. Hsu's records state that Petitioner communicated well, was comfortable and she under no apparent distress. Petitioner complained of muffled hearing. Audiological diagnostic testing was ordered for the following visit. (PX 13).

On February 13, 2013, Petitioner was examined by Dr. Sam Marzo, of Loyola Medicine, pursuant to Section 12 of the Act, for evaluation of the right ear and head. Petitioner reported being struck multiple times with fists by a student. Petitioner reported to Dr. Marzo that she was told by a neurologist that she had post-concussive syndrome, occipital neuralgia, tinnitus in both ears, and TMJ.[2] Petitioner complained of a stiff jaw.

Dr. Marzo assessed central perforation of tympanic membrane, post-concussion syndrome, conductive hearing loss, subjective tinnitus and otogenic pain. Dr. Marzo indicated that Petitioner's ear pain and tinnitus should improve over time and Petitioner should continue treating with her neurologist for post-concussive syndrome and TMJ. (PX 16).

[2] The Arbitrator notes that Petitioner did not testify that she treated with a neurologist and was diagnosed with post-concussive syndrome, occipital neuralgia, tinnitus or TMJ between October 23, 2012 and March 19, 2013. The Arbitrator also notes that Petitioner did not submit into evidence the records of Dr. Chang or any other neurologist she treated with between October 23, 2012 and March 19, 2013.

After the second incident, on March 19, 2013, Petitioner went to the emergency room at Central DuPage Hospital. At that time, Petitioner reported being pushed by a student, hit her head and was punched in the back of the head near the base of her head. Petitioner reported dizziness and nausea. The emergency room records state that Petitioner reported "*at work-shoved by a student, my head went back, then he went to punch me again and he hit me in the back of the skull, I have post-concussion from another student and have constant headaches which is worse now, I feel nauseated and dizzy.*" (PX 15). Petitioner also reported that she sustained a "significant concussion" with a ruptured tympanic membrane and post-concussive syndrome as the result of an October incident involving another and she was treating with Dr. Cheng, a neurologist. The emergency room records state that Petitioner did not suffer a loss of consciousness, no numbness, no tingling or weakness anywhere. A CT scan performed which was negative. The emergency room clinical impression was listed as no diagnosis found. (PX 15).

The emergency room records also state that patient had a new concussion with post-concussive syndrome from a head injury a few months ago and she appeared to be also suffering from PTSD from her fist concussion. Petitioner was released from the hospital, given a name of a neurologist and told to follow up with her primary care physician. (PX 15).

On April 4, 2013, Petitioner was examined by Dr Sachin Mehta of Marianjoy Medical Group. The medical records state the reason for the visit was post-concussive (10/23/2012) and PTSD (3/19/2013). At that visit, Petitioner reported an initial traumatic event in October 2012 after being punched by a student between the eyes and on the right side of her scalp. Petitioner reported suffering a ruptured tympanic membrane. Petitioner also reported being diagnosed with post-concussion syndrome and she was treating with Dr. Chang a neurologist.[3] Dr. Mehta's records show that Petitioner complained of ongoing headaches, impaired balance, insomnia, mood issues and that she returned to work. Petitioner reported that a second incident on March 19, 2013 when she was hit from behind by a student and punched in the occiput by a student. (PX 8)

[3] The Arbitrator notes that Petitioner did not testify that she treated with Dr. Cheng, a neurologist, was diagnosed with post-concussion syndrome after the October 23, 2012 accident.

At this visit, Petitioner complained of trouble with "flipping letters, numbers, directions", calculating difficulties, being more irritable and less tolerant of her kids. Petitioner also reported constant headaches and eye twitching. Petitioner reported feeling nervous, anxious, and feeling fatigued most of the day. Petitioner told Dr. Mehta that she was diagnosed with PTSD. Dr. Mehta noted in his records that Petitioner reported feeling a loss of control over her life because she was working 37 hours a week, attending classes 2-6 hours a week, her husband was not working and on disability and not helping around the house and she was the primary caregiver for her children. Dr. Mehta diagnosed post-concussion syndrome, neurobehavioral deficits/neurocognitive, impaired balance, insomnia, anxiety/depression/PTSD, chronic post-concussion headaches. (PX 8)

On April 15, 2013, Petitioner was seen in the emergency room of Glen Oaks Hospital. The records state that Petitioner was well until 12:30, in the afternoon, when she developed a right-sided headache and numbness on the left side of her tongue and left lips. Petitioner also reported numbness in her left arm and left leg. The records state that Petitioner has a history of migraines with atypical aura of "flashing light" and that she takes Topamax, 75 mg twice daily, and prophylaxis, and butalbital. (PX 14).

The emergency room show that Petitioner reported being punched in the face in October and experiencing a brief loss of consciousness. The records also show that Petitioner reported sustaining a second head injury in March. The emergency room records show that Petitioner reported headaches since October, frequent nausea, postural dizziness and difficulty with balance. The records show that Petitioner reported that she was treating for post-concussion syndrome at Marianjoy clinic. (PX 14). At the emergency room, CT a scan was taken which was normal. Petitioner was diagnosed with migraine syndrome. Petitioner was told that she could increase her Topamax to 100 mg twice daily. (PX 14).

On April 22, 2013, Petitioner was seen by Dr. Nina Jordania, MD, of the psychiatry department of Behavioral Health Services at Central DuPage Hospital. At that time, Petitioner reported a history of two consecutive concussions. Dr. Mehta refereed Petitioner to Dr. Jordania for the treatment of Petitioner's anxiety. At that visit, Petitioner reported that since the first concussion she has had constant headaches, with photo and phonophobia, arm/elbow tingling, can't focus, can't sleep, nausea, twitching,

sadness, fear, unable to drive due to poor balance, irritability, and worrying.[4] Petitioner also reported ringing in her ears like sirens in her head. (PX 5).

Dr. Jordania noted that Petitioner past medical history included mild depression, anxiety, celiaç disease and that she is allergic to glutens which cause nausea and vomiting. Dr. Jordania diagnosed Petitioner with anxiety due to post-concussion syndrome, PTSD, post-concussion syndrome and insomnia due to PTSD. (PX 5).

On June 6, 2013, returned to Dr. Hsu. At that time the audiogram was taken showed normal hearing. Petitioner reported that she was treating with a neurologist and at Marianjoy. Petitioner complained of headaches, balance problems, and ringing in both ears. Dr. Hsu released Petitioner from care. (PX 13).

On July 18, 2013, Petitioner returned to Dr. Jordinia reporting a significant reduction of headaches after switching to Dexakote from Topamax. (PX 6).

On July 31, 2013, at the recommendation of Dr. Mehta, Petitioner sought counseling services from Steve Cromer, LCPC, at Pathways Psychological Services. Mr. Cromer provided individual counseling to Petitioner until July 1, 2015. Mr. Cromer reported that Petitioner was depressed, overwhelmed, exhausted, sad and angry and he related that Petitioner's inability to work was due to fears and symptoms of PTSD. (PX 5).

On August 19, 2013, Petitioner was examined by Dr. Nancy Landre, a licensed clinical psychologist who is board certified in clinical neuropsychology, pursuant to Section 12 of the Act. At that visit, Petitioner reported being stuck by a 7-year-old in the nose and right temporal/ear area on October 23, 2012. Petitioner reported seeing her PCP and ENT (Dr. Celmer) and undergoing an audiological evaluation on March 7, 2013 which showed normal hearing sensitivity and excellent speech discrimination abilities. Petitioner also reported she later developed persistent tinnitus which, her treating doctor, opined was unrelated to her hear injury. Petitioner further reported that after returning to work she started to experience headaches, jaw pain, fever, and dizziness. Petitioner advised Dr. Landre that she started seeing Dr. Rikert, whom she previously treated with

[4] Dr. Jordania's records do not indicate that Petitioner was treating with Dr. Patel prior to the October 2012 for migraines and that she previously experienced symptoms of headaches, blurry vision, facial numbness and tingling, sensory changes, fatigue, and episodes of being unable to talk.

for headaches. Petitioner advised Dr. Landre that she started to also experience eye twitching, nausea, sleep disturbances and other post-concussive symptoms. (RX 1).

Petitioner reported that she was symptomatic but continued to work until March 3, 2013. On that day, Petitioner reported that she was pushed from behind by a second grader. Dr. Landre noted the Employer's Report of Injury stated that Petitioner was pushed from behind causing her to stumble but she did not fall or strike her head on anything. Dr. Landre also noted that Petitioner treated at Central DuPage Hospital and those records showed that Petitioner did not report a loss of consciousness, a CT was normal, the exam was found to be unremarkable and Petitioner was discharged with no diagnoses being found. (RX 1).

Dr. Landre noted that Petitioner said that she stopped working after the second incident and that she was referred to Dr. Mehta, Marianjoy, by Dr. Cheng and another neurologist, which she sought a consultation.[5] Dr. Landre indicated that Petitioner underwent a neuropsychological evaluation with Dr. Devereux on May 1, 2013. Dr. Devereux found Petitioner's neuropsychological evaluation to be invalid because Petitioner significantly under-reporting her mental/personal problems while over-reporting somatic and cognitive problems. Dr. Landre noted that Dr. Devereux recommended a treatment plan for PTSD, which Petitioner declined. (RX 1).

Dr. Landre noted that Petitioner's past medical history included migraines, left ear tympanoplasty, significant psychiatric history for treatment of depression, anxiety, sleep disorder with psychotropic medications dating back to 2009. (RX 1).

Dr. Landre noted that Petitioner failed several stand-alone and embedded validity measures. Dr. Landre stated that Petitioner showed significant elevated scores on self-reported measures intended to identify malingering and that Petitioner's scores showed marked symptom over-reporting. Dr. Landre opined that Petitioner's cognitive tests were not invalid for interpretation because they portray her much more impaired than she is. Dr. Landre also opined that Petitioner's self-reporting injury related symptomatology was not credible. Dr. Landre noted that Petitioner's performance on standard cognitive tests

[5] Petitioner did not submit into evidence the records of Dr. Cheng or the other neurologist which she sought a consultation.

results were improbably low, at a level typically seen in patients with severe brain injuries or advanced dementia. (RX 1).

Dr. Landre opined that Petitioner's cognitive tests results and responses to self-reporting measures reflect probable symptom magnification.. Dr. Landre further opined that Petitioner does not need further treatment and that any complaints she has would be driven by factors unrelated to her injuries. Dr. Landre opined that Petitioner's complaints were not causally related to her work injuries but are being maintained by other factors such as work avoidance or possible financial renumeration. Dr. Landre also opined that Petitioner could return to work full duty without restrictions. (RX 1).

On August 27, 2014, Petitioner returned to Dr. Jordaia who indicated that Petitioner scored 30/30 on a MMSE. Dr. Jordania's records state that the test was not useful, in Petitioner's case, to detect cognitive defect. Petitioner continued to treat with Dr. Jordania until May 11, 2016. (PX 6).

Petitioner returned to Marianjoy on September 20, 2016 and was seen by Dr. Sayyad's nurse practitioner, Sylvia Duraski. Petitioner reported a return of headaches. The medical records state that Petitioner was alert, oriented, appeared to be smiling more and was more optimistic. Petitioner was given the names of potential psychiatrists to follow up since Dr. Jordania left the area. Petitioner was encouraged to continue taking classes she enjoys so she will be more successful. Petitioner was advised to return in six months or sooner should a problem arise. Petitioner did not return for additional treatment. (PX 4).

On December 31, 2014, Dr. Obolsky performed a Forensic Psychiatric Examination, pursuant to Section 12 of the Act. The forensic psychiatric evaluation was performed to assess Petitioner's reported mental health as a consequence of the Petitioner's work accident. The forensic psychiatric evaluation consisted of over 36 hours of record review, forensic psychiatric interview, forensic psychological and cognitive testing and data analysis. (RX 3).

Dr Obolsky opined that Petitioner's complaints of subjective trauma-related mental, emotional, and cognitive symptoms were not reliable. In his report, Dr. Obolsky stated that the objective evidence does not support Petitioner's reported subjective complaints. Dr. Obolsky opined that Petitioner was malingering (i.e. symptom

exaggeration for secondary gain) and that she suffers from avoidant dependent and compulsive personality features not causally related to her work accidents. (RX 3).

In his report, Dr. Obolsky opined there was no objective evidence that Petitioner's work accidents caused any clinically significant mental, emotional or cognitive dysfunctions. Dr. Obolsky noted that Petitioner endorsed over 40 current assorted symptoms involving various bodily systems on medical psychiatric questionnaires. Dr. Obolsky stated that on the forensic psychological testing, Petitioner exaggerated somatic and cognitive complaints consistent with malingered neurocognitive dysfunction and she also inconsistently magnified her psychiatric symptoms.

Dr. Obolsky stated that that Petitioner's reported posttraumatic symptoms during the forensic psychiatric interview but her description of some of the pathognomonic posttraumatic stress disorder symptoms were phenomenologically inauthentic. Dr. Obolsky noted that Petitioner's performance on forensic psychological testing was erratic. Dr. Obolsky stated that Petitioner made deliberate and unsophisticated attempts to represent herself in an unrealistically virtuous way on the MMPI-2 test. (RX 3).

Dr. Obolsky determined that Petitioner made non-credible over report of psychiatric, cognitive and physical symptoms. In the report, Dr. Obolsky noted that five months after Petitioner's second work injury, Dr. Landre noted that Petitioner failed symptoms validity testing and she displayed abnormal performance on multiple neurocognitive tests. Dr. Obolsky further noted that Dr. Landre assessed malingering after Petitioner's neurocognitive and psychological tests results were found invalid because of multiple failed symptoms validity indicators and evidence of over reporting on self-reporting measures. (RX 3).

Dr. Obolsky opined that the results of two neuropsychological evaluations don't offer objective evidence of mental, emotional or cognitive symptoms of post-concussion syndrome. Dr. Obolsky further opined that Petitioner did not develop post-traumatic stress disorder due to her work accidents and Petitioner could return to work full duty. (RX 3).

Surveillance

Beginning April 24, 2013 and ending through May 7, 2017, on six separate dates, Respondent conducted surveillance of Petitioner. During the surveillance, Petitioner was

observed opening her front door, carrying a garden hose and two rakes, putting items into a trash container, carrying a bag of trash, shipping at a store and pushing a shopping cart, getting mail and carrying empty bags and sitting and walking in a playground. (RX 6).

Evidence Depositions

Dr. Sayyad/Treating physician

Dr. Sayyad testified by evidence deposition on March 1, 2017. (PX 10). Dr. Sayyad testified that she did not see the Petitioner until January 30, 2014 because she previously treated with her partner, Dr. Mehta. (PX 10).

Dr. Sayyad testified that Petitioner complained of light and sound sensitively, lightheaded, and had problems with attention, memory, concentration, dizziness. Dr. Sayyad testified that Petitioner reported to the nurse that she also had ringing in both ears, vision concerns, blurred vision in the left eye and headaches. Dr. Sayyad testified that Petitioner said her symptoms were the result of post-concussion syndrome and PTSD as a result of being punched in the head in October of 2012. (PX 10).

Dr. Sayyad testified that she last saw Petitioner on September 20, 2016 and, at that time, Petitioner had a much brighter affect, was smiling and appeared more optimistic and her speech was fluent. Dr. Sayyad testified that his partner had diagnosed Petitioner with post-concussion syndrome, PTSD, neurocognitive deficits associated with PTSD, post-concussion syndrome and post-traumatic headaches. Dr. Sayyad opined there was a connection between the Petitioner being punched in the head and her diagnoses. Dr. Sayyad testified that her opinion was based upon her medical judgment and that you need a pretty significant trauma to the head to have a diagnoses of post-concussion syndrome and the associated symptoms. (PX 10).

Dr. Sayyad also opined that, as of September 20, 2016, Petitioner was unable to work because her headaches had not completely resolved and because her condition was not stabilized since Petitioner was still looking for a new psychiatrist. (PX 10).

On cross-examination, Dr. Sayyad testified that she had not reviewed any of Petitioner's neuropsychological testing. Dr. Sayyad acknowledged ordering neuropsychological testing, on January 6, 2015, which was not completed in more than two years. (PX 10).

Dr. Sayyad testified that she only reviewed the medical records from Marianjoy and she was not aware that Petitioner suffered form headaches in 2007. Dr. Sayyad further testified that she could not give an opinion as to Petitioner's current condition because she had not examined Petitioned in over two years. (PX 10).

Dr. Nancy Landre/Section 12 Examiner

Dr. Nancy Landre was deposed on March 9, 2017. Dr. Landre is a clinical psychologist specialty trained in neuropsychology. Dr. Landre testified that she sees patients in the areas of dementia, learning disabilities, ADHD, head injuries and other neurological disorders. Dr. Landre testified that she was the clinical neuropsychologist that consulted with the level one trauma center at Lutheran General Hospital in the traumatic brain injury program. (RX 2)

Dr. Landre testified that Petitioner's past medical history was significant for migraines, which Petitioner attributed to fluorescent lights in her work place, left ear tympanoplasty, depression, anxiety, sleep disorder, and celiac disease. Petitioner's depression and sleep disorders dated back to 2009. (RX 2)

Dr. Landre testified that Petitioner reported being struck by a 7-year-old student and that she did not lose consciousness, but she did feel dizzy and saw stars. Petitioner was diagnosed with a right TM perforation and she had surgery on January 17, 2013. Dr. Landre noted that an audiogram, taken 2 months later, showed normal hearing sensitivity and excellent speed discrimination ability in the ear. Dr. Landre testified that Petitioner reported complaining of tinnitus, but her doctor opined that it was unrelated to her injury and discharged Petitioner from care. (RX 2)

Dr. Landre testified that Petitioner reported a second accident, occurring on March 19, 2013, when she was pushed from behind by a second-grade student. Petitioner reported that she briefly lost her balance, but she did not fall or strike her had on anything. Petitioner was treated at Central DuPage Hospital. Dr. Landre testified that Central DuPage Hospital records showed that Petitioner's examination was unremarkable, and a CT scan was negative. Petitioner reported being referred to Dr. Mehta, at Marianjoy, who diagnosed post-concussion syndrome and recommended the outpatient brain injury day rehab program at Marianjoy. (RX 2)

Dr. Landre testified that, on May 1, 2013, Petitioner saw Dr. Devereux who determined that Petitioner showed insufficient effort and performance during symptom validity testing. Dr. Landre testified that she also conducted neuropsychological testing and her findings, just as Dr. Devereux findings, her findings also showed problems with Petitioner's effort and credibility regarding self-report of injury related symptoms. Dr. Landre noted that Dr. Devereux recommended a highly effective treatment for PTSD which Petitioner declined. The treatment involved exposure to work. Dr. Landre testified that one of the best available treatments for PTSD is exposure to work. Dr. Landre testified that when asked about returning to work, Petitioner responded that thinking about returning to work made her feel nauseous. (RX 2)

Dr. Landre testified that one of the best measures of symptom validation tests is the MMPI (Minnesota Multiphasic Personality Inventory). Dr. Landre testified that Petitioner failed a number of the symptom validity tests which showed that Petitioner was over reporting her symptoms. (RX 2)

Dr. Landre testified that Petitioner's cognitive test and psychological tests results were found not to be valid for interpretation because the tests did not provide reliable or valid estimate of what was really going in those domains. Dr. Landre testified that on some of the performance validity tests, Petitioner performed worse than patients with severe dementia in a hospital setting. (RX 2)

Dr. Landre testified that there is a predictable pattern of performance with mild head injuries, and Petitioner's patterns of deficits were not consistent with those predictable patterns. Dr. Landre testified that she would never expect to see someone with severely negative impaired spatial abilities, like Petitioner, or someone with moderately impaired fine motor skills, like Petitioner, in a case involving a mild head injury. Dr. Landre testified that she would not expect to see any effect at all on fine motor skills. (RX 2)

Dr. Landre's opined Petitioner's symptoms are related to malingering. Dr. Landre testified that she based her opinion upon the test results, Petitioner's failure on both performance and symptoms validity measures, Petitioner's poor finding on the standard neuropsychological indices and inconsistencies between self-reported and what we know about the nature and course of recovery from concussions. (RX 2)

Dr. Landre also opined that Petitioner's current condition were related to symptom magnification. Dr. Landre testified that she was unable to provide a valid estimate of Petitioner's true cognitive or emotional status based upon the testing because of Petitioner's insufficient effort during testing and symptom exaggeration. Dr. Landre opined that Petitioner's true functioning status was within normal limits based upon Petitioner attending college, passing classes, and driving without restrictions. (RX 2)

Dr. Landre opined that based upon the test results, history of reported symptoms Petitioner's complaints is being maintained by secondary gain, work avoidance or financial compensation. (RX 2)

Dr. Obolsky/Section 12 Examiner

Dr. Obolsky's evidence deposition occurred on April 10, 2017. Dr. Obolsky is board certified in general and forensic psychiatry. Dr. Obolsky testified that Petitioner did not report a loss of consciousness, mental status changes or post-traumatic amnesia when she described her work accidents which, he said, was consistent with the emergency room findings. (PX 4).

Dr. Obolsky testified that Petitioner said she reported, after the March incident, that she was experiencing dizziness, nausea, slurred speech, confusion and nonreactive pupils. Dr. Obolsky testified nonreactive pupils are present post-traumatically when you have a very sever traumatic brain injury are signs of virtual death. Dr. Obolsky testified that had a patient presented to the emergency room with nonreactive pupils and slurred speech the emergency room would have taken life saving measures and, if sucy symptoms existed, it would had been documented in the emergency room records. Dr. Obolsky noted that the emergency room records indicated that Petitioner's speech was not slurred, her pupils were equal in diameter and reactive to light, and she was not confused and was alert and oriented in all spheres. (PX 4).

Dr. Obolsky testified that Petitioner is a medical professional who has some medical education and she may know the term nonreactive pupils, but most lay people do not. Dr. Obolsky testified that the use of these terms reflects a conscious exaggeration of symptom. (PX 4).

Dr. Obolsky also testified that Petitioner reported her jaw was knocked out of place and she had jaw symptoms after the first incident. Dr. Obolsky testified that

Petitioner's jaw symptoms did not appear in any medical records until February 6, 2013, three and a half months after the October 2012 event. Dr. Obolsky testified that this shows that Petitioner is purposefully not giving a clear history of her illness suggesting symptom exaggeration. (PX 4).

Dr. Obolsky testified that, after reviewing the results from the psychological testing, Petitioner is misattributing causation. Dr. Obolsky testified that Petitioner is piling up every symptom she can think of, whether it's present or not, and she claims they are all caused by either the first or second injury. Dr. Obolsky testified that Petitioner is misattributing causation of her physical symptoms to an event for which she could receive compensation which is malingering. (PX 4).

Dr. Obolsky testified that Petitioner reported that she started to experience memory difficulties after the March 2013 incident. Dr. Obolsky noted that the first time Petitioner reported memory difficulties was during the IME, with Dr. Levine, on March 7, 2013, one week before the March incident. Dr. Obolsky testified that, at that time, Petitioner reported that she did not know what country or town she was in. Dr. Obolsky testified that one must have a very significant traumatic brain injury not to know that you are in United States or Chicago. (PX 4).

Dr. Obolsky testified that a neurologist, Dr. Cheng, performed an evaluation of Petitioner on February 7, 2013, one week before she was examined by Dr. Levine, and also performed a mental status exam which found Petitioner to be alert, oriented in all spheres and her memory, attention and concentration was normal. Dr. Obolsky testified that, based upon Dr. Cheng's examination, one month before Petitioner's second accident, her mental state was normal. Dr. Obolsky testified that this issue is significant because it shows that Petitioner did not have any cognitive symptoms after her first injury and it also shows that Petitioner started lying before the second accident. (PX 4).

Dr. Obolsky testified that the way traumatic brain injuries work is that something happens, your brain is bruised, and you, immediately, develop symptoms and, over time, the symptoms improve. Dr.Obolsky testified that the symptoms should steadily improve and resolve within 3 months of the event. (RX 4).

Dr. Obolsky further testified that after reviewing all of the physical symptoms reported and Petitioner's complaints listed in the questionnaire Petitioner endorsed over

50 separate physical complaints. Dr. Obolsky opined that both Dr. Devereux and Dr. Landre's neurocognitive testing shows that Petitioner malingered, exaggerated cognitive complaints and her subjective cognitive complaints are untrustworthy. (RX 4).

Dr. Obolsky testified that Dr. Devereux's neuropsychological testing, performed on May 1, 2013, six weeks after the second work accident, shows that Petitioner was malingering her symptom. Dr. Obolsky testified that on the RBANS test, Petitioner performed in the lowest .01 percentile and her scores were the same as people with severe end-staged dementia. Dr. Obolsky testified that the RBANS test is a cognitive test of memory, concentration, attention, and executive functioning. Dr. Obolsky opined that the MMPI-2 test showed that Petitioner was exaggerating her physical symptoms. (RX 4).

Dr. Obolsky further opined the VSVT showed that Petitioner was a malinger. Dr. Obolsky testified that a person is who is a malinger will perform well on the part of the VSVT they believe is easy and will do poorly on the part of the test they believe is hard. Dr. Obolsky testified that both parts of the test are of equal difficulty. Dr. Obolsky testified that Petitioner performed in a valid range on the perceived easy part of the test and she performed in the questionable range on the perceived hard part of the test. (RX 4).

Dr. Obolsky diagnosed malingering with avoidant dependent and compulsive personality features. Dr. Obolsky testified that his diagnoses were based upon the review of the medical records, performance of psychological testing, review of the psychological neurocognitive tests and his interview with Petitioner. (RX 4).

Dr. Obolsky opined that Petitioner did not suffer any post-traumatic disorder based upon the totality of the data which included the medical records, psychological testing, and neurocognitive testing. Dr. Obolsky testified that symptoms were missing to diagnose PTSD. Dr. Obolsky testified that Petitioner's intrusive symptoms were not authentic, her avoidance symptoms were inconsistent, and her hyperarousal symptoms were not authentic. Dr. Obolsky opined that it is inappropriate to diagnose PTSD, in this case, because Petitioner was an untrustworthy reporter of her symptoms, she misattributes the causation, misreports symptoms and she manipulates symptoms. (PX 4).

Dr. Obolsky further testified that Petitioner's credibility, as a historian of her own symptoms, is undermined significantly because she clearly malingering. Dr. Obolsky

testified that it is inappropriate to diagnose PTSD under such conditions. Dr. Obolsky noted that Petitioner refused PTSD treatment offered by Dr. Devereux and the people who diagnosed PTSD did not treat Petitioner as if she had PTSD. (RX 4).

.Dr. Obolsky also opined that Petitioner did not suffer a concussion in either work accident. Dr. Obolsky testified to be diagnose with a concussion you have to exhibit one of the four symptoms immediately after the physical force is applied to the head. Dr. Obolsky testified to be diagnosed with a concussion, you must, immediately, develop a loss of consciousness or mental state changes or post-traumatic amnesia or focal neurological signs. Dr. Obolsky testified that Petitioner did not immediately develop any of the four symptoms for both incidents. (RX 4).

Dr. Obolsky opined that Petitioner did not develop any condition of mental ill-being causally related to either the October 23, 2012 or March 19, 2013 work events. Dr. Obolsky further opined that Petitioner does not require additional medical care and she could return to work full duty, without restrictions. (RX 4).

Petitioner's Education

Petitioner testified that after the March 19, 2013 accident she started to take classes at College of DuPage. In May of 2019, Petitioner received an associate degree in applied science and human services for addiction counseling. Petitioner testified that the degree takes two years to complete. Petitioner testified that she also has an associate degree in in general studies and she is certified as an emergency medical technician, both earned prior to 2012. (T. 34).

Petitioner's Current Complaints

Petitioner testified that she still suffers sleeping problems, dizziness, when she stands up too quickly, and the tinnitus causes ringing in her ears which gets louder when she gets light-headed. Petitioner testified that she gets anxious when the ringing gets louder. Petitioner testified that she gets tingly everywhere. very dizzy and she needs to lay down. Petitioner testified that she gets nervous around a lot of people, in new situations and she needs to know whose around. Petitioner testified that she gets anxious in grocery stores and needs to find landmarks when going to the park, so she could find her car. (T. 36-38).

The Arbitrator does not find the testimony of the Petitioner to be credible.

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of her claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill App. 3d 706 (1992).

In support of the Arbitrator's decision related to issue (F), is Petitioner's current condition of ill-being causally connected to the accidental Injuries of March 19, 2013, the Arbitrator makes the following conclusions:

Accidental injuries need not be the sole cause of the Petitioner's current condition of ill-being as long as the accidental injuries are a causative factor resulting in the current condition of ill-being. *Sisbro, Inc. v. Industrial Commission*, 207 Ill.2d 193 (2003). Causal connection between accidental work injuries and an injured worker's current condition of ill-being may be established by a chain of events, including Petitioner's ability to perform work duties before the date of accidental injuries and inability to perform those same duties following that date. *Darling v. Industrial Commission*, 176 Ill.App.3d 186 (1988). Petitioner's condition of health prior to the accidental injuries need not be perfect, if after an accident occurs and following the accident, the Petitioner's condition has deteriorated, and it is plainly inferable that the intervening injury caused the deterioration; the salient factor is not the precise previous condition, it is the deterioration from whatever the previous condition had been. *Schroeder v. Illinois Workers' Compensation Comm'n*, 2017 IL App (4th) 160192WC.

The Arbitrator finds, after reviewing all of the evidence, that Petitioner failed to prove by the preponderance of the evidence that she sustained a concussion, post-concussion syndrome, PTSD, TMJ, tinnitus, occipital neuralgia, anxiety, migraines that was causally related to the March 19, 2013, accident.

The Arbitrator finds the Petitioner's testimony not credible. The Arbitrator notes that Petitioner was not diagnosed with a concussion, post-concussion syndrome nor did she present concussion related symptoms to Dr. Patel, who she saw the day after the October 23, 2013 incident. When she saw Dr. Patel, in October, she only complained of ear pain and hearing loss. On October 24, 2012, when Petitioner saw Dr. Celmer, she only complained of hearing loss and a sore nose. When Petitioner returned to DR.

Celmer on October 24, 2012 and December 5, 2012, she had no other complaints. When Petitioner treated with Dr. Hsu, on December 18, 2012, January 22, 2013 and March 7, 2013, she reported no concussion related symptoms. (PX 13). The Arbitrator found that Petitioner failed to prove that she sustained a concussion or post-concussion syndrome as a result her October 23, 2012 incident. *See Jaclyn Wellman v. CASE: Glenwood Academy*, Case #13 WC 13675.

On March 19, 2013, the day of the second incident, Petitioner presented at Central DuPage Hospital and reported suffering a "significant concussion" in October and that she was diagnosed with post-concussion syndrome by Dr. Cheng, a neurologist. The Arbitrator notes that Petitioner did not submit into evidence Dr. Cheng's medical records.

Petitioner testified that she was hit by a student and that she struck her forehead on a wall and blacked out. (T. 20-22). The Central DuPage Hospital medical records do not show that Petitioner struck her forehead on the wall and blacked out. The Central DuPage Hospital medical records state that Petitioner did not suffer a loss of consciousness. (PX 15).

The Arbitrator notes that Petitioner did not state that she struck her forehead on a wall and blacked out in her Employee's Report of Injury. (PX 1). The Arbitrator finds that Petitioner's testimony conflicted with the history she provided at Central DuPage Hospital and the history she provided in her Employee's Report of Injury.

The Arbitrator also finds that Petitioner did not provide complete medical histories to various doctors regarding her preexisting conditions and symptoms she was experiencing prior to her work incidents. Petitioner attributed symptoms she was experiencing, prior to October of 2012, to have been caused by her October 23, 2012 and March 19, 2013 work incidents. Prior to October of 2012, Petitioner's migraines were getting worse and were occurring more often and for longer durations of higher severity. Petitioner was also experiencing blurry vision in the left eye, fatigue, sensory changes, facial numbness, tingling, and she was having difficulties speaking and putting thoughts together. Dr. Patel diagnosed chronic migraines and proscribed Topamax and he told Petitioner to taper off the Fioricet which could be contributing to her symptoms. In 2010, Petitioner was experiencing headaches, tingling on the left side of her face, eye, tongue, neck and down her arm. Petitioner reported being very fatigues with minimal activity.

(PX 12). Petitioner's past medical history also included left ear tympanoplasty, depression, anxiety, sleep disorder, psychotropic medications dating back to 2009, celiac disease and being allergic to glutens which causes her nausea and vomiting. (RX 1 and PX 5). When Petitioner was treated at Marianjoy she reported headaches, fatigue, nausea, eye twitching, insomnia, moodiness, and flipping letters and numbers. Petitioner did not disclose that she had been previously diagnoses with chronic migraines, celiac disease, depression, sleep disorder, anxiety and that gluten cause nausea and vomiting. When Petitioner was seen at Glen Oaks Hospital, she reported nausea, dizziness, numbness in her left arm and numbness on the left side of her tongue. While at Glen Oaks Hospital Petitioner did not report that she previously experienced symptoms of nausea, numbness in the left side of her tongue and left arm. Petitioner did not report that she had celiac disease and that glutens cause nausea and vomiting. When Petitioner treated with Dr. Jordainia she reported headaches, nausea, twitching, arm tingling and that she was unable to focus. Petitioner did not advise Dr. Jordania that she had been previously diagnosed with chronic migraines and that she previously experienced twitching, vision problems. Petitioner did not advise the doctors that she had been experiencing many of these symptoms prior to her work incidents and Petitioner also told her doctors these symptoms were caused by her work incidents. Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicated unreliability. *Gilbert. V. Martin & Bayley/Hucks*, 08 IL.W.C. 004187 (Ill. Indus. Comm'n., 2010).

Petitioner testified that, prior to the October 23, 2012 incident, she was not taking medication for any reason and that she could regularly exercise. Petitioner saw Dr. Patel on April 16, 2012, complaining that her headaches were increasing in severity, intensity and frequency. Petitioner was diagnosed with chronic migraines. Dr. Patel proscribed Topamaz and told to Petitioner to reduce the Fioricet she was taking. Petitioner also complained fatigue. Two years earlier, Petitioner reported similar symptoms which included migraines and being very fatigued even with minimal activity. The Arbitrator finds that Petitioner's testimony regarding her physical condition prior to the October 23, 2012 incident was not credible.

The Arbitrator finds the opinions of Drs. Landre and Obolsky to be persuasive. The Arbitrator does not find the opinions of Drs. Sayyad, Mehta, Jordania to be persuasive nor does the Arbitrator find the diagnoses, related to post-concussion syndrome and PTSD, found in the Central DuPage Hospital medical records, to be persuasive. The Arbitrator finds that those opinions were based upon inaccurate histories or information provided by Petitioner. It is axiomatic that the weigh accorded an expert opinion is measured by the facts supporting it and the reasons given for it; an expert opinion cannot be based on guess, surmise, or conjecture. *Wilfert v. Retirement Board,* 318 Ill.App.3d 507, 514-515 (First Dist. 2000).

Petitioner advised Dr. Mehta that she was previously diagnosed with a concussion and post-concussion syndrome by Dr. Cheng, a neurologist. Petitioner did not place Dr. Chang's records into evidence. The Arbitrator notes that none of Petitioner's initial treating physicians, for the October 23, 2012 incident, diagnosed her was sustaining a concussion or post-concussion syndrome. As previously noted, the Arbitrator did not find that Petitioner suffered a concussion or post-concussion syndrome after the October 23, 2012 incident.

The Arbitrator does not find the testimony of Dr. Sayyad to be persuasive. Dr. Sayyad testified that he was not aware the Petitioner previously treated for headaches, he did not review Petitioner's neuropsychological testing and he only reviewed Petitioner's medical records from Marianjoy. The Arbitrator notes that Dr. Sayyad could not offer an opinion as to Petitioner's current condition of ill-being because he had not examined Petitioner in more than two years prior to his testimony.

The Arbitrator finds the opinions of Drs. Landre and Obolsy persuasive. The Arbitrator notes that both doctors reviewed Petitioner's medical records, examined Petitioner, reviewed neuropsychological testing. Dr. Obolsky diagnosed Petitioner as malingerer. Dr. Obolsky opined that Petitioner did not suffer PTSD. Dr. Obolsky based his opinion upon the medical records, psychological testing and neurocognitive testing. Dr. Obolsky testified that the neurocognitive testing showed that Petitioner was malingering and exaggerating her cognitive complaints. On the RBANS test, Petitioner scored in the .01 percentile similar to people who are in severe end-state dementia. The Arbitrator notes, that at the time of the testing, Petitioner was taking college classes and

receiving passing grades. Dr. Obolsky testified the MMPI-2 test showed that Petitioner was exaggerating her physical symptoms. Dr. Obolsky also opined that Petitioner did not suffer a concussion or post-concussion syndrome.

Dr. Obolsky testified that Petitioner did not have any of the four symptoms needed to properly diagnose a concussion. Dr. Obolsky testified to diagnose a concussion you must immediately exhibit one of four symptoms (i.e. loss of consciousness, mental state changes, post-traumatic amnesia or focal neurological signs). Dr. Obolsky found that Petitioner did not have any of the four symptoms immediately after the March 19, 2013 accident.

Dr. Landre opined that Petitioner's complaints were not causally related to her work injuries and were being maintained by other factors such work avoidance or financial renumeration. Dr. Landre also opined that Petitioner's performance on some of the standard cognitive test were improbably low and were at a level typically seen in patients with severe brain injuries or advanced dementia.

Dr. Landre further opined that Petitioner's complaints and course of recover, with delayed onset of many symptoms, and little or no improvement and/or worsening of alleged injury-related symptomatology were inconsistent with her injuries. Dr. Landre opined that Petitioner's cognitive tests and responses to self-reporting measures reflect probable symptom magnification. (RX 1).

Dr. Sayyad testified that when Petitioner started treating at Marianjoy she complained of blurred vision in the left eye, headaches, sensitivity to light and problems with attention and memory all the result of being punched in the head in October of 2012.

On April 16, 2012 and August 23, 2010, prior to the October 23, 2012 incident, Petitioner reported symptoms of blurry vision in the left eye, migraines increasing in frequency and duration, sensory changes, tingling down the left side of her face, difficulty talking and felt fatigued. (PX 12)

The Arbitrator notes the symptoms Petitioner's claims were related to her work injuries existed prior to her work accidents and that Petitioner failed to fully report these preexisting symptoms to her treating physicians. The Arbitrator further finds that Petitioner's actions further supports the opinions of Dr. Obolsy who testified that after reviewing the results from the psychological testing, Petitioner was misattributing

causation and Petitioner was piling up every symptom she can think of, whether it's present or not, and claim they were all caused by either the first or second injury. (PX 4).

In support of the Arbitrator's decision relating to issue, (J), has Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds the following facts:

The Arbitrator finds that Petitioner reached maximum medical improvement at required no further medical treatment as of August 19, 2013, as of the date of Dr. Landre's independent medical evaluation. (RX 1). All medical treatment after that date is denied.

In support of the Arbitrator's decision relating to issue, (K), what amount of compensation is due for temporary total disability, the Arbitrator finds the following facts:

The Petitioner is seeking temporary total disability benefits from the date of accident through the date of hearing despite. The Arbitrator finds that Petitioner failed to prove that she was entitled to temporary total disability benefits beyond August 19, 2013.

The Arbitrator finds the most credible and persuasive evidence surrounding Petitioner's ability to return to work can be found in Dr. Landre's evaluation. (RX 1). During her testimony, Dr. Landre opined that Petitioner could return to work full duty without restrictions. Dr. Landre based her opinions, in part, upon the information provided to her and that Petitioner was driving, attending college and passing her classes. Dr. Landre testified that, "All of the valid information I had about her suggested that she should be capable of doing that type of work again." (RX 2, p. 35).

The Arbitrator finds that Dr. Landre's testimony was supported by the opinions of Dr. Obolsky, who opined that the petitioner had no psychiatric injury which would prevent her from returning to full duty work. (RX 4, p. 78).

The Arbitrator notes that Dr. Sayyad acknowledged that she never saw the results of the testing that Dr. Sayyad requested to determine whether Petitioner was able to return to work. (PX 10, p. 28-29). Absent these test results, Dr. Sayyad testified that there was no objective basis to support any restriction from work. (*Id.* at 33).

Based on all of the above, this Arbitrator awards Petitioner temporary total disability benefits from March 20, 2013, through August 19, 2013, a period of 21 6/7 weeks.

In support of the Arbitrator's decision relating to the disputed issue, (L), What is the nature and extent of the injury, the Arbitrator finds the following facts:

Section 8.1b of the Illinois Workers' Compensation Act ("Act") addresses the factors that must be considered in determining the extent of permanent partial disability for accidents occurring on or after September 1, 2011. 820 ILCS 305/8.1b (LEXIS 2011). Specifically, Section 8.1b states:

> For accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:
>
> (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.
>
> (b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:
>
> (i) the reported level of impairment pursuant to subsection (a);
> (ii) the occupation of the injured employee;
> (iii) the age of the employee at the time of the injury;
> (iv) the employee's future earning capacity; and
> (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order. *Id.*

Considering these factors in light of the evidence submitted at trial, the Arbitrator addresses the factors delineated in the Act for determining permanent partial disability.

With regard to subsection (i) of Section 8.1b(b), the reported level of impairment pursuant to Section 8.1b(a), the Arbitrator notes that neither party submitted into evidence an AMA impairment rating. Thus, the Arbitrator considers the parties to have waived their right to do so and assigns no weight to this factor.

With regard to subsection (ii) of Section 8.lb(b), the occupation of the injured employee, the evidence established that Petitioner was a health assistant in a school with children with behavior disorders and physical limitations. As such, it is reasonable to assume, Petitioner would continue to be at risk of being hit or struck by a child with behavior issues. Therefore, the Arbitrator find that this factor increases the amount of permanency.

With regard to subsection (iii) of Section 8.1b(b), the age of the employee at the time of the injury, the evidence established that Petitioner was 35 years old on the date of the accident. As employees age, the body becomes less capable of recovering from injuries as someone younger than Petitioner. As such, the Arbitrator finds that this factor slightly increases the amount of Permanency.

With regard to subsection (iv) of Section 8.1b(b), Petitioner's future earnings capacity, the Arbitrator finds that Petitioner is capable of returning to work without restrictions but that has not for reasons unrelated to her work accident. As such, the Arbitrator finds that this factor has no impact upon the amount of permanency.

With regard to subsection (v) of Section 8.lb(b), evidence of disability corroborated by the treating medical records, Petitioner testified to symptoms unrelated to her work accident. The Arbitrator finds that Petitioner's testimony, regarding evidence of disability, was not corroborated by the treating medical records. Petitioner did make some soft-tissue complaints of pain involving her neck and nose. As such, the Arbitrator finds that this factor lessens the amount of permanency.

In consideration of the factors enumerated in Section 8.1b, which does not simply require a calculation, but rather a measured evaluation of all five factors of which no single factor is conclusive on the issue of permanency, the Arbitrator finds that Petitioner suffered permanent partial disability to the extent of 7.5% loss of man as a whole pursuant to Section 8(d)(2) of the Act.

In support of the Arbitrator's decision relating to the disputed issue, (N), Is the respondent due any credit, the Arbitrator finds the following facts:

The parties stipulated that the respondent is owed a credit in the amount of $6,122.63 for temporary total disability benefits paid, and an additional $8,385.14 and

permanent partial disability advances. (Arb. Ex. 2). Respondent's credit totals $14,507.77. *Id.*

This Arbitrator has awarded the Petitioner 21-6/7 weeks of temporary total disability benefits and 7.5% loss of use of a whole person. Therefore, the Respondent shall pay Petitioner the balance of the award after deducting the sum of $14,507.77 for the credit.

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KENNETH BRITT,

Petitioner,

vs. NO: 18 WC 3627
21 IWCC 0425

GRANITE CITY SCHOOL DISTRICT,

Respondent.

CORRECTED DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Circuit Court of Madison County, Illinois. In its August 10, 2020 Order, the Circuit Court affirmed in part and reversed in part the Commission's Decision dated November 21, 2019.

Procedurally, the parties proceeded with a Section 19(b) hearing as to the alleged injuries Petitioner sustained at work to his left shoulder, left elbow, and both knees on January 19, 2018. Respondent disputed causal connection after February 5, 2018 for Petitioner's left shoulder, left elbow, and left knee injuries, and disputed both accident and causal connection for Petitioner's claim to the right knee.

The Arbitrator issued his Decision on January 7, 2019, finding that Petitioner sustained an accident on January 19, 2018 that arose out of and in the course of his employment with Respondent. However, the Arbitrator found that Petitioner's current conditions of ill-being for his left shoulder, left elbow, and left knee were not causally related to the work injury. The Arbitrator only awarded medical bills through February 5, 2018. The Arbitrator additionally found that Petitioner failed to prove accident and causal connection for his alleged right knee injury and denied Petitioner's claim for the right knee in its entirety. The Arbitrator did not award any temporary total disability (TTD) benefits.

Petitioner filed his Petition for Review before the Commission. In its November 21, 2019 Decision, the Commission affirmed the Arbitrator in all respects but modified the Arbitrator's

findings and award as it related to the alleged left knee injury. The Commission found that Petitioner's current left knee condition was causally related to the January 19, 2018 work accident and awarded benefits. Specifically, the Commission awarded:

a) All reasonable, necessary, and causally related medical bills pertaining to the left knee;
b) The prospective treatment as may be recommended or reasonably required to cure or relieve Petitioner's left knee condition from the effects of the accidental injury; and,
c) Temporary total disability benefits of $659.46 per week for 36 5/7 weeks, commencing January 20, 2018 through October 3, 2018.

The matter was next reviewed by the Circuit Court of Madison County, Illinois. In its August 10, 2020 Order, the Circuit Court affirmed in part the Commission's Decision, but reversed as follows:

a) "The Court finds the Commission Decision ordering the District to 'pay all reasonable, necessary, and causally related medical bills pertaining to the left knee' is against the manifest weight of the evidence and is REVERSED AND REMANDED to the Commission to specify the exact dollar figure and dates of service the District is to pay and to whom for the medical bills pertaining to the left knee";
b) "The Court finds the Commission Decision that Britt is entitled to 'prospective treatment as may be recommended or reasonably required to cure or relieve Britt's left knee condition from the effects of the accidental injury' is against the manifest weight of the evidence and is therefore REVERSED and VACATED IN ITS ENTIRETY"; and,
c) "The Court finds the Commission Decision that Britt is entitled to 'temporary total disability benefits of $659.46 per week for 36 5/7 weeks, commencing January 20, 2018 through October 3, 2018' is against the manifest weight of the evidence and is therefore REVERSED and MODIFIED to Britt is entitled to 'temporary total disability benefits of $659.46 per week for 9 weeks, commencing January 20, 2018 through March 23, 2018.'"

Based upon the Circuit Court's remand Order, the Commission re-affirms the Arbitrator's finding that Petitioner sustained a work-related accident on January 19, 2018. The Commission also reinstates the Arbitrator's finding that Petitioner failed to prove that his current conditions of ill-being for his left shoulder, left elbow and left knee are causally related to the accident. The Commission additionally re-affirms the Arbitrator's finding that Petitioner failed to prove a compensable claim for his right knee and benefits as it relates to the right knee are denied in their entirety.

The Commission modifies and clarifies the Arbitrator's award of medical bills as instructed by the Circuit Court, and reverses the Arbitrator's denial of TTD benefits and instead awards TTD benefits from January 20, 2018 through March 23, 2018. The Commission also vacates its prior

award of prospective medical. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Indus. Comm'n*, 78 Ill. 2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed January 7, 2019, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay pursuant to Sections 8(a) and 8.2 of the Act the following reasonable, necessary, and causally related medical bills pertaining to the left shoulder and the left elbow, incurred from January 19, 2018 through February 5, 2018, and for the left knee, incurred from January 19, 2018 through March 23, 2018:

a) Gateway Regional Medical: 1/19/2018 = $5,281.89
b) Multicare Specialists: 1/22/2018-3/22/2018 = $10,205.00
c) MRI Partners of Chesterfield: 1/24/2018 and 2/1/2018 = $15,789.12 (less $6,281.95 credit to Respondent)
d) Dr. Paletta: 2/5/2018 = $823.00 (less $94.82 credit to Respondent)

The Commission notes that the medical bills from Gateway Regional and Multicare Specialists were paid in part by the group carrier. The Commission therefore finds that Respondent is entitled to a credit pursuant to Section 8(j) of the Act for these bills. Respondent shall also hold Petitioner harmless for any claims for reimbursement from any health insurance provider.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's claim for prospective medical related to the left knee is hereby denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is entitled to temporary total disability benefits of $659.46 per week for 9 weeks, commencing January 20, 2018 through March 23, 2018, that being the period of temporary total incapacity for work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall be given a credit of $9,891.90 for temporary total disability benefits that were previously paid to Petitioner.

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

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 this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of

expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

No bond is required for removal of this cause to the Circuit Court by Respondent. 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.

SEPTEMBER 8, 2021

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

CAH/pm
D: 8/19/2021
052

/s/ *Stephen J. Mathis*
Stephen J. Mathis

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