

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Frank Schneider ,
Petitioner,

vs.

No: 13 WC 05403
14 IWCC 922

J F Brennan Co. Inc. ,
Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, and temporary disability and being advised of the facts and law, reverses the November 13, 2013 Decision of the Arbitrator, which is attached hereto and made a part hereof. 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. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

Arbitrator Gerald Granada found that Petitioner did sustain an accident that arose out of and the course of employment on January 23, 2013 when Petitioner fell at work. The Arbitrator found that Petitioner did provide timely notice of the accident to Respondent but his current condition of ill-being was not causally related to the accident. The Arbitrator ordered Respondent to pay Petitioner temporary total disability benefits of \$1,149.75 per week for 10-6/7 weeks for the period February 13, 2013 through April 29, 2013. Petitioner's undisputed average weekly wage was \$1,724.62. Petitioner was also awarded medical expenses pursuant to the Act through the date of Dr. Lange's examination, April 29, 2013, at which time Dr. Lange found Petitioner to be at maximum medical improvement. The Arbitrator denied Petitioner's request for prospective medical treatment.

After considering the entire record, and for the reasons set forth below, the Commission affirms the finding of accident and notice and reverses the remainder of the November 13, 2013 decision of the Arbitrator.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner filed an Application for Adjustment of Claim on February 20, 2013 claiming injury on January 23, 2013 to the low back and body as a whole when he fell on a metal plate while unloading rebar in the scope and course of his employment for Respondent. (AX2)

2. Petitioner testified he worked for Respondent for 13 years as a union ironworker. His duties included erecting steel buildings, welding, reinforcing rebar in concrete, etc. Petitioner described the strenuous nature of his work, including wearing a 30-35 pound harness and tool belt, climbing up to 80 feet in the air, and using heavy tools to weld, drive in bolts and wire rebar. (T11-12).

3. Prior to the January 23, 2013 accident, Petitioner treated at St. Elizabeth's emergency room on December 20, 2010, after a fall on ice at home, with injury to his neck and back. He was given a prescription for Vicodin 5/500 #20, Flexeril 10 mg #20, and Motrin. (RX3)

4. Petitioner began seeing Dr. Garner, a general practitioner, as a new patient on January 13, 2011. His main complaints at that time were trouble sleeping and a possible ear infection. Petitioner also mentioned he worked as an ironworker and experienced some back pain. Petitioner noted to Dr. Garner that he had recently had a fall, went to the ER, and was given a short supply of Vicodin and Flexeril that seemed to work well for his pain. Dr. Garner provided a short refill of the Vicodin and Flexeril and recommended a formal back workup. (RX2)

5. Dr. Garner assessed Petitioner on February 4, 2011 and opined he suffered from persistent low back pain with a question of radiculopathy and required prescription medication for pain control as well as an MRI of the lumbar spine. Petitioner never had the MRI performed. In April 2011, Petitioner presented to Dr. Garner for checkup and was noted to be working in a current job where he didn't have to carry a tool belt as much and hoped that would decrease his pain somewhat. At that time, Petitioner was taking four Vicodin daily and Flexeril before bed. Vicodin 5/500 #120 with 3 refills and Flexeril 10 mg was prescribed. (RX2)

6. Throughout 2011, Dr. Garner continued to prescribe refills of Vicodin and Flexeril for what was described in the records as "iron working pain." In a note dated September 6, 2012, Petitioner asked Dr. Garner to write a note for a job he was performing in Canada that required a doctor to certify that Petitioner was able to work full duty without restriction while on Vicodin for chronic back pain; Dr. Garner obliged. (RX2)

7. Petitioner followed with Dr. Garner for a check up on September 17, 2012. At that time, he was noted to have continued chronic low back pain and a new complaint of numbness and tingling in his hands, greater on the right. It was further noted that Petitioner has been working a lot of 12 hour shifts lately. Dr. Garner increased the number of Vicodin Petitioner received per month from #120 to 150 as it was noted the Vicodin did help his pain. (RX2) Petitioner testified that he told Dr. Garner that he felt #120 was sufficient Vicodin a month but Dr. Garner wrote for #150 just in case as Petitioner was working so many hours. (T32)

8. Petitioner presented to Dr. Garner on November 15, 2012 with complaints of significant left knee pain for a little over a week without injury but it was noted that Petitioner is required to crawl a lot for his job and carry weights. Dr. Garner gave a preliminary diagnosis of bursitis and a prescription for prednisone. It was also noted that Petitioner was refilling Vicodin at #150 per month and Flexeril at #90 per month with a couple of refills. The November 15, 2012 note makes no mention of any back complaints. (RX2)

9. The last visit with Dr. Garner prior to the January 23, 2013 accident was on January 18, 2013. It was noted that Petitioner's blood pressure was rechecked and he was doing well. It was also noted that his carpal tunnel complaints were better with bracing and his left knee pain was intermittent. Vicodin and Flexeril were refilled at that time. No specific mention of back pain was made in the record. (RX2)

10. Petitioner testified the low back pain he experienced prior to January 23, 2013 did not radiate regularly and he only occasionally experienced pain that went into his hip or buttock; never lower than his knees (T15).

11. Despite his regular pain complaints, Petitioner testified he never missed work due to low back pain and he regularly worked 12 hour days, up to 7 days a week for 4-5 years prior to the accident. (T13). Petitioner testified that he worked steadily for 7 years prior to the January 2013 accident and worked about 3000 hours total out of the union hall the prior year. (T26)

12. On January 23, 2013, Petitioner testified that around 9:00 am he was at work, unloading steel from a barge, guiding a load of rebar, when he stepped back onto a steel plate that was two inches thick, set atop 6 inches of cribbing, for a total height of 8 inches. Petitioner slipped off the edge of the plate, causing him to hit his low back on the edge of the steel plate. Petitioner testified that the pain in his low back progressively worsened and he left work around lunchtime to go home and lie down. (T15-17).

13. Petitioner presented to Dr. Garner on January 24, 2013 and gave a history of fall the prior day at work with current complaints of pain in the low back and numbness in his hands and feet. Petitioner noted that his hardhat came off and he hit the back of his head in the fall. Dr. Garner noted Petitioner's history of back pain and use of Vicodin and Flexeril prior to the accident.

14. Petitioner testified that his pain continued and progressively worsened with pain beginning to shoot down his leg, numbness in his buttock with prolonged standing, and tingling if he lay too long in one position. (T16-19). Petitioner followed up with Dr. Garner on January 28, 2013 with worsening complaints including pain that radiated to his feet bilaterally. Dr. Garner diagnosed lumbago after a fall at work with radicular symptoms and ordered a short course of prednisone, imaging of the lumbar spine and light duty work restrictions.

15. On February 13, 2013, Petitioner followed with Dr. Garner and it was noted that Petitioner had not had an MRI yet due to insurance scheduling and Petitioner continued to have a lot of pain with radiculopathy into the left leg with numbness, burning and tingling. It was at this time that Dr. Garner increased the dosage of Vicodin from 5/500, as Petitioner had been taking since 2010, to 7.5/500. (PX1)

16. On February 18, 2013, a lumbar MRI revealed an L4-5 paracentral disc herniation causing stenosis on the left neural foramen. Facet arthropathy with associated effusions at L3 through S1 were also noted by the radiologist. Dr. Garner continued Petitioner's off work status and referred him for injections and physical therapy. (PX1)

17. Petitioner's initial treatment with Dr. Gornet was on March 14, 2013. Petitioner complained of bilateral low back pain radiating into both buttock and down both legs to the knees. Petitioner advised that the current magnitude and severity of his complaints began after a work injury on January 23, 2013. Petitioner gave a history of some low back pain in the past, but no significant treatment and no previous MRIs. Petitioner advised that his current symptoms were constant and worse with prolonged bending, sitting, or standing and he currently took 7.5s Vicodin, 5 times a day. Dr. Gornet recommended Petitioner wean off narcotic medication and undergo a series of epidural steroid injections. He further opined that Petitioner suffered a disc injury at L4-5 in the January 2013 accident. Petitioner underwent ESIs on March 25, 2013 and April 29, 2013 at the L4-5 and 5-S1 levels.

18. Petitioner presented to Dr. Lange for a Section 12 examination ordered by Respondent on April 29, 2013. Petitioner gave a history of the January 2013 fall. Dr. Lange noted that Petitioner was currently taking 3 Vicodin daily at the time of the exam and Petitioner denied any prior low back difficulties or treatment in the past. Dr. Lange noted signs of symptom magnification on exam. Petitioner had neither referred nor radiating symptoms in the lower extremities. He opined Petitioner's complaints were not suggestive of a work injury, noting Petitioner had a history of narcotics use for 2 years and if only one lumbar level was affected, that must be a chronic condition related to that level. Dr. Lange opined Petitioner was not at maximum medical improvement but could work at the light/medium demand level with a maximum lift of 30 pounds. Dr. Lange amended his report on June 3, 2013 to note that while Petitioner did suffer an accident on January 23, 2013, the bulk of his current symptoms were chronic in nature and the treatment recommended could not be associated with that accident. Dr. Lange opined Petitioner suffered a temporary aggravation of his preexisting lumbar condition but recommended further treatment, including surgery, for his preexisting condition. (RX1)

19. Dr. Gornet diagnosed an annular tear at L4-5 on May 2, 2013 and opined that the tear accounted for the majority of Petitioner's left-sided pain complaints. Dr. Gornet further opined that given the fact Petitioner is a heavy laborer, he would be best served with an anterior spinal fusion at that level. Dr. Gornet noted Petitioner would need to wean off narcotic pain relievers before surgery. (PX4)

20. Petitioner testified at trial that he had stopped taking Vicodin and Flexeril so he could proceed with the surgery recommended by Dr. Gornet. He further testified that medication and injections did not alleviate his pain after the January 2013 accident. (T24-25)

21. Petitioner testified that currently he is unable to help take care of his young children, play with them or pick them up. He spends most of his time on the couch. He cannot stand for more than 30 minutes without his buttock falling asleep. He is unable to pick up a gallon of milk because it causes shooting pain down the left leg into the calf and sometimes to the heel. He is unable to sleep for longer than 3 hours at a time and therefore has to nap throughout the day. Petitioner testified that prior to the January 23, 2013 accident, he did not experience these complaints. (T21-23).

22. On cross-examination, Petitioner confirmed he sustained a fall in his driveway in the winter of 2010 for which he was seen in the emergency room with complaints of back pain radiating to the left side. (T28). However, the radiation was in a different location than after the work accident as the emergency room record of December 28, 2010 showed pain just above the buttock on the left side with no radiation, numbness or tingling. (RX3)

23. Petitioner was taken off work by Dr. Garner on February 13, 2013 due to Petitioner's complaints following the January 23, 2013 accident and he has not been released to return to work. Dr. Gornet has also opined Petitioner is temporarily totally disabled pending lumbar fusion surgery for the injury sustained in the work accident of January 23, 2013. (PX4)

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

The Arbitrator found Petitioner's current condition of ill-being was not related to the January 23, 2013 accident. The Arbitrator stated his findings were "based on the questions of credibility raised by the medical evidence and Petitioner's testimony." The Arbitrator further found that the medical evidence documented a two year history of pre-existing chronic low back pain for which Petitioner was prescribed Vicodin and Flexeril in increasing dosages and he sustained a fall with injury to his back in December 2010. The Arbitrator further opined that Petitioner was not credible that he would be able to perform his duties as an ironworker prior to the accident without the use of narcotics to control his chronic low back pain. The Arbitrator found the opinions of Dr. Lange more credible than those of Dr. Gornet regarding causation.

The Commission, after reviewing the entire record, reverses the Arbitrator's denial of causal connection of Petitioner's current condition of ill-being for the reasons stated below.

The Commission's review of the Petitioner's testimony does not lead to a determination that Petitioner lacked credibility. The Commission found his answers to be truthful, non-evasive and logical given his work history. Petitioner worked for Respondent as a union ironworker erecting steel structures, a position that required him to work with heavy steel and tools, climb and kneel in tight spaces, hang from harnesses and perform welding duties from heights. Petitioner testified he regularly took Vicodin and Flexeril for up to two years prior to the January 23, 2013 accident. Petitioner readily testified that he began taking the medication in 2010 after being prescribed the narcotics after a fall on his driveway. He continued to take the medication, with a prescription from his primary care doctor, for pain in his knees, back and wrists due to the "everyday wear and tear of iron work." Petitioner testified that for 4-5 years prior to the January 2013 fall he steadily worked out of the union hall, working on average 12 hour days, up to 7 days a week and he never missed work due to low back pain. Petitioner testified the year prior to the accident, he worked about 3000 hours. Petitioner testified that he did receive an increase in the number of pills he received per month in the fall of 2012 because he was working so many hours in a heavy demand position. Petitioner testified that prior to the January 2013 fall, Vicodin and Flexeril mitigated his pain, but the medication was ineffective after the accident.

The Commission finds the medical records prior to January 23, 2013 substantiate Petitioner's testimony regarding his pain complaints. Petitioner treated at St. Elizabeth's emergency room on December 20, 2010, after a fall on ice at home with injury to his neck and back. He was given a prescription for Vicodin, Flexeril and Motrin. Petitioner began seeing Dr. Garner as a new patient on January 13, 2011. His main complaints at that time were trouble sleeping and a possible ear infection. Petitioner also mentioned he was an ironworker and experienced some back pain. Petitioner told Dr. Garner that he had recently had a fall and went to the ER and was given a short supply of Vicodin and Flexeril that seemed to work well for his pain. Dr. Garner provided a short refill of the Vicodin and Flexeril. Throughout 2011 and 2012, Dr. Garner continued to prescribe refills of Vicodin and Flexeril for what was described in the records as "iron working pain." Petitioner followed with Dr. Garner for a check-up on September 17, 2012. At that time, he was noted to have continued chronic low back pain and new numbness and tingling in his hands, greater on the right. It was further noted that Petitioner has been working a lot of 12 hour shifts. Dr. Garner increased the number of Vicodin Petitioner received per month from #120 to 150 as it reduced his pain. In November 2012, he presented with complaints of significant knee pain due to crawling required by his job and carrying of weights. Vicodin and Flexeril were refilled at the new dosage. On January 18, 2013, a few days before the accident, Dr. Garner noted that Petitioner's carpal tunnel complaints were doing better with braces but his left knee pain was still intermittent. There was no notation of specific back pain. When Petitioner presented to Dr. Garner the day after the work accident, January 24, 2013, he had specific complaints of back and neck pain. The pain was noted to have worsened by January 28, 2013 with radiation down to the feet bilaterally.

The medical records also substantiate Petitioner's testimony that he was able to work full and heavy duty prior to the January 23, 2013 accident. In September 2012, Petitioner's pain medication was increased as he had been working a lot of 12 hour shifts and was experiencing knee pain from a lot of crawling and carrying weights at work. There is no evidence Petitioner was taken off work or put on light duty prior to January 28, 2013.

The Commission finds it irrelevant to the question of causation whether Petitioner was able to work full duty without Vicodin or Flexeril prior to the January 23, 2013. What is relevant to the question of causation is that Petitioner was able to work full heavy duty prior to the accident, the prescription for Vicodin and Flexeril were given not only for chronic low back pain but also for pain in his extremities, that it was the increasing pain in the extremities that lead to the increase in medication prior to the accident, and that Petitioner had new or increased complaints of lumbar radiculopathy after the accident. Petitioner repeatedly stated in the medical records and his testimony at hearing that he did suffer from chronic back pain prior to the January 23, 2013 accident, but that the pain he experienced prior was "nothing like" the pain he experienced post-accident. Prior to the January 23, 2013 accident Petitioner worked on average 60-70 hours a week heavy labor. After the accident he is no longer able to work due to pain that is not satiated by narcotic medication.

When reviewing the record as a whole, including the Petitioner's un rebutted testimony and the treating medical records, the Commission finds the opinions of Dr. Gornet more credible than those of Dr. Lange regarding causation. While Petitioner did not specifically mention the 2010 fall on ice to Dr. Gornet, the doctor was aware and noted a history of low back pain and ongoing narcotic prescriptions. Dr. Gornet noted in his initial exam record that Petitioner's current problem began in its magnitude and severity after a work injury on January 23, 2013 and it was after that accident he was placed on light duty and then off work. Petitioner testified that Dr. Lange asked him whether he had back pain like he was experiencing currently before the accident. Petitioner truthfully answered that he had not had prior treatment, only medication. Petitioner only had one diagnostic image of his spine prior to the work injury, a normal x-ray of the lumbar spine after the 2010 fall. The MRI obtained on February 18, 2013 showed a left paracentral disc bulge at L4-5 causing moderate stenosis of the left neural foramen. Dr. Gornet opined Petitioner suffered an annular tear at L4-5 and that Petitioner's current symptoms were causally related to the January 23, 2013 accident. Dr. Gornet opined that given Petitioner's occupation, he would be best served with a spinal fusion after being weaned off narcotics. Dr. Lange opined that Petitioner was not yet at MMI with regard to the low back and required light duty restrictions, but not because of the work accident. However, Dr. Lange readily admitted that Petitioner was able to work full heavy duty with extensive overtime as an ironworker prior to the January 23, 2013 accident without any recommendation for treatment other than maintenance medication. Dr. Lange makes special note of the "increasing dosage of narcotics just prior to January 23, 2013" in forming his opinion regarding causation. The Commission reiterates the medical records show the increase in narcotics was to combat knee and wrist pain due to his job demands and schedule. Further, the Commission notes the increase in quantity prescribed occurred in September 2012, not November as Dr. Lange states. The dosage of Vicodin did not increase from 5 to 7.5 until February 13, 2013; after the work accident and due to radicular pain into the legs.

The Commission finds Petitioner proved by a preponderance of the evidence that his current condition of ill-being is casually related to the January 23, 2013 fall that arose out of and in the course of employment for Respondent. The fall was not disputed and caused direct injury to the back. Prior to the fall, Petitioner was able to work on average 60-70 hours a week heavy duty for Respondent and after, was unable to work. He developed significant radicular pain and was diagnosed with an annular tear at L4-5 with a recommendation made by Dr. Gornet for

fusion surgery. Prior to the accident, he had never had any recommendation for treatment to his spine, less maintenance medication. While Petitioner did have a long history of using heavy narcotic pain relievers for what has been described as "iron working pain," it is significant that Petitioner was able to work full duty at a heavy demand level on average 60 hours a week for years prior to the accident.

Were the medical services proved to Petitioner reasonable and necessary? Is Petitioner entitled to any prospective medical care?

Based on his finding regarding causation, the Arbitrator found Respondent was liable for the medical expenses incurred from the date of accident through April 29, 2013 subject to the fee schedule and in accordance with the Act. All medical opinions found the treatment Petitioner received was reasonable and necessary to relieve his complaints.

The Commission has found Petitioner proved the January 23, 2013 accident was a cause of his current condition of ill-being with regard to the low back and body as a whole. As such, the Commission modifies the Arbitrator's finding of medical expenses. Respondent shall pay all related, reasonable and necessary medical services contained in Petitioner's Exhibit 5 incurred from the date of accident, January 23, 2013, through the date of hearing, September 25, 2013, as provided in Sections 8(a) and 8.2 of the Act.

Petitioner also seeks prospective medical treatment for the work related lumbar condition as recommended by Dr. Gornet, including fusion surgery at L4-5. Petitioner testified that he has been able to wean himself off narcotic pain relievers in anticipation of surgery as recommended by Dr. Gornet. Dr. Lange and Dr. Gornet have both opined that the surgery recommended is reasonable and necessary to relieve Petitioner's complaints. As the Commission has found Petitioner's spinal condition is casually related to the work injury, the Commission orders Respondent to approve prospective medical treatment for the lumbar spine as recommended by Dr. Gornet, including fusion at L4-5.

What temporary benefits are in dispute?

Based on his finding regarding causation, the Arbitrator found Petitioner reached maximum medical improvement as of April 29, 2013, the date of Dr. Lange's Section 12 evaluation of Petitioner. The Arbitrator awarded temporary total disability for the period February 13, 2013 through April 29, 2013.

Petitioner was taken off work by Dr. Garner on February 6, 2013. Dr. Garner continued Petitioner off work through the date of hearing and Petitioner testified he never returned to work after February 13, 2013. Dr. Gornet also found Petitioner to be temporarily totally disabled due to the work accident in his note of March 14, 2013. Dr. Lange found Petitioner only able to work in a light duty capacity in his report of April 29, 2013.

The Commission finds Petitioner was temporarily totally disabled by the work accident of January 23, 2013 for the period February 13, 2013 through hearing, September 25, 2013. Respondent shall pay Petitioner TTD benefits of \$1149.75 per week for 32-1/7 weeks as provided in Section 8(b) of the Act.

After considering the entire record and for the foregoing reasons, the Commission finds that on the date of accident, January 23, 2013, Respondent was operating under and subject to the provisions of the Act and an employee-employer relationship did exist between Petitioner and Respondent. Petitioner did sustain an accident on that date that rose out of and in the course of employment and timely notice of the accident was given to Respondent. In the year preceding the injury, Petitioner earned an average weekly wage of \$1,724.62 and on the date of accident he was 35 years of age, married with two dependent children. The Commission further finds Petitioner's current condition of ill-being is causally related to the accident and Respondent has not paid all reasonable and necessary charges for all reasonable and necessary medical services. Consistent with these findings, the Commission affirms the Arbitrator's finding of accident and notice but reverses the remainder of the Arbitrator's findings including causation, medical expenses and temporary disability.

IT IS THEREFORE ORDERED BY THE COMMISSION that the November 13, 2013 Decision of the Arbitrator is reversed. The Commission finds Petitioner sustained an accident on January 23, 2013 that arose out of and in the course of employment, timely notice was given and Petitioner proved by a preponderance of the evidence that his current condition of ill-being is causally related to the accident.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$1,149.75 per week for a period of 32-1/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the reasonable and necessary medical expenses contained in Petitioner's Exhibit 5 pursuant to §8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent authorizes and pays for prospective medical treatment for the lumbar spine, including spinal fusion, as recommended by Dr. Gornet.

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 Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injuries.

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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$37,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **FEB 10 2015**



Daniel R. Donohoo



Charles J. DeVriendt



Ruth W. White

o-08/26/14
drd/adc
68

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

SCHNIEDER, FRANK

Employee/Petitioner

Case# 13WC005403

J F BRENNAN CO INC

Employer/Respondent

14IWCC0922

On 11/13/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% 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:

3067 KIRKPATRICK LAW OFFICES
ERIC KIRKPATRICK
3 EXECUTIVE WOODS CT
BELLEVILLE, IL 62226

2250 LAW OFFICES OF STEPHEN H LARSON
STACEY GLOGOVAC
940 W PORT PLZ SUITE 208
ST LOUIS, MO 63146

STATE OF ILLINOIS)
)SS.
COUNTY OF Madison)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Frank Schneider
Employee/Petitioner

Case # 13 WC 005403

v.

Consolidated cases:

J.F. Brennan Co., Inc.
Employer/Respondent

14IWCC0922

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 **Gerald Granada**, Arbitrator of the Commission, in the city of **Collinsville**, on **9/25/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, 1/23/13, 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 \$(worked approximately three weeks for Respondent); the average weekly wage was \$1,724.62.

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

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

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

Respondent is entitled to a credit of \$0 under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$1149.75/week for 10-6/7 weeks, commencing 2/13/13 through 4/29/13, as provided in Section 8(b) of the Act.

Respondent shall receive a credit for any and all TTD it has paid to date.

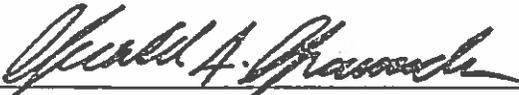
Respondent shall pay all related, reasonable and necessary medical services incurred through 4/29/13, subject to the Fee Schedule, as provided in Sections 8(a) and 8.2 of the Act.

Petitioner's request for prospective medical treatment is denied based on the findings regarding causation and TTD.

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

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

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



 Signature of Arbitrator

11/7/13
 Date

14I WCC 0922

FINDINGS OF FACT

This case involves a 35 year old iron worker who alleges he sustained injuries to his low back stemming from an undisputed accident on January 23, 2013. Respondent is disputing the issue of causation, medical expenses, TTD and prospective medical treatment. This case proceeded to hearing pursuant to Sections 19(b) and 8(a) of the Act.

Petitioner testified at the time of hearing that he is currently 35 years of age and has been an iron worker for thirteen years. He works out of the union hall. His job duties consist of erecting steel buildings, welding, tying and reinforcing rebar and wearing a harness weighing 30-35 lbs. He testified that the very nature of his job duties as an iron work are strenuous, require heavy lifting and working from heights. In January 2013, he began working on a job for Respondent, J.F. Brennan Co, Inc. On January 23, 2013, while working for Respondent, he was unloading steel from a barge up to a lock and dam. At approximately, 9:00 am petitioner slipped after releasing a load falling backwards and landing on his back and buttocks on a steel plate. Petitioner testified that he immediately felt a throbbing pain. Two of his co-workers came to his aid. The next day he went to his primary care physician with complaints of tingling, numbness and back pain. He further testified five days after the accident he started experiencing shooting pain down his left leg. He experiences left leg and buttock pain. His buttock falls asleep. Pain medication prescribed by Dr. Garner temporarily relived the pain but did not totally relieve it. He has not experienced any relief from injections. He has been off work since February 6, 2013. His back pain is excruciating and causes him to wake up at night and therefore he must nap during the day. Dr. Gornet wants to perform a back fusion.

Prior to January 23, 2013, petitioner testified that he had chronic low back pain and slight pain going to his left hip and buttocks. He took pain medication for his chronic low back pain. His primary care doctor's records contain complaints of low back radicular pain in February 2011 and April 2011. In November 2012, Dr. Garner increased his pain medication because he was working 12 hours a day and 7 days a week as an iron worker. He testified that he never missed work prior to the accident for lower back pain. Prior to seeing Dr. Gornet, he was still taking pain medication prescribed by Dr. Garner. He testified that has now quit taking Vicodin and Flexeril.

On Cross-Examination, petitioner admitted that he had previously fallen in December 2010 in his driveway at home landing flat on his back. He admitted that he was seen at the Emergency Room at St. Elizabeth's Hospital with complaints of low back pain with radiation to the left side. He was given a prescription for Hydrocodone and Flexeril at that time. After this fall, he began seeing his primary care doctor, Dr. Garner, for low back pain. He admitted that Dr. Garner recommended an MRI of the lumbar spine in February 2011 and again in April 2011 because of his radiating back complaints. Petitioner admitted he never had had the MRI because he couldn't afford it. He testified that he didn't think he needed the MRI. Petitioner admitted that Dr. Garner thought he needed the MRI.

On Cross-Examination, petitioner admitted that between January 2011 and January 23, 2013, Dr. Garner prescribed him Hydrocodone/Vicodin on at least 12 separate occasions for chronic low back pain. In September 2012, he was given a prescription for 150 Vicodin pills to take 4-5 pills per day. He further admitted that on November 15, 2012, he requested another 150 Vicodin pills and 90 Flexeril pills with a couple refills for his low back pain. On January 18, 2013, five days before the accident, he received another 150 Vicodin pills and 90 Flexeril pills. He admitted taking at least 5 Vicodin pills per day for the two months prior to the accident to control his low back pain. In addition, he admitted to taking Vicodin on the job while working for

Respondent to control his low back pain. He admitted he took Vicodin on the day of the accident. He continued to take 150 Vicodin per month after the accident.

Further on Cross-Examination, petitioner admitted that when he was hired by Respondent, he was given a copy of their drug and alcohol policy and asked to read it. The policy required him to report if he was taking prescription drugs and to have a doctor's note that the prescription drugs would not affect his work performance. He admitted that he signed paperwork that he accepted and agreed to the policy. He admitted that he didn't tell Respondent that he was taking prescription drugs or Vicodin. He testified that he thought the policy was referring to illegal drugs. He admitted that he had provided a previous employer a letter from Dr. Garner that he took hydrocodone for chronic low back pain.

He admitted that he didn't tell Dr. Gornet about the fall he had at home in December 2010 prior to the accident. In addition, he didn't tell Dr. Gornet about his pre-existing radicular pain. He admitted that he didn't tell Dr. Lange about his prior back problems.

The medical records of Dr. Garner (Respondent's Exhibit 2) indicate petitioner presented on February 4, 2011 with persistent low back pain with some radiation into the legs bilaterally for which he has been taking Vicodin, Flexeril and Ibuprofen. An MRI was recommended. Petitioner returned on April 27, 2011 and his lower exam was unchanged. He was diagnosed with lumbago with radiculopathy. It was noted that he needed an MRI when he is able to get testing done. The records thereafter document multiple refills of Vicodin/Hydrocodone for low back pain. In September 2012, petitioner was given an increase in his prescription after he relayed to Dr. Garner that he has been doing a lot of 12 hour shifts as an iron worker. He admitted to over doing it lately.

Petitioner presented to Dr. Garner's office on January 24, 2013, with low back pain and gave a history of falling while unloading iron at work. The records note, on January 28, 2013, he returned to Dr. Garner and complained of back pain with radicular symptoms. An MRI of the lumbar spine was performed on February 18, 2013 which showed a disc herniation with left paracentral extension at L4-L5.

Petitioner came under the care of Dr. Gornet on March 14, 2013. Per Dr. Gornet's report, petitioner presented with chief complaints of low back pain to both sides, both buttocks, down both legs to his knees. Petitioner gave a history of the January 23, 2013 work related incident. He admitted to having a history of some low back pain in the past, but didn't recall any significant treatment and no previous MRIs. Dr. Gornet reviewed the MRI films and noted a large left-sided annular tear at the L4-5 level. It was Dr. Gornet's opinion that petitioner's current symptoms are causally connected to the January 23, 2013 work related event. Dr. Gornet referred petitioner to Dr. Boutwell for trigger point and steroid injections. On March 25, 2013, an L4/5 epidural steroid injection and left L5/S1 transforaminal epidural space injection was performed. On April 8, 2013, a L4/5 epidural steroid injection and right L5/S1 transforaminal epidural space injection was performed.

The petitioner saw Dr. Gornet in follow up on May 2, 2013 and a CT discogram at L4-5 and L5-S1 was recommended as well as an anterior lumbar fusion at L4-5. The note documented that Dr. Gornet had a long discussion with petitioner regarding his narcotics use and he indicated he would delay surgery if he saw further narcotic prescriptions. On July 8, 2013, Dr. Gornet reviewed Dr. Lange's report and indicated that he disagreed with him regarding causation. He further noted that the continued use of Hydrocodone 150 tablets per month was unacceptable. He requested that petitioner demonstrate through drug testing that he is off all narcotics prior to moving forward with surgery. On August 19, 2013, a CT of the lumbar spine was performed which showed no evidence of disc herniation, canal compromise, or changes. Petitioner last saw Dr. Gornet in follow up on

August 19, 2013. Petitioner reported that he was off all Hydrocodone and he was moving forward taking control of his life. Dr. Gornet is currently awaiting approval for a lumbar fusion at L4-5. Dr. Gornet has indicated that the petitioner has been temporarily and totally disabled since the time of his initial evaluation on March 14, 2013.

At the request of Respondent, petitioner underwent a Section 12 examination performed by orthopedic spine surgeon, Dr. Lange on April 29, 2013. Per Dr. Lange's report and deposition testimony, Petitioner reported that he was injured at work on January 23, 2013 when he fell backward landing on steel plates. He initially had discomfort in the low back and then developed some discomfort passing into the bilateral hips. At the time of the exam, petitioner had neither referred nor radiating symptoms into the lower extremities. Petitioner reported using Flexeril and Hydrocodone three times a day. Petitioner was asked by Dr. Lange in a very straightforward fashion whether he had low back difficulties or treatment of low back problems in the past and the answer was no. Waddell testing was significantly positive. He was seen walking out of the office in a normal fashion, in the office, however, he had an intermittent limp to the left. Straight leg exam was normal. Dr. Lange summarized Petitioner's pre-existing records from Dr. Garner regarding chronic low back pain and the use of Hydrocodone. Dr. Lange's diagnoses were subjective complaints of axial low back pain, no symptoms consistent with radiculopathy, signs of symptoms magnification, chemical dependency. Dr. Lange indicated that one could not say within any degree of medical certainty that petitioner's current complaints were related to the work related event of January 23, 2013. He was of the opinion that petitioner's medical history suggests a lumbar condition sufficiently severe to warrant the use of chronic narcotics. A few weeks prior to the work incident there was an escalation of usage with the prescribing of 25% more narcotics than previously received. Dr. Lange indicated that the MRI reveals pathology only at L4-5 and if petitioner had a chronic lumbar condition requiring narcotics for at least the past two years, the pre-existing lumbar condition and need for narcotics must be related to the same L4-5 level. Dr. Lange noted that petitioner's medical treatment had been reasonable and necessary up to this point in time for the chronic low back condition and no further treatment was necessary for the work-related incident.

Dr. Lange provided two subsequent reports dated May 14, 2013 and June 3, 2013. In the reports and per Dr. Lange's deposition, Dr. Lange could not say with certainty that the work related incident of January 23, 2013 even aggravated or changed petitioner's pre-existing back condition. Dr. Lange agreed at most petitioner had a temporary aggravation following the work related incident which has since resolved. Any further treatment including surgery would be to address petitioner's pre-existing chronic lumbar condition and is not related to the work-related incident. Dr. Lange did acknowledge that the petitioner was not at maximum medical improvement with respect to his chronic lumbar condition. However, it was his opinion that he has reached maximum medical improvement with respect to the work related incident. It was his opinion that he should currently be able to work at the light-medium physical demand level. He acknowledged that a work release however, would need to come from a treating physician.

CONCLUSIONS OF LAW

1. With respect to issue of causation, the Arbitrator finds that petitioner has failed to sustain his burn of proof that his present condition of ill-being is causally related to the work related incident. The Arbitrator's findings are based on the questions of credibility raised by the medical evidence and Petitioner's testimony. The medical evidence documents a two year history of pre-existing chronic low back pain for which petitioner was prescribed Hydrocodone and Flexeril at increasing dosages. Petitioner admitted to a pre-existing fall in December 2010 wherein he landed flat on his back and complained of radiating left low back pain. When his radiating complaints persisted, Dr. Garner recommended an MRI of the lumbar spine. Petitioner admitted that

he did not have the MRI. Petitioner's testimony that he didn't believe he needed the MRI is contradicted by the medical records documenting pre-existing chronic low back pain with radicular complaints for which he received narcotics to treat. Further as acknowledged by Petitioner, two months prior to the work injury, he was taking 150 pills of Vicodin and 90 pills Flexeril per month to control his chronic low back pain. Five days before the work related incident, he requested an additional 150 pills of Vicodin and 90 pills of Flexeril. He acknowledged that he took the narcotics for pre-existing chronic low back pain. His testimony that he would have been able to perform his job duties as an iron worker without use of narcotics is not credible since he continued to seek narcotics at increasing dosages from Dr. Garner due to chronic low back pain from his job duties as an iron worker. Moreover, the medical evidence documents that petitioner was not able to perform his duties as an iron worker without complaint. It is difficult to believe that petitioner would have been physically able to perform his duties as an iron worker without the use of narcotic medication to control his chronic low back pain. Dr. Lange's opinion and testimony regarding causation is more credible than the opinion of Dr. Gornet. Dr. Gornet's records do not contain a detailed history of petitioner's pre-existing chronic low back complaints. Petitioner himself admits that he did not tell Dr. Gornet about his fall in 2010 or about his pre-existing radiating low back complaints. Dr. Lange had the benefit of reviewing petitioner's pre-existing records. Dr. Lange and Dr. Gornet both agree on the level of pathology at L4-5 on Petitioner's MRI. Dr. Lange's opinion that petitioner's pre-existing low back symptoms came from his level and therefore the need for additional treatment including surgery pre-existed the work incident is more credible than Dr. Gornet's opinion regarding causation. The work-related incident at most caused a temporary aggravation which has since resolved. Therefore, the Arbitrator finds the petitioner is at maximum medical improvement following the work-related incident and finds that the petitioner has not demonstrated a causal relationship between the work-related incident and his current condition of ill-being.

2. Regarding the issue of TTD, the Arbitrator finds that the Petitioner was found to have reached maximum medical improvement according to the April 29, 2013 evaluation by Dr. Lange. Accordingly, the Petitioner is awarded TTD from February 13, 2013 through April 29, 2013. This finding is supported by the Arbitrator's findings on the issue of causation above. Respondent shall receive a credit for any TTD it has paid to date.

3. Based on the Arbitrator's findings above, the Petitioner is awarded medical expenses through the date he was found to have reached maximum medical improvement – April 29, 2013, the date of Dr. Lange's IME. Respondent shall pay any and all reasonable, related and necessary medical expenses incurred from the date of accident through April 29, 2013, subject to the fee schedule and in accordance with Sections 8(a) and 8.1 of the Act.

4. Petitioner's request for prospective medical treatment is denied based on the findings above.